2001

HOUSE
JUDICIARY II

MINUTES

HOUSE COMMITTEE ON JUDICIARY II
2001 SESSION

MEMBER	ASSISTANT	PHONE	OFFICE	SEAT
BADDOUR, Phil Chairman	Elizabeth Kirkland Committee Assistant	715-0850	2301	31
FITCH, Toby	Carolyn Branch	715-2241	1202	17
HAIRE, Phil	Sara Jane Lennard	715-3005	419B	47
BOWIE, Joni	Sharon Gaudette	733-5877	538	77
CULPEPPER, Bill	Dot Crocker	715-3028	404	36
DECKER, Michael	Linda Hines	733-5988	1021	87
GULLEY, Jim	Lucille Carter	733-5860	1307	25
HALL, John	Joan Peacock	733-5898	614	60
JEFFUS, Maggie	Mary Lee Robinson	733-5191	1013	4
JUSTUS, Larry	Carolyn Justus	733-5956	2204	13
MILLER, Paul	Eryn Gee	733-5872	640	27
MINER, David	Susan Phillips	733-5861	1006	76
POPE, Art	Barbara Rhodes	733-5809	539	53
SHERRILL, Wilma	Rosa Kelley	715-3026	403	37
WEISS, Jennifer	Susan Doty	733-5781	2221	16
Esther Manheimer, Committee Counsel	Robin Johnson, Committee Counsel	733-2578	545	
Jeffrey Hudson, Committee Counsel				

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE JUDICIARY II COMMITTEE
2001 – 2002 SESSION



Rep. Baddour
Chair



Rep. Fitch
Vice-Chair



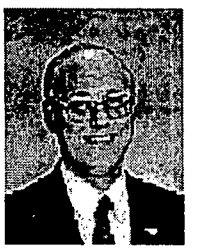
Rep. Haire
Vice-Chair



Rep. Bowie



Rep. Culpepper



Rep. Decker



Rep. Gulley



Rep. Hall



Rep. Jeffus



Rep. Justus



Rep. Miller



Rep. Miner



Rep. Pope



Rep. Sherrill



Rep. Weiss

ATTENDANCE

House Judiciary II

(Name of Committee)

DATES	2/27	3/6	3/13	3/20	3/22	3/27	3/29	4/3	4/5	4/10	4/12	4/17 10am	4/17 1pm	4/18	4/19 10am
Baddour, Phil (Chair)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Fitch, Toby (Vice-Chair)															
Haire, Phil (Vice-Chair)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓
Bowie, Joni		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	EA	✓	✓	EA
Culpepper, Bill	✓	✓		✓		✓	✓		✓		✓	✓			✓
Decker, Michael	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓			✓
Gulley, Jim	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓		
Hall, John	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Jeffus, Maggie	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Justus, Larry	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓			✓	✓
Miller, Paul	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
Miner, David											✓				✓
Pope, Art	✓		✓		✓				✓	✓					✓
Sherrill, Wilma	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓
Weiss, Jennifer	✓	EA	✓	✓	✓	✓	✓	✓	EA	✓	✓	✓	✓	✓	EA
Ex-Officio Members															

ATTENDANCE

House Judiciary II

(Name of Committee)

DATES	4/19 1pm	4/23	4/24 9:30	4/24 3pm	5/1	5/8	5/10	5/15	5/17	5/20	5/24	5/31	6/5	6/7	6/12
Baddour, Phil (Chair)	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓
Fitch, Toby (Vice-Chair)	✓			✓											
Haire, Phil (Vice-Chair)	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓	✓	✓	✓
Bowie, Joni	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Culpepper, Bill	✓	✓	✓	✓					✓			✓	✓		
Decker, Michael	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Gulley, Jim	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
Hall, John	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
Jeffus, Maggie	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
Justus, Larry		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Miller, Paul	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓
Miner, David	✓	✓		✓			✓							✓	
Pope, Art	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Sherrill, Wilma	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Weiss, Jennifer	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Ex-Officio Members															

ATTENDANCE

House Judiciary II

(Name of Committee)

DATES	6/19	7/3	7/10	7/12	7/17	7/19	7/24	7/31	8/7	8/14	8/28	10/9	10/23	10/30	10/31
Baddour, Phil (Chair)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Fitch, Toby (Vice-Chair)	✓	✓													
Haire, Phil (Vice-Chair)		✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓
Bowie, Joni		✓	✓	✓	✓	✓	✓	✓	EA	✓	✓	✓	✓	✓	
Culpepper, Bill		✓	✓	✓	✓	✓	✓	✓	✓	✓		✓			✓
Decker, Michael	✓	✓	✓		✓	✓	✓	✓	✓	✓		✓		✓	✓
Gulley, Jim	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓
Hall, John	✓	✓	✓	✓		✓	✓	✓	✓	✓		✓	.	✓	✓
Jeffus, Maggie	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓
Justus, Larry	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	■			
Miller, Paul	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓		
Miner, David															
Pope, Art	✓	✓	✓	✓			✓		✓	✓	✓				✓
Sherrill, Wilma	✓			✓		✓	✓	✓	✓	✓	✓	✓	✓		
Weiss, Jennifer	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	EA
Ex-Officio Members										.					
Rep. Earle										✓					
Rep. Cunningham															

ATTENDANCE

House Judiciary II

11/6 (Name of Committee)

DATES															
Baddour, Phil (Chair)	✓														
Fitch, Toby (Vice-Chair)															
Haire, Phil (Vice-Chair)															
Bowie, Joni	✓														
Culpepper, Bill	✓														
Decker, Michael	✓														
Gulley, Jim	✓														
Hall, John	✓														
Jeffus, Maggie	✓														
Justus, Larry	✓														
Miller, Paul															
Miner, David															
Pope, Art	✓														
Sherrill, Wilma	✓														
Weiss, Jennifer	✓														
Ex-Officio Members															
Rep. Cunningham	✓														

North Carolina General Assembly
Pending House Committee on
Judiciary II

2001-2002 Biennium

Bill	Short Title		Date	Latest Action
H 45	GAS DRIVE AWAYS/LICENSE SUSPENSION.	*H	03-22-2001	Re-ref Com On Judiciary II
H 137	FINANCIAL RESPONSIBILITY.	H	02-15-2001	Ref To Com On Judiciary II
H 138	JUVENILE CAPACITY TO PROCEED.	H	02-15-2001	Ref To Com On Judiciary II
H 178	DRUNK DRIVING DEATH IS FELONY MURDER.	H	02-20-2001	Ref To Com On Judiciary II
H 277	JUVENILE EXTENDED COMMITMENT PROCEDURE.	*H	04-04-2001	Re-ref Com On Judiciary II
H 372=	AMEND RULE 68 OFFER OF JUDGMENT.	H	03-01-2001	Ref To Com On Judiciary II
H 533	FUQUAY-VARINA RED LIGHT CAMERAS.	H	03-29-2001	Re-ref Com On Judiciary II
H 534	KNIGHTDALE RED LIGHT CAMERAS.	H	03-29-2001	Re-ref Com On Judiciary II
H 535	GARNER RED LIGHT CAMERAS.	H	03-29-2001	Re-ref Com On Judiciary II
H 705	GREENVILLE SPEED ENFORCEMENT CAMERAS.	H	04-03-2001	Re-ref Com On Judiciary II
H 737=	AMEND ADOPTION LAWS.	H	03-22-2001	Ref To Com On Judiciary II
H 849	JUDICIAL & EXECUTION SALES PROCEDURE-2	H	03-29-2001	Ref To Com On Judiciary II
H 862	UNION COUNTY/ALBEMARLE RED LIGHT CAMERAS.	H	03-29-2001	Ref To Com On Judiciary II
H 918	DURHAM RED LIGHT CAMERAS.	H	03-29-2001	Ref To Com On Judiciary II
H 946	POSSESSION/MANUFACTURE OF FRAUDULENT IDS.	*H	10-04-2001	Ref To Com On Judiciary II
H 967	COLLATERAL SOURCE EVIDENCE RULE.	H	04-04-2001	Ref To Com On Judiciary II
H 971	DSS WORKER - RIGHT OF ENTRY.	H	04-04-2001	Ref To Com On Judiciary II
H 989=	JUDICIAL APPOINTMENT/VOTER RETENTION.	H	04-05-2001	Ref To Com On Judiciary II
H1129	GRANDPARENT VISITATION.	H	04-12-2001	Ref To Com On Judiciary II
H1146	PRESUMPTIVE FINES FOR SPEEDING.	H	04-12-2001	Ref To Com On Judiciary II
H1164	POSTADOPTION PRIVILEGES.	H	04-12-2001	Ref To Com On Judiciary II
H1166	STATE EMPLOYEES' HEALTH PLAN/WORKERS COMP.	H	04-12-2001	Ref To Com On Judiciary II
H1244	FAMILY COURT PILOT DISTRICTS.	H	04-12-2001	Ref To Com On Judiciary II
H1281	EAST. BAND CHEROKEES' FULL FAITH AND CREDIT.	H	04-12-2001	Ref To Com On Judiciary II
$ H1282	**CRIMINAL BACKGROUND CHECKS LONG-TERM CARE.**	**H**	**04-12-2001**	**Ref To Com On Judiciary II**
H1314	COUNTY APPEAL OF JUVENILE ORDERS.	H	04-12-2001	Ref To Com On Judiciary II
H1317	RESTRICTIVE COVENANTS-CHILD CARE	*H	04-25-2001	Re-ref Com On Judiciary II
$ H1402	**ADDRESS CONFIDENTIALITY PROGRAM/FUNDS.**	**H**	**04-26-2001**	**Ref to the Com on Judiciary II and, if favorable, to the Com on Appropriations**
S 93	EN BANC PROCEDURE.	*H	04-26-2001	Ref To Com On Judiciary II
S 280=	LAW ENFORCEMENT PROTECTION FOR SOCIAL WORKERS.	H	04-30-2001	Ref To Com On Judiciary II
S 416=	AMEND RULE 68 OFFER OF JUDGMENT.	H	04-30-2001	Ref To Com On Judiciary II
S 746	SENTENCING ENHANCEMENT CHANGES/SENT. COMM..	*H	07-02-2001	Re-ref Com On Judiciary II
S 752=	STATE JUDICIAL COUNCIL MEMBERSHIP.	*H	04-24-2001	Ref To Com On Judiciary II
S 787=	JUDICIAL APP./VOTER RETENTION.	*H	04-26-2001	Ref To Com On Judiciary II

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2001-2002 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0007	Hill	AMEND WORTHLESS CHECK PROGRAM.	*HR	Ch. SL 2001-61	03-15-01	04-18-01
H0045	Decker	GAS DRIVE AWAYS/ LICENSE SUSPENSION.	*H	Re-ref Com On Judiciary II	03-22-01	
H0137	Baddour	FINANCIAL RESPONSIBILITY.	H	Ref To Com On Judiciary II	02-15-01	
H0138	Baddour	JUVENILE CAPACITY TO PROCEED.	H	Ref To Com On Judiciary II	02-15-01	
H0168=	Culpepper	CORPORATE ASSET TRANSFERS/RELIEF	*HR	Ch. SL 2001-508	02-20-01	02-27-01
H0178	Decker	DRUNK DRIVING DEATH IS FELONY MURDER.	H	Ref To Com On Judiciary II	02-20-01	
H0182=	Culpepper	AMEND ANTI-LAPSE STATUTE.	HR	Ch. SL 2001-83	02-20-01	02-27-01
$ H0241=	**Warner**	**FAMILY DRUG TREATMENT COURT PROGRAM.**	***H**	**Assigned To Appropriations Subcommittee on Justice and Public Safety**	**03-08-01**	**05-22-01**
H0274	Haire	AMEND JUVENILE JUSTICE TERMINOLOGY.	*HR	Ch. SL 2001-95	02-27-01	04-03-01
H0275=	Haire	INFANT HOMICIDE PREVENTION ACT.	*HR	Ch. SL 2001-291	02-27-01	03-21-01
H0277	Haire	JUVENILE EXTENDED COMMITMENT PROCEDURE.	*H	Re-ref Com On Judiciary II	02-27-01	03-21-01
H0277	Haire	JUVENILE EXTENDED COMMITMENT PROCEDURE.	*H	Re-ref Com On Judiciary II	04-04-01	
H0311	Redwine	INDIAN TRIBE UNEMPLOYMENT OPTION.	*HR	Ch. SL 2001-184	03-22-01	04-04-01
H0372=	Haire	AMEND RULE 68 OFFER OF JUDGMENT.	H	Ref To Com On Judiciary II	03-01-01	
H0377=	Culpepper	DEPARTMENT OF SOCIAL SERVICES CHANGES 2.	*HR	Ch. SL 2001-237	03-01-01	04-23-01
H0385=	Culpepper	CONSOLIDATE BUSINESS PROVISIONS.	*HR	Ch. SL 2001-358	03-01-01	03-07-01
H0385=	Culpepper	CONSOLIDATE BUSINESS PROVISIONS.	*HR	Ch. SL 2001-358	07-16-01	07-17-01
H0434	Haire	AMEND RULE 9(J).	*HR	Ch. SL 2001-121	03-01-01	04-19-01
H0439=	Haire	CIVIL PROCEDURE RULE CHANGES.	*HR	Ch. SL 2001-379	03-01-01	04-02-01
H0440	Weiss	EMBALMERS AND FUNERAL DIRECTORS.	*HR	Ch. SL 2001-294	03-06-01	04-04-01
H0442	Gibson	CONCEALED HANDGUN PERMIT RECIPROCITY.	*H	Ref To Com On Judiciary II	03-01-01	04-24-01
H0495	Hensley	LEFT TURN ON RED.	*H	Ref To Com On Rules and Operations of the Senate	03-06-01	03-26-01
H0533	Ellis	FUQUAY-VARINA RED LIGHT CAMERAS.	H	Re-ref Com On Judiciary II	03-29-01	
H0534	Ellis	KNIGHTDALE RED LIGHT CAMERAS.	H	Re-ref Com On Judiciary II	03-29-01	
H0535	Ellis	GARNER RED LIGHT CAMERAS.	H	Re-ref Com On Judiciary II	03-29-01	
H0536	Ellis	LRC/STUDY USE OF RED LIGHT CAMERAS.	*H	Re-ref Com On Rules, Calendar,	03-08-01	04-16-01

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2001-2002 Biennium

Bill	Introducer	Short Title		Latest Action and Operations of the House	In Date	Out Date
567=	Ellis	WAKE COUNTY RED LIGHT CAMERAS.	*HF	Failed 2nd Reading	03-12-01	04-18-01
H0668	Baddour	SETTLEMENT PROCEDURES IN DISTRICT COURT ACTIONS.	*HR	Ch. SL 2001-320	03-19-01	03-28-01
H0689	Haire	TENNESSEE VALLEY AUTHORITY OFFICERS' AUTHORITY.	*HR	Ch. SL 2001-257	03-19-01	03-22-01
H0705	Rogers	GREENVILLE SPEED ENFORCEMENT CAMERAS.	H	Re-ref Com On Judiciary II	04-03-01	
H0716	Haire	ESTATE LAW CHANGES.	*H	Ref To Com On Judiciary I	03-21-01	04-24-01
H0737=	Earle	AMEND ADOPTION LAWS.	H	Ref To Com On Judiciary II	03-22-01	
H0849	Culpepper	JUDICIAL & EXECUTION SALES PROCEDURE-2	H	Ref To Com On Judiciary II	03-29-01	
H0862	Shubert	UNION COUNTY/ ALBEMARLE RED LIGHT CAMERAS.	H	Ref To Com On Judiciary II	03-29-01	
H0902=	Baddour	STATE JUDICIAL COUNCIL MEMBERSHIP.	*HR	Ch. SL 2001-96	03-29-01	04-18-01
H0906=	Weiss	DURHAM TECH. CORR./ EXP ABC BD./SINGLE-PRIME.	*HR	Ch. SL 2001-350	03-29-01	04-03-01
H0918	Luebke	DURHAM RED LIGHT CAMERAS.	H	Ref To Com On Judiciary II	03-29-01	
H0946	Eddins	POSSESSION/ MANUFACTURE OF FRAUDULENT IDS.	*H	Ref To Com On Judiciary II	10-04-01	
0953	Eddins	UTTER/POSSESS COUNTERFEIT U.S. CURRENCY.	*H	Re-ref Com On Judiciary II	04-03-01	04-18-01
H0967	Russell	COLLATERAL SOURCE EVIDENCE RULE.	H	Ref To Com On Judiciary II	04-04-01	
H0971	Capps	DSS WORKER - RIGHT OF ENTRY.	H	Ref To Com On Judiciary II	04-04-01	
H0989=	Michaux	JUDICIAL APPOINTMENT/ VOTER RETENTION.	H	Ref To Com On Judiciary II	04-05-01	
H0998	Pope	STATE PRIVACY ACT.	*HR	Ch. SL 2001-256	04-05-01	04-11-01
H1053=	McMahan	ACTION ON CONSTRUCTION PAYMENT BOND.	HR	Ch. SL 2001-177	04-10-01	04-17-01
H1070	Haire	TRUSTEES AND ESTATE LAW CHANGES	*HR	Ch. SL 2001-413	04-10-01	06-06-01
H1099	Church	SUBSTITUTE LETTER OF CREDIT FOR SURETY BOND.	H	Ref To Com On Judiciary I	04-11-01	04-17-01
H1100	Baddour	COUNTERFEITING/ NEGOTIABLE INSTRUMENTS.	H	Ref To Com On Finance	04-11-01	04-18-01
H1117	Baddour	DA DISCRETION	*HR	Ch. SL 2001-81	04-12-01	04-24-01
H1118	Church	FRAUD AGAINST FINANCIAL INSTITUTIONS.	H	Ref To Com On Judiciary I	04-12-01	04-19-01

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2001-2002 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H1129	Decker	GRANDPARENT VISITATION.	H	Ref To Com On Judiciary II	04-12-01	
H1146	Hurley	PRESUMPTIVE FINES FOR SPEEDING.	H	Ref To Com On Judiciary II	04-12-01	
H1164	Baddour	POSTADOPTION PRIVILEGES.	H	Ref To Com On Judiciary II	04-12-01	
H1166	Baddour	STATE EMPLOYEES' HEALTH PLAN/WORKERS COMP.	H	Ref To Com On Judiciary II	04-12-01	
H1174	Miller	INCREASE PENALTY/DRUG SALES @ PARKS.	HR	Ch. SL 2001-307	04-12-01	04-19-01
H1244	Baddour	FAMILY COURT PILOT DISTRICTS.	H	Ref To Com On Judiciary II	04-12-01	
H1245	Baddour	NCDL/SELECTIVE SERVICE REGISTRATION.	*H	Ref To Com On Judiciary II	04-12-01	04-24-01
H1270	Haire	EASTERN BAND OF CHEROKEES' FULL FAITH AND CREDIT	*HR	Ch. SL 2001-456	04-12-01	04-24-01
H1281	Carpenter	EAST. BAND CHEROKEES' FULL FAITH AND CREDIT.	H	Ref To Com On Judiciary II	04-12-01	
$ H1282	**Weiss**	**CRIMINAL BACKGROUND CHECKS LONG-TERM CARE.**	**H**	**Ref To Com On Judiciary II**	**04-12-01**	
H1284	Weiss	OPENNESS OF COURT RECORDS AND PROCEEDINGS.	*HR	Ch. SL 2001-516	04-12-01	04-24-01
H1284	Weiss	OPENNESS OF COURT RECORDS AND PROCEEDINGS.	*HR	Ch. SL 2001-516	04-26-01	06-19-01
H1314	Baddour	COUNTY APPEAL OF JUVENILE ORDERS.	H	Ref To Com On Judiciary II	04-12-01	
H1317	Easterling	RESTRICTIVE COVENANTS-CHILD CARE	*H	Re-ref Com On Judiciary II	04-25-01	
H1340	Mitchell	LRC TO STUDY POST-TOWING PROCEDURES.	*H	Re-ref Com On Rules, Calendar, and Operations of the House	04-12-01	04-24-01
$ H1402	**Jeffus**	**ADDRESS CONFIDENTIALITY PROGRAM/FUNDS.**	**H**	**Ref to the Com on Judiciary II and, if favorable, to the Com on Appropriations**	**04-26-01**	
H1468		CERTAIN WEAPONS OF MASS DESTRUCTION.	*HR	Ch. SL 2001-470	10-18-01	10-24-01
H1472		BIOLOGICAL AGENTS REGISTRY.	*HR	Ch. SL 2001-469	10-30-01	11-06-01
S0007	Luther H. Jordan	ADD JUVENILE MEMBERS.	*HR	Ch. SL 2001-199	03-01-01	05-23-01
S0067	Luther H. Jordan	JUVENILE JUSTICE UNDER CORRECTIONS OVERSIGHT.	HR	Ch. SL 2001-138	03-01-01	05-22-01
S0068	Luther H. Jordan	CRIMINAL JUSTICE STANDARDS COMMISSION CHANGE.	*HR	Ch. SL 2001-490	04-26-01	06-06-01
S0093	Tony Rand	EN BANC PROCEDURE.	*H	Ref To Com On Judiciary II	04-26-01	
S0119	Walter H. Dalton	DISTRICT COURT ELECTIONS NONPARTISAN.	*HR	Ch. SL 2001-403	03-01-01	08-15-01

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
S0220	Fletcher L. Hart	DEFINE TIME STOCK ABANDONED FOR ESCHEATS.	*HR	Ch. SL 2001-226	04-09-01	05-31-01
S0241	Walter H. Dalton	HEALTH INSURANCE TERMINATION NOTICE.	*HR	Ch. SL 2001-422	05-16-01	08-15-01
S0243	Aaron W. Plyler	RED LIGHT CAMERAS/ CERTAIN CITIES.	*HR	Ch. SL 2001-286	04-02-01	04-16-01
S0243	Aaron W. Plyler	RED LIGHT CAMERAS/ CERTAIN CITIES.	*HR	Ch. SL 2001-286	05-16-01	06-11-01
S0257	Fletcher L. Hart	UCC ARTICLE 9 AMENDMENTS.	*HR	Ch. SL 2001-231	04-04-01	05-29-01
S0258	Fletcher L. Hart	RESCISSION OFFER FILING PROCEDURE.	HR	Ch. SL 2001-183	03-22-01	05-29-01
S0259	Fletcher L. Hart	ABOLISH CHURCH BOND DEALER RESTRICTION.	HR	Ch. SL 2001-182	03-26-01	05-29-01
S0277	Fletcher L. Hart	COMMUNITY DEVELOPMENT EXEMPTION.	*HR	Ch. SL 2001-197	03-22-01	05-29-01
S0278	Kay R. Hagan	THEFT OF GASOLINE/ LICENSE SUSPENSION.	*HR	Ch. SL 2001-352	04-25-01	07-10-01
S0280=	Charlie S. Danne	LAW ENFORCEMENT PROTECTION FOR SOCIAL WORKERS.	H	Ref To Com On Judiciary II	04-30-01	
S0352	John H. Kerr III	EXTEND LIEN FOR PUBLIC HEALTH NUISANCE.	*HR	Ch. SL 2001-448	04-25-01	06-04-01
S0370	John H. Kerr III	STATE MH JOINT SECURITY FORCE JURISD.	HR	Ch. SL 2001-125	04-02-01	05-14-01
S0390	James Forrester	PHYSICIAN-ASSISTED SUICIDE/EDUCATION & CRIME.	*H	Re-ref Com On Judiciary I	05-24-01	06-04-01
S0397	Frank W. Ballanc	GED CREDIT FOR INMATES.	*HR	Ch. SL 2001-200	04-02-01	05-22-01
S0416=	Daniel G. Clodfe	AMEND RULE 68 OFFER OF JUDGMENT.	H	Ref To Com On Judiciary II	04-30-01	
S0499=	Fletcher L. Hart	AMEND ADOPTION LAWS.	*HR	Ch. SL 2001-150	04-26-01	05-14-01
S0532	Walter H. Dalton	CLARIFY SCH. BD. APPS./NONCERT. E'EES NOTICE.	*HR	Ch. SL 2001-260	06-05-01	06-19-01
S0626=	Daniel G. Clodfe	DOMESTIC VIOLENCE FATALITY REVIEW TEAM.	*H	Re-ref Com On Rules, Calendar, and Operations of the House	04-26-01	05-02-01
S0681	Fletcher L. Hart	JUDICIAL & EXECUTION SALES/REVISE PROCEDURE.	*HR	Ch. SL 2001-271	04-19-01	06-13-01
S0746	Brad Miller	SENTENCING ENHANCEMENT CHANGES/ SENT. COMM..	*H	Re-ref Com On Judiciary II	04-23-01	06-13-01
S0746	Brad Miller	SENTENCING ENHANCEMENT CHANGES/ SENT. COMM..	*H	Re-ref Com On Judiciary II	07-02-01	
S0751	Scott Thomas	NO DRUGS AT CHILD CARE CENTERS.	*HR	Ch. SL 2001-332	04-26-01	07-10-01
S0752=	Frank W. Ballanc	STATE JUDICIAL COUNCIL MEMBERSHIP.	*H	Ref To Com On Judiciary II	04-24-01	
S0780	Fletcher L. Hart	AMEND PHYSICIANS'	*HR	Ch. SL 2001-377	04-26-01	07-25-01

'$' indicates the bill is an appropriation bill.
A bold line indicates the bill is an appropriation bill.
'*' indicates that the text of the original bill was changed by some action.
'=' indicates that the original bill is identical to another bill.

2001-2002 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		LIENS STATUTES.				
787=	T. LaFontine Odo	JUDICIAL APP./VOTER RETENTION.	*H	Ref To Com On Judiciary II	04-26-01	
S0790	Fletcher L. Hart	GOOD FUNDS SETTLEMENT ACT REVISIONS.	*HR	Ch. SL 2001-420	06-04-01	08-28-01
S0826	Tony Rand	CRIMINAL RECORD CHECK CHANGE/LONG-TERM CARE.	*HR	Ch. SL 2001-465	07-10-01	10-24-01
S0829	Tony Rand	GOVERNMENT SECURITY INTERESTS CLARIFIED.	*HR	Ch. SL 2001-218	04-25-01	06-04-01
S0833=	Tony Rand	POSSESSING FRAUDULENT ID TO GET LIQUOR.	*HR	Ch. SL 2001-461	10-04-01	10-10-01
S0842	Daniel G. Clodfe	BUSINESS ENTITY CHANGES.	*HR	Ch. SL 2001-387	07-03-01	07-26-01
S0866=	Brad Miller	PERSONS WITH DISABILITIES CHANGES.-AB	*H	Conf Com Appointed	05-29-01	06-20-01
S0881	R. C. Soles, Jr.	WORKERS' COMP AWARDS FILED AS JUDGMENTS.	*HR	Ch. SL 2001-477	04-18-01	11-06-01
S0912	Tony Rand	PENALTY FOR FILING FALSE STATUTORY LIEN.	*HR	Ch. SL 2001-495	04-26-01	06-04-01
S1014	Charles W. Alber	STRENGTHEN LITTERING LAWS.	*HR	Ch. SL 2001-512	06-19-01	07-23-01

'$' indicates the bill is an appropriation bill.
A bold line indicates the bill is an appropriation bill.
'*' indicates that the text of the original bill was changed by some action.
'=' indicates that the original bill is identical to another bill.

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

February 27, 2001 – 10:00 a.m.

The House Committee on Judiciary II met on Tuesday, February 27, 2001, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairman Phil Haire, Representatives Culpepper, Decker, Gulley, Hall, Jeffus, Justus, Miller, Pope, Sherrill, and Weiss. Robin Johnson, Esther Manheimer, Jeff Hudson, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the first meeting of the House Committee on Judiciary II to order and asked members and staff to introduce themselves to the committee. Rep. Baddour outlined the role of the Judiciary II committee, and charged members to scrutinize all bills to come before them. He then introduced the Pages, and called for consideration of the following bills:

HB 168 Corporate Asset Transfers. Rep. Baddour recognized Rep. Culpepper, bill sponsor, to explain the bill. Rep. Culpepper urged members to review the bill analysis, which is attached for the record. He noted that this legislation would address new business entities. The chair then called on Floyd Lewis of the General Statutes Commission to comment on the bill. Mr. Lewis noted that this bill would give corporations more options. Following comments from the committee, Rep. Haire moved that the bill receive a favorable report. Motion carried unanimously.

HB 182 Amend Anti-Lapse Statute. Rep. Baddour recognized Rep. Culpepper, bill sponsor, to present the bill. Rep. Culpepper asked the chair to recognize Bly Hall of the General Statutes Commission to explain the origin of the bill. After brief discussion from the committee, Rep. Decker moved that the bill receive a favorable report. Motion passed.

The meeting adjourned at 10:30 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

AGENDA

HOUSE JUDICIARY II COMMITTEE

February 27, 2001
10:00 A.M.

CALL TO ORDER
INTRODUCE PAGES

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Jeff Hudson
Elizabeth Kirkland (Committee Assistant)

BILLS TO BE CONSIDSERED:

HB 168 Corporate Asset Transfers
Sponsor: Rep. Culpepper

HB 182 Amend Anti-Lapse Statute
Sponsor: Rep. Culpepper

ADJOURNMENT

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 168 A BILL TO BE ENTITLED AN ACT TO PERMIT A CORPORATION TO TRANSFER ASSETS TO A WHOLLY OWNED UNINCORPORATED ENTITY, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 168*

Short Title:	Corporate Asset Transfers.	(Public)
Sponsors:	Representative Culpepper.	
Referred to:	Judiciary II.	

February 20, 2001

A BILL TO BE ENTITLED

AN ACT TO PERMIT A CORPORATION TO TRANSFER ASSETS TO A WHOLLY OWNED UNINCORPORATED ENTITY, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 55-12-01 reads as rewritten:

"**§ 55-12-01. Sale of assets in regular course of business and mortgage of assets.**

(a) A mortgage of or other security interest in all or any part of the property of a corporation may be made by authority of the board of directors without approval of the shareholders, unless otherwise provided in the articles of incorporation or in bylaws adopted by the shareholders.

(b) Unless otherwise provided in the articles of incorporation or in bylaws adopted by the shareholders, a corporation may, on the terms and conditions and for the consideration determined by the board of directors, and without approval by the shareholders:

(1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business; or

(2) Transfer any or all of its property to a corporation <u>or an unincorporated entity</u> all the shares <u>or ownership interests</u> of which are owned by the corporation."

SECTION 2. This act is effective when it becomes law and applies to transfers occurring on or after that date.

HOUSE BILL 168:
Corporate Asset Transfers

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Culpepper
Date:	February 27, 2001	**Summary by:**	Jeff Hudson
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 168 (Corporate Asset Transfers) would permit the board of directors of a corporation to transfer corporate assets to a wholly owned unincorporated entity[1] without the approval of the shareholders. This act is effective when it becomes law and would apply to transfers occurring on or after that date.***

CURRENT LAW: Under current law, the board of directors of a corporation may transfer corporate assets to a wholly owned corporation without the approval of the shareholders. Such a transfer may be prohibited by the articles of incorporation or the bylaws of the parent corporation.

BILL ANALYSIS: House Bill 168 would expand the types of entities to which the board of directors of a corporation could transfer corporate assets without shareholder approval to include wholly owned unincorporated entities as well as wholly owned corporations. Such a transfer could still be prohibited by the articles of incorporation or the bylaws of the parent corporation.

BACKGROUND: Under certain circumstances, there may be tax advantages to transferring corporate assets to an unincorporated entity. The transfer of corporate assets to a wholly owned unincorporated entity is not a taxable event, whereas the transfer of assets to a wholly owned corporation may be a taxable event. Furthermore, a corporation is subject to taxation at both the corporate level and the shareholder level. An unincorporated entity such as a limited liability company may only be subject to taxation at the member level.

[1] An unincorporated entity is defined in G.S. 55-1-40 to include limited liability companies, limited partnerships, and other partnerships.

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

MEMORANDUM

TO: House Judiciary II Committee

FROM: General Statutes Commission

DATE: February 21, 2001

RE: House Bill 168 (Corporate Asset Transfers)

G.S. 55-12-01 currently permits a corporation to transfer property to a wholly owned corporation without shareholder approval. For tax reasons, however, it may be preferable to transfer property to a wholly owned subsidiary that is not a corporation (such as a limited liability company) in connection with certain financing transactions, including securitizations. House Bill 168 amends G.S. 55-12-01 to permit property transfers to a wholly owned unincorporated entity. An unincorporated entity is defined in Chapter 55 of the General Statutes to mean a domestic or foreign limited liability company, limited partnership, or other partnership. See N.C.Gen.Stat. § 55-1-40 (1999).

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 182 A BILL TO BE ENTITLED AN ACT TO AMEND THE ANTI-LAPSE STATUTE TO PROVIDE THAT THE INTEREST OF A DECEASED CLASS MEMBER WHO LEAVES NO ISSUE DEVOLVES UPON THE REMAINING CLASS MEMBERS AND THE ISSUE OF OTHER DECEASED CLASS MEMBERS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 182*

Short Title:	Amend Anti-Lapse Statute.	(Public)
Sponsors:	Representatives Culpepper; and Hurley.	
Referred to:	Judiciary II.	

February 20, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE ANTI-LAPSE STATUTE TO PROVIDE THAT THE INTEREST OF A DECEASED CLASS MEMBER WHO LEAVES NO ISSUE DEVOLVES UPON THE REMAINING CLASS MEMBERS AND THE ISSUE OF OTHER DECEASED CLASS MEMBERS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 31-42(a) reads as rewritten:

"(a) Unless the will indicates a contrary intent, if a devisee predeceases the testator, whether before or after the execution of the will, and if the devisee is a grandparent of or a descendant of a grandparent of the testator, then the issue of the predeceased devisee shall take in place of the deceased devisee. The devisee's issue shall take the deceased devisee's share in the same manner that the issue would take as heirs of the deceased devisee under the intestacy provisions in effect at the time of the testator's death. The provisions of this section apply whether the devise is to an individual, to a class, or is a residuary devise. In the case of the class devise, the issue shall take whatever share the deceased devisee would have taken had the devisee survived the ~~testator.~~ testator; in the event the deceased class member leaves no issue, the devisee's share shall devolve upon the members of the class who survived the testator and the issue of any deceased members taking by substitution."

SECTION 2. This act is effective when it becomes law and applies to estates of decedents dying on or after that date.

HOUSE BILL 182:
Amend Anti-Lapse Statute

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Culpepper
Date:	February 27, 2001	**Summary by:**	Robin S. Johnson
Version:	First		Committee Counsel

SUMMARY: ***This bill would clarify that surviving class members take the share of a class member who has no descendents and who predeceases the testator (i.e., the person who makes the will).***

The bill would take effect when it becomes law and would apply to estates of testators who die on or after that date.

CURRENT LAW: It is unclear under current law who takes the share of a class member who has no descendents and who predeceases the testator. If a predeceased class member has descendents, then those descendents are entitled to the predeceased class member's share under the will.

BILL ANALYSIS: The bill would amend G.S. 31-42(a) to add express language providing that the surviving members of a class and the descendents of other predeceased members take the share of a class member who had no descendents and who predeceased the testator.

BACKGROUND: **This bill is a recommendation of the General Statutes Commission and is intended to clarify an omission that apparently occurred as the result of the 1999 rewrite of this statute.**

Generally, wills can make specific gifts of property to named persons or to a class (such as "to my sisters"). Wills also specify the disposition of "the remainder of the estate" – known as the residuary clause. Historically, a testamentary gift was ineffective if an intended donee died before the testator died.[1] If the intended donee died after the will was executed, the gift was said to lapse; if the intended donee died before the will was executed, the gift was void.[2] Later, anti-lapse statutes were introduced, which name substitute takers. Under current law, unless there is a contrary intent expressed in the will, these gifts do not "lapse" and are not "void." Instead, the contemplated gift goes to the descendents of the predeceased donee or is transferred under the will's residuary clause.

In 1999, the statute was amended to expand the substitute takers when an intended donee predeceases the testator. Before that time, there was express language in the statute to the effect that, in the absence of a contrary intent expressed in the will, if a predeceased class member has no descendents who can be substituted, then the predeceased class member's share went to the surviving class members and the descendents of other predeceased members. That language was omitted when the statute was rewritten.

H182-SMRH-001

[1] Gratuitous Transfers 3rd Ed. P.360.
[2] Id.

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

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

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

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

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

(1844, c. 88, s. 4; R.C., c. 119, s. 7; Code, s. 2142; Rev., s. 3142; 1919, c. 28; C.S., s. 4166; 1951, c. 762, s. 1; 1953, c. 1084; 1965, c. 938, s. 1; 1975, c. 371, s. 3; 1979, c. 525, s. 5; 1987, c. 86, ss. 1, 2; 1989, c. 244; 1999-145, s. 1.)

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

MEMORANDUM

TO: House Judiciary II Committee

FROM: General Statutes Commission

DATE: February 22, 2001

RE: House Bill 182 (Amend Anti-Lapse Statute)

House Bill 182 amends G.S. 31-42 to clarify a perceived ambiguity. It reinserts a provision that was apparently inadvertently not brought forward when G.S. 31-42 was rewritten in 1999.

Generally speaking, when property is left by will to a person who predeceases the testator, and the will does not name a substitute taker, the devise "lapses." G.S. 31-42 has always provided for possible substitute takers in this event (hence, it is called the "anti-lapse" statute). The General Assembly rewrote G.S. 31-42 in 1999 to expand the number of possible substitute takers. At present, the statute names the predeceased beneficiary's descendants as substitute takers if the beneficiary was a grandparent or a descendant of a grandparent of the testator. If there are no such descendants, the property goes to the residuary beneficiary, if any, or else to whoever would take the property if the testator had died without a will.

The 1999 revision, however, did not bring forward a sentence from the earlier version of the statute that directed what happened when property is left by will to a class (a group) of beneficiaries, one or more members of the class die before the testator without having descendants who could qualify as substitute takers, and the will does not name a substitute taker. The sentence from the pre-1999 version of G.S. 31-42 explicitly provided that, in this event, the property was to be shared among the rest of the class rather than passing to the residuary beneficiary. As far as can be ascertained, it appears that the 1999 revision was not intended to change the law in this respect, and this bill reinserts an explicit provision to the same effect.

VISITOR REGISTRATION SHEET

Judiciary II — Name of Committee

2-27-01 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
P. Bry Hall	General Statutes Commission
Margaret Westbrook	KCLH
Floyd Lewis	General Statutes Commission
PB Parker	NOC
Grady McCallie	N.C. Conservation Network

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

March 6, 2001 – 10:00 a.m.

The House Committee on Judiciary II met on Tuesday, March 6, 2001, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairman Phil Haire, Representatives Bowie, Culpepper, Decker, Gulley, Hall, Jeffus, Miller, and Sherrill. Robin Johnson, Esther Manheimer, Jeff Hudson, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order, and called for consideration of the following bills:

HB 385 Consolidate Business Provisions. Rep. Hall moved that the proposed committee substitute be before the committee for purposes of discussion, and without objection, the PCS was before the committee. Rep. Baddour recognized Rep. Culpepper, bill sponsor, to present the bill. Rep. Culpepper asked the chair to recognize Bly Hall of the General Statutes Commission to explain the bill. Rep. Sherrill noted that this bill provided no savings to the budget, and Rep. Decker noted that the legislation would make changes to the statute involving copies and electronic filing. There being no further discussion, Rep. Haire moved for a favorable report as to committee substitute bill, unfavorable as to original bill. Motion carried unanimously.

HB 274 Training School to Youth Academy. Rep. Baddour recognized Rep. Haire, bill sponsor, to explain the bill. The chair then recognized Secretary George Sweat of the Department of Juvenile Justice and Delinquency Prevention to comment on the bill. Sec. Sweat noted that this bill did not just represent a name change, but rather a new vision and a new tone for the department. Rep. Miller questioned the audience for the name change, and Sec. Sweat noted that the change is aimed at the students. Rep. Sherrill questioned whether additional needs will arise as a result of this change. Sec. Sweat noted that changing Training Schools to Youth Academies will not change personnel alignment. Following additional comments and questions from the committee, Rep. Hall suggested that the department consider a name other than academy for these institutions. No vote was taken.

The meeting adjourned at 10:35 a.m.

Phil Baddour
Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Elizabeth Kirkland
Committee Assistant

AGENDA

HOUSE JUDICIARY II COMMITTEE

March 6, 2001
10:00 A.M.

CALL TO ORDER
INTRODUCE PAGES

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Jeff Hudson
Elizabeth Kirkland (Committee Assistant)

BILLS TO BE CONSIDSERED:

HB 274 Training School to Youth Academy
Sponsor: Rep. Haire

HB 277 Juvenile Extended Commitment Procedure
Sponsor: Rep. Haire

HB 385 Consolidate Business Provisions
Sponsor: Rep. Culpepper

ADJOURNMENT

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 385 A BILL TO BE ENTITLED AN ACT TO CONSOLIDATE IN ONE PLACE IN THE GENERAL STATUTES VARIOUS BUSINESS ASSOCIATION PROVISIONS TO AVOID UNNECESSARY REPETITION, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 385*
PROPOSED COMMITTEE SUBSTITUTE H385*-PCS3145-RH-3

Short Title: Consolidate Business Provisions. (Public)

Sponsors:

Referred to:

March 1, 2001

A BILL TO BE ENTITLED

AN ACT TO CONSOLIDATE IN ONE PLACE IN THE GENERAL STATUTES VARIOUS BUSINESS ASSOCIATION PROVISIONS TO AVOID UNNECESSARY REPETITION, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

PART I. CONSOLIDATION OF FILING REQUIREMENTS.

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 55D.

"Filings for

Corporations, Nonprofit Corporations, Limited Liability Companies, Limited Partnerships, and Limited Liability Partnerships.

"Article 1.

"General Provisions.

"**§ 55D-1. Applicable definitions.**

The following definitions apply in this Chapter:

(1) 'Corporation' or 'domestic corporation' is defined in G.S. 55-1-40(4).

(2) 'Deliver' is defined in G.S. 55-1-40(5).

(3) 'Entity' is defined in G.S. 55-1-40(9).

(4) 'Foreign corporation' is defined in G.S. 55-1-40(10).

(5) 'Foreign limited liability company' is defined in G.S. 57C-1-03(8).

(6) 'Foreign limited liability partnership' is defined in G.S. 59-32(4a).

(7) 'Foreign limited partnership' is defined in G.S. 59-102(5).

(8) 'Foreign nonprofit corporation' means a foreign corporation as defined in G.S. 55A-1-40(11).

(9) 'Individual' is defined in G.S. 55-1-40(13).

(10) 'Limited liability company' or 'domestic limited liability company' is defined in G.S. 57C-1-03(11).

(11) 'Limited liability partnership' or 'registered limited liability partnership' means a registered limited liability partnership as defined in G.S. 59-32(7).

(12) 'Limited partnership' or 'domestic limited partnership' is defined in G.S. 59-102(8).

(13) 'Nonprofit corporation' or 'domestic nonprofit corporation' means a corporation as defined in G.S. 55A-1-40(5).

(14) 'Person' is defined in G.S. 55-1-40(16)."

SECTION 2. Chapter 55D of the General Statutes, as enacted by this act, is amended by adding a new Article to read:

"Article 2.

"Submission of Documents to the Secretary of State for Filing."

SECTION 3.(a) G.S. 55-1-20(a) through (e) and (g) through (i) are recodified as G.S. 55D-10 in Article 2 of Chapter 55D of the General Statutes, as enacted by this act. The catch line of G.S. 55D-10, as enacted by this section, is "Filing requirements."

SECTION 3.(b) G.S. 55-1-22.1, 55-1-22.2, 55-1-23, 55-1-24, 55-1-25, 55-1-26, 55-1-27, and 55-1-29 are recodified as G.S. 55D-11, 55D-12, 55D-13, 55D-14, 55D-15, 55D-16, 55D-17, and 55D-18, respectively, in Article 2 of Chapter 55D of the General Statutes.

SECTION 4. Article 2 of Chapter 55D of the General Statutes, as enacted by Section 2 and amended by Section 3 of this act, reads as rewritten:

"Article 2.

"Submission of Documents to the Secretary of State for Filing.

"**§ 55D-10. Filing requirements.**

(a) To be entitled to filing by the Secretary of State under ~~this Chapter,~~ Chapter 55, 55A, 55B, 57C, or 59 of the General Statutes, a document must satisfy the requirements of this section, and of any other section of the General Statutes that adds to or varies these requirements.

(b) The document must meet all of the following requirements:

(1) The document must be one that is required or permitted by ~~this Chapter~~ Chapter 55, 55A, 55B, 57C, or 59 of the General Statutes to be filed in the office of the Secretary of State.

~~(c)~~ (2) The document must contain the information required by ~~this Chapter.~~Chapter 55, 55A, 55B, 57C, or 59 of the General Statutes for that document. It may contain other information as well.

~~(d)~~ (3) The document must be ~~typewritten or printed.~~ typewritten, printed, or in an electronic form acceptable to the Secretary of State.

~~(e)~~ (4) The document must be in the English language. A ~~corporate~~ name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign

~~corporations~~ corporations, foreign nonprofit corporations, foreign limited liability companies, and foreign limited liability partnerships need not be in English if accompanied by a reasonably authenticated English translation.

(5) A document submitted by an entity must be executed by a person authorized to execute documents (i) under G.S. 55-1-20 if the entity is a domestic or foreign corporation, (ii) under G.S. 55A-1-20 if the entity is a domestic or foreign nonprofit corporation, (iii) under G.S. 57C-1-20 if the entity is a domestic or foreign limited liability company, (iv) under G.S. 59-204 if the entity is a domestic or foreign limited partnership, or (v) under G.S. 59-35.1 if the entity is any other partnership as defined in G.S. 59-36 whether or not formed under the laws of the State.

~~(g)~~ (6) The person executing the document ~~shall~~ must sign it and state beneath or opposite ~~his signature his name~~ the person's signature, the person's name, and the capacity in which ~~he~~ the person signs. Any signature on the document may be a facsimile or an electronic signature in a form acceptable to the Secretary of State. The document may but need not ~~contain:~~

~~(1) The corporate seal;~~

~~(2) An attestation by the secretary or an assistant secretary; and~~

~~(3) An acknowledgement, verification, or proof.~~ contain a seal, attestation, acknowledgment, verification, or proof.

~~(h)~~ (7) If the Secretary of State has prescribed a mandatory form for the ~~document under G.S. 55-1-21,~~ document, the document must be in or on the prescribed form.

~~(i)~~ (8) The document must be delivered to the office of the Secretary of State for filing and must be accompanied by ~~one exact or conformed copy (except as provided in G.S. 55-5-03 and G.S. 55-15-09), and all fees required by this Chapter.~~the applicable fees.

"§ 55D-11. Expedited filings.

A person submitting a document for filing may request an expedited filing at the time the document is submitted. The Secretary of State shall guarantee the expedited filing of ~~a document upon receipt of the document in proper form and the payment of the required filing fee. The Secretary of State may collect the following additional fees for the expedited filing of a document received in good form:~~ the document if the document is in proper form and accompanied by all applicable fees, including the following fee:

(1) Two hundred dollars ($200.00) for the filing by the end of the same business day of a document received by 12:00 ~~noon Eastern Standard Time; and~~noon; or

(2) One hundred dollars ($100.00) for the filing of a document within 24 hours after receipt, excluding weekends and holidays.

The Secretary of State shall not collect the fees allowed in this section unless the person submitting the document for filing ~~requests an expedited filing and~~ is informed by the Secretary of State of the fees prior to the filing of the document.

"**§ 55D-12. Advisory review of documents.**

Upon request, the Secretary of State shall ~~provide for the~~ review ~~of~~ a document prior to its submission for filing to determine whether it satisfies ~~the requirements of this Chapter.~~ applicable filing requirements. Submission of a document for review shall be accompanied by ~~the proper fee~~ a fee of two hundred dollars ($200.00) and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and filings under ~~G.S. 55-1-22.1.~~ G.S. 55D-11. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing.

"**§ 55D-13. Effective time and date of document.**

(a) Except as provided in subsection (b) of this section and ~~G.S. 55-1-24(c),~~in G.S. 55D-14, a document accepted for filing is effective:

(1) At the time of filing on the date it is filed, as evidenced by the Secretary of State's date and time endorsement on the ~~original~~ filed document; or

(2) At the time specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at 11:59:59 p.m. on that date. A delayed effective date for a document may not be later than the 90th day after the date it is filed.

(c) Except as provided in G.S. 55-2-03(b), 55A-2-03(b), and 57C-2-20(b), the fact that a document has become effective under this section does not determine its validity or invalidity or the correctness or incorrectness of the information contained in the document.

"**§ 55D-14. Correcting filed document.**

(a) A ~~domestic or foreign corporation~~ person on whose behalf a document was filed in the Office of the Secretary of State may correct ~~a document filed by the Secretary of State if the document (1)~~ that document if it (i) contains a statement that is incorrect and was incorrect when ~~the document was~~ filed or ~~(2)~~(ii) was defectively executed, attested, sealed, verified, or acknowledged.

(b) A document is ~~corrected:~~ corrected by delivering to the Secretary of State for filing articles of correction that do all of the following:

(1) ~~By preparing articles of correction that (i) describe~~ Describe the document (including its filing date) or ~~attach a copy of it to the articles,~~ have attached to them a copy of the document.

(2) ~~(ii) specify~~ Specify the incorrect statement and the reason it is incorrect or the ~~manner in which the execution was defective, and~~ nature of the defect.

(3) ~~(iii) correct~~ Correct the incorrect statement or ~~defective execution; and~~ defect.

~~(2) By delivering the articles to the Secretary of State for filing.~~

(c) Articles of correction are effective ~~on the effective~~ as of the effective time and date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

"§ 55D-15. Filing duty of Secretary of State.

(a) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of this ~~Chapter,~~ Chapter and of Chapter 55, 55A, 55B, 57C, or 59 of the General Statutes, the Secretary of State shall file it. Documents filed with the Secretary of State ~~pursuant to~~ under this Chapter may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this Chapter, or under any predecessor ~~act,~~ law, by photographic, microfilm, optical disk media, or other means of reproduction, and may destroy the originals of those documents reproduced.

(b) The Secretary of State files a document by ~~stamping or otherwise~~ endorsing "Filed", together with the Secretary's name and official title and the date and time of filing, on ~~both the original and the document copy.~~ the document. After filing a document, ~~except as provided in G.S. 55-5-03 and G.S. 55-15-09,~~ the Secretary of State shall deliver ~~the~~ a document copy to the ~~domestic or foreign corporation or its representative.~~ person submitting the document for filing and as provided in G.S. 55-5-03, 55-15-09, 55A-5-03, 55A-15-09, 57C-2-42, and 57C-7-09.

(c) If the Secretary of State refuses to file a document, the Secretary shall return ~~it, by personal delivery or by first-class mail postage prepaid, to the domestic or foreign corporation or its representative~~ it to the person submitting the document for filing within five days after the document was received, together with a ~~brief,~~ written statement of the date of the refusal and a brief explanation of the reason for refusal. The Secretary of State may correct apparent errors and omissions on a document submitted for filing if authorized to make the corrections by the person submitting the document for filing. ~~The authorization to make the corrections shall be confirmed, according to procedures adopted by rule, by the Secretary prior to making the correction.~~

(d) The Secretary of State's duty is to review and file documents that satisfy the requirements of this ~~Chapter.~~ Chapter and of Chapter 55, 55A, 55B, 57C, or 59 of the General Statutes. The Secretary of State's filing or refusing to file a document does ~~not:~~ not do any of the following:

(1) Except as provided in G.S. 55-2-03(b), 55A-2-03(b), or 57C-2-20(b), affect the validity or invalidity of the document in whole or ~~part;~~part.

(2) Relate to the correctness or incorrectness of information contained in the ~~document;~~ document.

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

"§ 55D-16. Appeal from Secretary of State's refusal to file document.

(a) If the Secretary of State refuses to file a document delivered to ~~his~~ the Secretary of State's office for filing, the person ~~tendering the document~~ on whose behalf the document was submitted for filing may, within 30 days after ~~such~~ the date of the refusal, appeal the refusal to the Superior Court of Wake County. The appeal is commenced by filing a petition with the court and with the Secretary of State requesting the court to compel the Secretary of State to file the document. The petition ~~shall~~must have attached to it the document to be filed and the Secretary of State's explanation for ~~his~~ the refusal to file. The appeal to the superior court is not governed by ~~the Administrative Procedure Act~~ Chapter 150B of the General Statutes, the Administrative Procedure Act, and shall be determined upon such further notice and opportunity to be heard, if any, as the court may deem appropriate under the circumstances.

(b) Upon consideration of the petition and any response made by the Secretary of State, the court may, prior to entering final judgment, order the Secretary of State to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

"§ 55D-17. Evidentiary effect of copy of filed document.

A certificate attached to a copy of a document filed by the Secretary of State, bearing the Secretary of State's signature ~~(which may be in facsimile)~~ and the seal of office (both of which may be in facsimile or in any electronic form approved by the Secretary of State) and certifying that the copy is a true copy of the document, is conclusive evidence that the original document is on file with the Secretary of State. A photographic, microfilm, optical disk media, or other reproduced copy of a document filed ~~pursuant to this Chapter~~ under this Chapter, Chapter 55, 55A, 55B, 57C, or 59 of the General Statutes, or any predecessor ~~act,~~ law, when certified by the Secretary, shall be considered an original for all purposes and is admissible in evidence in like manner as an original.

"§ 55D-18. Penalty for signing false document.

(a) A person commits an offense if ~~he~~ the person signs a document ~~he~~ the person knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing.

(b) An offense under this section is a Class 1 misdemeanor."

PART II. MISCELLANEOUS AND CONFORMING AMENDMENTS.

SECTION 5.(a) G.S. 55-1-40(9) reads as rewritten:

"(9) "Entity" includes (without limiting the meaning of such term in Article ~~9)~~ 9 of this Chapter):

a. Any domestic or foreign:

1. Corporation; ~~corporation and foreign corporation;~~ nonprofit corporation; professional corporation;
2. Limited ~~limited~~ liability company;
3. Profit ~~profit~~ and nonprofit unincorporated association; and
4. Business ~~business~~ trust, estate, partnership, ~~trust, and~~ trust;

b. Two ~~two~~ or more persons having a joint or common economic interest; and

c. ~~state,~~ The United States, and any state and foreign government."

SECTION 5.(b) G.S. 55A-1-40(10) reads as rewritten:

"(10) "Entity" ~~includes~~ includes:

a. Any domestic or foreign:

1. Corporation; ~~corporation and foreign corporation; domestic or foreign~~ business corporation; professional corporation;
2. Limited ~~limited~~ liability company;
3. Profit ~~profit~~ and nonprofit unincorporated association, chapter or other organizational unit; and
4. Business ~~business~~ trust, estate, partnership, ~~trust, and~~ trust;

b. Two ~~two~~ or more persons having a joint or common economic interest; and

c. ~~state,~~ The United States, and any state and foreign government."

SECTION 6.(a) G.S. 55-1-20, as amended by Section 3 of this act, reads as rewritten:

"**§ 55-1-20. Filing requirements.**

~~(a) through (e). Recodified.~~

~~(f) A document submitted by a domestic or foreign corporation or nonprofit corporation must be executed:~~

~~(1) By the chairman of the board of directors, by its president, or by another of its officers;~~

~~(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or~~

~~(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.~~

~~A document submitted by an unincorporated entity must be executed by a person authorized to execute documents (i) pursuant to G.S. 57C-1-20(f) if the unincorporated~~

~~entity is a domestic or foreign limited liability company, (ii) pursuant to G.S. 59-204 if the unincorporated entity is a domestic or foreign limited partnership, or (iii) pursuant to G.S. 59-73.7(a)(4) if the unincorporated entity is any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State.~~

~~(g) through (j). Recodified.~~

(a) A document required or permitted by this Chapter to be filed by the Secretary of State must be filed under Chapter 55D of the General Statutes.

(b) A document submitted on behalf of a domestic or foreign corporation must be executed:

(1) By the chair of its board of directors, by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary."

SECTION 6.(b) G.S. 55-1-22(a)(27) is repealed.

SECTION 6.(c) G.S. 55-8-7(a) reads as rewritten:

"(a) A director may resign at any time by communicating his resignation to the board of directors, its ~~chairman,~~ chair, or the corporation."

SECTION 7.(a) G.S. 55A-1-20 reads as rewritten:

"**§ 55A-1-20. Filing requirements.**

~~(a) To be entitled to filing by the Secretary of State under this Chapter, a document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements.~~

~~(b) The document must be one that is required or permitted by this Chapter to be filed in the office of the Secretary of State.~~

~~(c) The document shall contain the information required by this Chapter. It may contain other information as well.~~

~~(d) The document shall be typewritten or printed.~~

~~(e) The document shall be in the English language.~~

~~A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.~~

~~(f) A document submitted by a domestic or foreign corporation or business corporation shall be executed:~~

~~(1) By the presiding officer of the board of directors by its president, or by another of its officers;~~

~~(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or~~

~~(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.~~

~~A document submitted by an unincorporated entity must be executed by a person authorized to execute documents (i) pursuant to G.S. 57C-1-20(f) if the unincorporated~~

~~entity is a domestic or foreign limited liability company, (ii) pursuant to G.S. 59-204 if the unincorporated entity is a domestic or foreign limited partnership, or (iii) pursuant to G.S. 59-73.7(a)(4) if the unincorporated entity is any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State.~~

~~(g) The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. The document may but need not contain:~~

~~(1) The corporate seal;~~

~~(2) An attestation by the secretary or an assistant secretary; and~~

~~(3) An acknowledgment, verification, or proof.~~

~~(h) If the Secretary of State has prescribed a mandatory form for the document under G.S. 55A-1-21, the document shall be in or on the prescribed form.~~

~~(i) The document shall be delivered to the office of the Secretary of State for filing and shall be accompanied by one exact or conformed copy (except as provided in G.S. 55A-5-03 and G.S. 55A-15-09), and all fees required by this Chapter.~~

~~(j) Any signature on any document authorized to be filed with the Secretary of State under any provision of this Chapter may be a facsimile.~~

(a) A document required or permitted by this Chapter to be filed by the Secretary of State must be filed under Chapter 55D of the General Statutes.

(b) A document submitted on behalf of a domestic or foreign corporation must be executed:

(1) By the presiding officer of its board of directors, by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary."

SECTION 7.(b) G.S. 55A-1-22.1, 55A-1-22.2, 55A-1-23, 55A-1-24, 55A-1-25, 55A-1-26, 55A-1-27, and 55A-1-29 are repealed.

SECTION 7.(c) G.S. 55A-1-22(a)(28) is repealed.

SECTION 8.(a) G.S. 57C-1-20 reads as rewritten:

"**§ 57C-1-20. Filing requirements.**

~~(a) To be entitled to filing by the Secretary of State under this Chapter, a document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements.~~

~~(b) The document must be one that is required or permitted by this Chapter to be filed in the Office of the Secretary of State.~~

~~(c) The document must contain the information required by this Chapter. It may contain other information as well.~~

~~(d) The document must be typewritten or printed.~~

~~(e) The document must be in the English language. The name of a limited liability company need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign limited liability~~

~~companies need not be in English if accompanied by a reasonably authenticated English translation.~~

~~(f) A document submitted by a domestic or foreign limited liability company must be executed:~~

~~(1) By a manager of the limited liability company;~~

~~(2) If managers have not been selected, or if the limited liability company does not have a manager other than a member, by any member;~~

~~(3) If the limited liability company has not been formed or if no initial members of the limited liability company have been identified in the manner provided in this Chapter, by an organizer; or~~

~~(4) If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.~~

~~A document submitted by a business entity other than a domestic or foreign limited liability company must be executed by a person authorized to execute documents (i) pursuant to G.S. 55-1-20(f) if the business entity is a corporation or foreign corporation, (ii) pursuant to G.S. 55A-1-20(f) if the business entity is a domestic or foreign nonprofit corporation, (iii) pursuant to G.S. 59-204 if the business entity is a domestic or foreign limited partnership, or (iv) pursuant to G.S. 59-73.7(a)(4) if the business entity is any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State.~~

~~(g) The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. The document may, but need not, contain an acknowledgement, verification, or proof.~~

~~(h) If the Secretary of State has prescribed a mandatory form for the document under G.S. 57C-1-21, the document must be in or on the prescribed form unless the Secretary of State otherwise permits an alternative form.~~

~~(i) The document must be delivered to the Office of the Secretary of State for filing and must be accompanied by one exact or conformed copy and all fees required by this Chapter.~~

~~(j) Any signature on any document authorized to be filed with the Secretary of State under any provision of this Chapter may be a facsimile.~~

(a) A document required or permitted by this Chapter to be filed by the Secretary of State must be filed under Chapter 55D of the General Statutes.

(b) A document submitted on behalf of a domestic or foreign limited liability company must be executed:

(1) By a manager of the limited liability company;

(2) If the limited liability company has not been formed or if no initial members of the limited liability company have been identified in the manner provided in this Chapter, by an organizer; or

(3) If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary."

SECTION 8.(b) G.S. 57C-1-22.1, 57C-1-22.2, 57C-1-23, 57C-1-24, 57C-1-25, 57C-1-26, 57C-1-27, and 57C-1-29 are repealed.

SECTION 8.(c) G.S. 57C-1-22(a)(27) is repealed.

SECTION 9. G.S. 59-73.7 is recodified as G.S. 59-35.1 and reads as rewritten:

"§ ~~59-73.7.~~ 59-35.1. **Filing of documents.**

(a) ~~To be entitled to filing by the Secretary of State, a document submitted pursuant to this Part must meet all of the following requirements:~~

~~(1) The document must contain the information required by this Part. It may contain other information as well.~~

~~(2) The document must be typewritten or printed.~~

~~(3) The document must be in the English language.~~

~~(4) A document submitted by a partnership must be executed by a general partner of the partnership. A document submitted by a business entity other than a partnership must be executed by a person authorized to execute documents (i) pursuant to G.S. 55-1-20(f) if the business entity is a domestic or foreign corporation, (ii) pursuant to G.S. 55A-1-20(f) if the business entity is a domestic or foreign nonprofit corporation, (iii) pursuant to G.S. 57C-1-20(f) if the business entity is a domestic or foreign limited liability company, or (iv) pursuant to G.S. 59-204 if the business entity is a domestic or foreign limited partnership.~~

~~(5) The person executing the document must sign it and state beneath or opposite the person's signature, the person's name and the capacity in which the person signs. Any signature on the document may be a facsimile. The document may, but need not, contain an acknowledgment, verification, or proof.~~

~~(6) The document must be delivered to the Office of the Secretary of State for filing and must be accompanied by one exact or conformed copy and by the required filing fee.~~

A document required or permitted by this Act to be filed by the Secretary of State must be filed under Chapter 55D of the General Statutes.

~~(b) A partnership may correct a document filed by the Secretary of State pursuant to this Part if the document (i) contains a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively executed, attested, sealed, verified, or acknowledged.~~

~~A document is corrected by:~~

~~(1) Preparing articles of correction that (i) describe the document (including its filing date) or have attached to them a copy of the document, (ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective, and (iii) correct the incorrect statement or defective execution; and~~

~~(2) Delivering the articles of correction to the Secretary of State for filing, accompanied by one exact or conformed copy and the required filing fee.~~

~~Articles of correction are effective on the effective date of the document that is corrected except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.~~

(b) A document submitted under this Act for filing by the Secretary of State must be executed by a general partner of the partnership.

(c) The Secretary of State shall collect the following fees when the documents described in this subsection are submitted by a partnership to the Secretary of State for filing:

Document	Fee
Articles of Merger	$50.00
Articles of Correction	$10.00

The Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary of State under this ~~Part.~~ Act. The party to the proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of a document filed by a partnership pursuant to this Part:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) Five dollars ($5.00) for the certificate.

~~(d) The Secretary of State shall guarantee the expedited filing of a document upon receipt of the document in proper form and the payment of the required filing fee. The Secretary of State may collect the following additional fees for the expedited filing of a document received in good form:~~

~~(1) Two hundred dollars ($200.00) for the filing by the end of the same business day of a document received by 12:00 noon Eastern Standard Time; and~~

~~(2) One hundred dollars ($100.00) for the filing of a document within 24 hours after receipt, excluding weekends and holidays.~~

~~The Secretary of State shall not collect the fees allowed in this subsection unless the person submitting the document for filing requests an expedited filing and is informed by the Secretary of State of the fees prior to the filing of the document.~~

~~(e) Upon request, the Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Part. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this subsection and filings under subsection (d) of this section. Upon completion of the advisory review, the~~

~~Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing.~~

~~(f) Except as provided in this subsection and in subsection (b) of this section, a document accepted for filing is effective:~~

~~(1) At the time of filing on the date it is filed, as evidenced by the Secretary of State's date and time endorsement on the original document; or~~

~~(2) At the time specified in the document as its effective time on the date it is filed.~~

~~A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at 11:59:59 p.m. on that date. A delayed effective date for a document may not be later than the 90th day after the date it is filed.~~

~~The fact that a document has become effective under this subsection does not determine its validity or invalidity or the correctness or incorrectness of the information contained in the document.~~

~~(g) If a document delivered to the Office of the Secretary of State for filing satisfies the requirements of this Part, the Secretary of State shall file it. Documents filed with the Secretary of State pursuant to this Part may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this Part, or under any predecessor act, by photographic, microfilm, optical disk media, or other means of reproduction, and may destroy the originals of those documents reproduced.~~

~~The Secretary of State files a document by stamping or otherwise endorsing "Filed", together with the Secretary of State's name and official title and the date and time of filing, on both the original and the document copy. After filing a document, the Secretary of State shall deliver the document copy to the partnership or its representative.~~

~~If the Secretary of State refuses to file a document, the Secretary of State shall return it to the partnership or its representative within five days after the document was received, together with a brief, written explanation of the reason for refusal. The Secretary of State may correct apparent errors and omissions on a document submitted for filing if authorized to make the corrections by the person submitting the document for filing. Prior to making the correction, the Secretary shall confirm the authorization to make the corrections according to procedures adopted by rule.~~

~~The Secretary of State's duty is to review and file documents that satisfy the requirements of this Part. The Secretary of State's filing or refusing to file a document does not:~~

~~(1) Affect the validity or invalidity of the document in whole or part;~~

~~(2) Relate to the correctness or incorrectness of information contained in the document; or~~

~~(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.~~

~~(h) If the Secretary of State refuses to file a document delivered to the Secretary of State's office for filing, the person tendering the document for filing may, within 30 days after the refusal, appeal the refusal to the Superior Court of Wake County. The appeal is commenced by filing a petition with the court and with the Secretary of State requesting the court to compel the Secretary of State to file the document. The petition shall have attached to it the document to be filed and the Secretary of State's explanation for the refusal to file. The appeal to the Superior Court is not governed by Chapter 150B of the General Statutes, the Administrative Procedure Act, and the court shall determine, based upon what is appropriate under the circumstances, any further notice and opportunity to be heard.~~

~~Upon consideration of the petition and any response made by the Secretary of State, the court may, prior to entering final judgment, order the Secretary of State to file the document or take other action the court considers appropriate.~~

~~The court's final decision may be appealed as in other civil proceedings.~~

~~(i) A certificate attached to a copy of a document filed by the Secretary of State, bearing the Secretary of State's signature (which may be in facsimile) and the seal of office and certifying that the copy is a true copy of the document, is conclusive evidence that the original document is on file with the Secretary of State. A photographic, microfilm, optical disk media, or other reproduced copy of a document filed pursuant to this Part or any predecessor act, when certified by the Secretary, shall be considered an original for all purposes and is admissible in evidence in like manner as an original.~~

~~(j) A person commits an offense if the person signs a document the person knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing. An offense under this subsection is a Class 1 misdemeanor.~~

~~(k)~~(d) Whenever title to real property in this State held by a partnership is vested by operation of law in another entity upon merger, consolidation, or conversion of the partnership, a certificate reciting the merger, consolidation, or conversion shall be recorded in the office of the register of deeds of the county where the property is located, or if the property is located in more than one county, then in each county where any portion of the property is located.

The Secretary of State shall adopt uniform certificates to be furnished for registration in accordance with this subsection. In the case of a partnership formed under a law other than the laws of this State, a similar certificate by any competent authority of the jurisdiction of organization may be registered in accordance with this subsection.

The certificate required by this subsection ~~shall~~ must be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgment, probate, or approval by any other officer shall be required. The former name of the partnership holding title to the real property before the merger, consolidation, or conversion shall appear in the "Grantor" index and the name of the

other entity holding title to the real property by virtue of the merger, consolidation, or conversion shall appear in the "Grantee" index."

SECTION 10.(a) 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) To have appointed the Secretary of State as its registered agent for service of process in any such proceeding. 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 and the fees required by ~~G.S. 59-73.7(c).~~ G.S. 59-35.1(c). Upon receipt of service of process on behalf of a surviving business 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. If the surviving business entity is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the surviving business is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to subdivision (3) of subsection (d) of this section."

SECTION 10.(b) G.S. 59-204(a) reads as rewritten:

"(a) Each certificate required by this Article to be filed in the office of the Secretary of State shall be executed in the following manner:

(1) An original certificate of limited partnership must be signed by all general partners;

(2) A certificate of amendment must be signed by at least one general partner and by each other partner designated in the certificate as a new general partner; and

(3) A certificate of cancellation must be signed by all general partners.

Any other document submitted by a domestic or foreign limited partnership for filing pursuant to this or any other Chapter must be signed by at least one general partner. ~~Any document submitted by a business entity other than a domestic or foreign limited partnership must be executed by a person authorized to execute documents (i) pursuant to G.S. 55-1-20(f) if the business entity is a domestic or foreign corporation, (ii) pursuant to G.S. 55A-1-20(f) if the business entity is a domestic or foreign nonprofit corporation, (iii) pursuant to G.S. 57C-1-20(f) if the business entity is a domestic or foreign limited liability company, or (iv) pursuant to G.S. 59-73.7(a)(4) if the business entity is a partnership as defined in G.S. 59-36, whether or not formed under the laws of this State, other than a domestic or foreign limited partnership.~~"

SECTION 10.(c) G.S. 59-204(b1) is repealed.

SECTION 10.(d) G.S. 59-206 reads as rewritten:

"**§ 59-206. Filing requirements.**

(a) A document required or permitted by this Article to be filed by the Secretary of State must be filed under Chapter 55D of the General Statutes. Whenever the provisions of this Article require any document relating to a limited partnership to be executed and filed in accordance with this Article, unless otherwise specifically stated in this Article:

~~(1) There shall be an original executed document and also one conformed copy.~~

~~(2) The original document so signed, together with the conformed copy, shall be delivered to the Secretary of State. If the Secretary finds that it satisfies the requirements of this Article, the Secretary shall, when the proper fees have been tendered, endorse upon the original the word "filed" and the hour, day, month and year of the filing thereof and shall file the same in the Secretary's office. The Secretary of State shall thereupon immediately compare the copy with the original and if the Secretary finds that they are identical the Secretary shall make upon the conformed copy the same endorsement which appears on the original and shall attach to the copy a certificate stating that attached thereto is a true copy of the document, designated by an appropriate title, filed in the Secretary's office and showing the date of the filing. The Secretary shall thereupon return the copy so certified to the limited partnership or its representatives. Any documents filed with the Secretary of State pursuant to this Chapter may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this Chapter, or under any predecessor act, by photographic, microfilm, optical disk media, or other means of reproduction, and may destroy the originals of the documents reproduced. The Secretary of State may correct apparent errors and omissions on a document submitted for filing if authorized to make the corrections by the person submitting the document for~~

~~filing. The authorization to make the corrections shall be confirmed, according to procedures adopted by rule, by the Secretary prior to making the correction.~~

~~(2b) A domestic or foreign limited partnership may correct a document filed by the Secretary of State if the document (i) contains a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively executed, attested, sealed, verified, or acknowledged.~~

~~(3) Repealed by Session Laws 1991, c. 153, s. 2.~~

(3a) Whenever the name of any domestic or foreign limited partnership holding title to real property in this State is changed upon amendment to the certificate of limited partnership, or whenever title to its real property is vested by operation of law in another entity upon merger, consolidation, or conversion of the domestic or foreign limited partnership, a certificate reciting the name change, merger, consolidation, or conversion shall be recorded in the office of the register of deeds of the county where the property lies, or if the property is located in more than one county, then in each county where any portion of the property lies.

(4) The Secretary of State shall adopt uniform certificates to be furnished for registration in accordance with this section. In the case of a foreign limited partnership, a similar certificate by any competent authority of the jurisdiction under which the limited partnership is organized may be registered in accordance with this section.

(5) The certificate required by subdivision (3a) of this subsection shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the domestic or foreign limited partnership holding title to the real property before the name change, merger, consolidation, or conversion shall appear in the "Grantor" index, and the new name of the domestic or foreign limited partnership or the name of the other entity holding title to the real property by virtue of the merger, consolidation, or conversion, as applicable, shall appear in the "Grantee" index.

~~(b) Repealed by Session Laws 1991, c. 153, s. 2.~~

~~(b1) Except as provided in subsection (b2), a document accepted for filing is effective:~~

~~(1) At the time of filing on the date it is filed, as evidenced by the Secretary of State's date and time endorsement on the original document; or~~

~~(2) At the time specified in the document as its effective time on the date it is filed.~~

~~(b2) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective~~

~~date but not time is specified, the document is effective at 11:59:59 p.m. on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed.~~

~~(b3) The fact that a document has become effective under this section does not determine its validity or invalidity or the correctness or incorrectness of the information contained in the document.~~

~~(c) It shall be the duty of the Secretary of State, whenever so requested and upon tender of the proper fees, to certify as aforesaid any true copy of any document on file in the office, or if requested, to make or cause to be made typewritten or photostatic copies of the documents and to certify the same as aforesaid.~~"

SECTION 10.(e) G.S. 59-206.1 and G.S. 59-206.2 are repealed.

SECTION 10.(f) G.S. 59-1106 reads as rewritten:

"**§ 59-1106. ~~Fees; expedited filing.~~ Fees.**

The Secretary of State shall collect the following fees and remit them to the State Treasurer for the use of the State:

(1)	For filing a certificate of limited partnership (G.S. 59-201)	$50.00
(2)	For filing a certificate of amendment (G.S. 59-202; 59-905)	25.00
(3)	For filing a certificate of cancellation (G.S. 59-203; 59-906)	25.00
(4)	For filing an application for reservation of name (G.S. 59-104(a))	10.00
(5)	For filing a transfer of name (G.S. 59-104(d))	10.00
(6)	For filing an application for registration as foreign limited partnership (G.S. 59-502)	50.00
(7)	For preparing and furnishing a copy of any document, instrument or paper filed or recorded relating to a limited partnership (G.S. 59-206(c))	
	For each page	1.00
	For affixing the certificate and official seal thereto	5.00
(8)	For comparing a copy furnished to him of any document, instrument or paper filed or recorded relating to a limited partnership	
	For each page	1.00
(9)	For filing any other document not ~~herein~~ specifically provided for	10.00
~~(10)~~	~~For the expedited filing by the end of the same business day of a document received in good order by 12:00 noon Eastern Standard Time~~	~~200.00~~
		~~additional fee~~

~~(11) For the expedited filing of a document received in good order within 24 hours after receipt, excluding weekends and holidays ..... 100.00~~
~~..... additional fee~~
~~(12) Advisory review of a document ..... 200.00.~~

~~The Secretary of State shall not collect the fees allowed in subdivisions (10) and (11) of this section unless the person submitting the document for filing requests an expedited filing and is informed by the Secretary of State of the fees prior to the filing of the document. Upon receipt of a document in proper form and payment of the required filing fee, the Secretary of State shall guarantee the expedited filing of the document.~~"

SECTION 11. G.S. 55B-3 reads as rewritten:

"**§ 55B-3. North Carolina Business Corporation Act ~~applicable.~~applicable; other applicable law.**

(a) Chapter 55 of the General Statutes, the ~~The~~ North Carolina Business Corporation ~~Act shall be applicable to such~~ Act, applies to professional corporations, including their organization, and professional corporations shall enjoy the powers and privileges and shall be subject to the duties, restrictions and liabilities of other corporations, except insofar as the same may be limited or enlarged by this Chapter. If any provision of this Chapter conflicts with the provisions of Chapter 55 of the General Statutes, the North Carolina Business Corporation Act, the provisions of this Chapter shall prevail.

(b) A document required or permitted by this Chapter to be filed by the Secretary of State shall be filed under Chapter 55D of the General Statutes, Filings for Corporations, Nonprofit Corporations, Limited Liability Companies, Limited Partnerships, and Limited Liability Partnerships."

SECTION 12. The Revisor of Statutes is authorized to transfer, as historical annotations, the Official Comments and the North Carolina Comments to those portions of Chapter 55 of the General Statutes that are recodified by this act to the corresponding locations in Chapter 55D of the General Statutes, as the Revisor deems appropriate.

PART III. EFFECTIVE DATE AND APPLICABILITY.

SECTION 13. This act becomes effective October 1, 2001, and applies to documents submitted for filing on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 385*

Short Title:	Consolidate Business Provisions.	(Public)
Sponsors:	Representative Culpepper.	
Referred to:	Judiciary II.	

March 1, 2001

A BILL TO BE ENTITLED

AN ACT TO CONSOLIDATE IN ONE PLACE IN THE GENERAL STATUTES VARIOUS BUSINESS ASSOCIATION PROVISIONS TO AVOID UNNECESSARY REPITITION, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

PART I. CONSOLIDATION OF FILING REQUIREMENTS.

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 55D.

"Filings for

Corporations, Nonprofit Corporations, Limited Liability Companies, Limited Partnerships, and Limited Liability Partnerships.

"Article 1

"General Provisions.

"**§ 55D-1. Applicable definitions.**

The following definitions apply in this Chapter:

(1) 'Corporation' or 'domestic corporation'. – Defined in G.S. 55-1-40(4).

(2) 'Deliver'. – Defined in G.S. 55-1-40(5).

(3) 'Entity'. – Defined in G.S. 55-1-40(9).

(4) 'Foreign corporation'. – Defined in G.S. 55-1-40(10).

(5) 'Foreign limited liability company'. – Defined in G.S. 57C-1-03(8).

(6) 'Foreign limited liability partnership'. – Defined in G.S. 59-32(4a).

(7) 'Foreign limited partnership'. – Defined in G.S. 59-102(5).

(8) 'Foreign nonprofit corporation'. – A foreign corporation as defined in G.S. 55A-1-40(11).

(9) 'Individual'. – Defined in G.S. 55-1-40(13).
(10) 'Limited liability company' or 'domestic limited liability company'. – Defined in G.S. 57C-1-03(11).
(11) 'Limited liability partnership' or 'registered limited liability partnership'. – A registered limited liability partnership as defined in G.S. 59-32(7).
(12) 'Limited partnership' or 'domestic limited partnership'. – Defined in G.S. 59-102(8).
(13) 'Nonprofit corporation' or 'domestic nonprofit corporation'. – A corporation as defined in G.S. 55A-1-40(5).
(14) 'Person'. – Defined in G.S. 55-1-40(16)."

SECTION 2. Chapter 55D of the General Statutes, as enacted by this act, is amended by adding a new Article to read:

"Article 2.

"Submission of Documents to the Secretary of State for Filing."

SECTION 3.(a) G.S. 55-1-20(a) through (e) and (g) through (i) are recodified as G.S. 55D-10 in Article 2 of Chapter 55D of the General Statutes, as enacted by this act. The catch line of G.S. 55D-10, as enacted by this section, is "Filing requirements."

SECTION 3.(b) G.S. 55-1-22.1, 55-1-22.2, 55-1-23, 55-1-24, 55-1-25, 55-1-26, 55-1-27, and 55-1-29 are recodified as G.S. 55D-11, 55D-12, 55D-13, 55D-14, 55D-15, 55D-16, 55D-17, and 55D-18, respectively, in Article 2 of Chapter 55D of the General Statutes.

SECTION 4. Article 2 of Chapter 55D of the General Statutes, as enacted by Section 2 and amended by Section 3 of this act, reads as rewritten:

"Article 2.

"Submission of Documents to the Secretary of State for Filing.

"§ 55D-10. Filing requirements.

(a) To be entitled to filing by the Secretary of State under ~~this Chapter,~~ Chapter 55, 55A, 55B, 57C, or 59 of the General Statutes, a document must satisfy the requirements of this section, and of any other section of the General Statutes that adds to or varies these requirements.

(b) The document must meet all of the following requirements:

(1) The document must be one that is required or permitted by ~~this Chapter~~ Chapter 55, 55A, 55B, 57C, or 59 of the General Statutes to be filed in the office of the Secretary of State.

~~(c)~~ (2) The document must contain the information required by ~~this Chapter.~~Chapter 55, 55A, 55B, 57C, or 59 of the General Statutes for that document. It may contain other information as well.

~~(d)~~ (3) The document must be ~~typewritten or printed.~~ typewritten, printed, or in an electronic form acceptable to the Secretary of State.

~~(e)~~ (4) The document must be in the English language. A ~~corporate~~ name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign

~~corporations~~ corporations, foreign nonprofit corporations, foreign limited liability companies, and foreign limited liability partnerships need not be in English if accompanied by a reasonably authenticated English translation.

(5) A document submitted by an entity must be executed by a person authorized to execute documents (i) under G.S. 55-1-20 if the entity is a domestic or foreign corporation, (ii) under G.S. 55A-1-20 if the entity is a domestic or foreign nonprofit corporation, (iii) under G.S. 57C-1-20 if the entity is a domestic or foreign limited liability company, (iv) under G.S. 59-204 if the entity is a domestic or foreign limited partnership, or (v) under G.S. 59-73.7 if the entity is any other partnership as defined in G.S. 59-36 whether or not formed under the laws of the State.

~~(g)~~ (6) The person executing the document ~~shall~~ must sign it and state beneath or opposite ~~his signature his name~~ the person's signature, the person's name and the capacity in which ~~he~~ the person signs. Any signature on the document may be a facsimile or an electronic signature in a form acceptable to the Secretary of State. The document may but need not ~~contain:~~

~~(1) The corporate seal;~~

~~(2) An attestation by the secretary or an assistant secretary; and~~

~~(3) An acknowledgement, verification, or proof.~~ contain a corporate seal, attestation, acknowledgment, verification, or proof.

~~(h)~~ (7) If the Secretary of State has prescribed a mandatory form for the ~~document under G.S. 55-1-21,~~ document, the document must be in or on the prescribed form.

~~(i)~~ (8) The document must be delivered to the office of the Secretary of State for filing and must be accompanied by ~~one exact or conformed copy (except as provided in G.S. 55-5-03 and G.S. 55-15-09), and all fees required by this Chapter.~~the applicable fees.

"§ 55D-11. Expedited filings.

A person submitting a document for filing may request an expedited filing at the time the document is submitted. The Secretary of State shall guarantee the expedited filing of ~~a document upon receipt of the document in proper form and the payment of the required filing fee. The Secretary of State may collect the following additional fees for the expedited filing of a document received in good form:~~ the document if the document is in proper form and accompanied by all applicable fees, including the following fee:

(1) Two hundred dollars ($200.00) for the filing by the end of the same business day of a document received by 12:00 ~~noon Eastern Standard Time; and~~noon; or

(2) One hundred dollars ($100.00) for the filing of a document within 24 hours after receipt, excluding weekends and holidays.

The Secretary of State shall not collect the fees allowed in this section unless the person submitting the document for filing ~~requests an expedited filing and~~ is informed by the Secretary of State of the fees prior to the filing of the document.

"§ 55D-12. Advisory review of documents.

Upon request, the Secretary of State shall ~~provide for the~~ review ~~of~~ a document prior to its submission for filing to determine whether it satisfies ~~the requirements of this Chapter.~~ applicable filing requirements. Submission of a document for review shall be accompanied by ~~the proper fee~~ a fee of two hundred dollars ($200.00) and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and filings under ~~G.S. 55-1-22.1.~~ G.S. 55D-11. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing.

"§ 55D-13. Effective time and date of document.

(a) Except as provided in subsection (b) of this section and ~~G.S. 55-1-24(c),~~ in G.S. 55D-14, a document accepted for filing is effective:

(1) At the time of filing on the date it is filed, as evidenced by the Secretary of State's date and time endorsement on the ~~original~~ filed document; or

(2) At the time specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at 11:59:59 p.m. on that date. A delayed effective date for a document may not be later than the 90th day after the date it is filed.

(c) Except as provided in G.S. 55-2-03(b), 55A-2-03(b), and 57C-2-20(b), the fact that a document has become effective under this section does not determine its validity or invalidity or the correctness or incorrectness of the information contained in the document.

"§ 55D-14. Correcting filed document.

(a) A ~~domestic or foreign corporation~~ person on whose behalf a document was filed in the Office of the Secretary of State may correct ~~a document filed by the Secretary of State if the document (1)~~ that document if it (i) contains a statement that is incorrect and was incorrect when ~~the document was~~ filed or ~~(2)~~(ii) was defectively executed, attested, sealed, verified, or acknowledged.

(b) A document is ~~corrected:~~ corrected by delivering to the Secretary of State for filing articles of correction that:

(1) ~~By preparing articles of correction that (i) describe~~ Describe the document (including its filing date) or ~~attach a copy of it to the articles,~~ have attached to them a copy of the document;

(2) ~~(ii) specify~~ Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was ~~defective,~~ defective; and

(3) ~~(iii) correct~~ Correct the incorrect statement or defective ~~execution; and~~ execution.

~~(2) By delivering the articles to the Secretary of State for filing.~~

(c) Articles of correction are effective ~~on the effective~~ as of the effective time and date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

"§ 55D-15. Filing duty of Secretary of State.

(a) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of this ~~Chapter,~~ Chapter and of Chapter 55, 55A, 55B, 57C, or 59 of the General Statutes, the Secretary of State shall file it. Documents filed with the Secretary of State ~~pursuant to~~ under this Chapter may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this Chapter, or under any predecessor ~~act,~~ law, by photographic, microfilm, optical disk media, or other means of reproduction, and may destroy the originals of those documents reproduced.

(b) The Secretary of State files a document by ~~stamping or otherwise~~ endorsing "Filed", together with the Secretary's name and official title and the date and time of filing, on ~~both the original and the document copy.~~ the document. After filing a document, ~~except as provided in G.S. 55-5-03 and G.S. 55-15-09,~~ the Secretary of State shall deliver the document copy to the ~~domestic or foreign corporation or its representative.~~ person submitting the document for filing and as provided in G.S. 55-5-03, 55-15-09, 55A-5-03, 55A-15-09, 57C-2-42, and 57C-7-09.

(c) If the Secretary of State refuses to file a document, the Secretary shall return ~~it, by personal delivery or by first-class mail postage prepaid, to the domestic or foreign corporation or its representative~~ it to the person submitting the document for filing within five days after the document was received, together with a ~~brief,~~ written statement of the date of the refusal and a brief explanation of the reason for refusal. The Secretary of State may correct apparent errors and omissions on a document submitted for filing if authorized to make the corrections by the person submitting the document for filing. ~~The authorization to make the corrections shall be confirmed, according to procedures adopted by rule, by the Secretary prior to making the correction.~~

(d) The Secretary of State's duty is to review and file documents that satisfy the requirements of this ~~Chapter.~~ Chapter and of Chapter 55, 55A, 55B, 57C, or 59 of the General Statutes. The Secretary of State's filing or refusing to file a document does not:

(1) Except as provided in G.S. 55-2-03(b), 55A-2-03(b), or 57C-2-20(b), affect the validity or invalidity of the document in whole or part;

(2) Relate to the correctness or incorrectness of information contained in the document;

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

"**§ 55D-16. Appeal from Secretary of State's refusal to file document.**

(a) If the Secretary of State refuses to file a document delivered to ~~his~~ the Secretary of State's office for filing, the person ~~tendering the document~~ on whose behalf the document was submitted for filing may, within 30 days after ~~such~~ the date of the refusal, appeal the refusal to the Superior Court of Wake County. The appeal is commenced by filing a petition with the court and with the Secretary of State requesting the court to compel the Secretary of State to file the document. The petition ~~shall~~must have attached to it the document to be filed and the Secretary of State's explanation for ~~his~~ the refusal to file. The appeal to the superior court is not governed by ~~the Administrative Procedure Act~~ Chapter 150B of the General Statutes, the Administrative Procedure Act, and shall be determined upon such further notice and opportunity to be heard, if any, as the court may deem appropriate under the circumstances.

(b) Upon consideration of the petition and any response made by the Secretary of State, the court may, prior to entering final judgment, order the Secretary of State to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

"**§ 55D-17. Evidentiary effect of copy of filed document.**

A certificate attached to a copy of a document filed by the Secretary of State, bearing the Secretary of State's signature ~~(which may be in facsimile)~~ and the seal of office (both of which may be in facsimile or in any electronic form approved by the Secretary of State) and certifying that the copy is a true copy of the document, is conclusive evidence that the original document is on file with the Secretary of State. A photographic, microfilm, optical disk media, or other reproduced copy of a document filed ~~pursuant to this Chapter~~ under this Chapter, Chapter 55, 55A, 55B, 57C, or 59 of the General Statutes, or any predecessor ~~act,~~ law, when certified by the Secretary, shall be considered an original for all purposes and is admissible in evidence in like manner as an original.

"**§ 55D-18. Penalty for signing false document.**

(a) A person commits an offense if ~~he~~ the person signs a document ~~he~~ the person knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing.

(b) An offense under this section is a Class 1 misdemeanor."

PART II. MISCELLANEOUS AND CONFORMING AMENDMENTS.

SECTION 5.(a) G.S. 55-1-40(9) reads as rewritten:

"(9) "Entity" includes (without limiting the meaning of such term in Article ~~9)~~ 9 of this Chapter):

a. Any domestic or foreign:

1. Corporation; ~~corporation and foreign corporation;~~ nonprofit corporation; professional corporation;

2. Limited ~~limited~~ liability company;

3. Profit ~~profit~~ and nonprofit unincorporated association; and
4. Business ~~business~~ trust, estate, partnership, ~~trust, and~~ trust;

b. Two ~~two~~ or more persons having a joint or common economic interest; and

c. ~~state,~~ The United States, and any state and foreign government."

SECTION 5.(b) G.S. 55A-1-40(10) reads as rewritten:

"(10) "Entity" ~~includes~~ includes:

a. Any domestic or foreign:

1. Corporation; ~~corporation and foreign corporation; domestic or foreign~~ business corporation; professional corporation;
2. Limited ~~limited~~ liability company;
3. Profit ~~profit~~ and nonprofit unincorporated association, chapter or other organizational unit; and
4. Business ~~business~~ trust, estate, partnership, ~~trust, and~~ trust;

b. Two ~~two~~ or more persons having a joint or common economic interest; and

c. ~~state,~~ The United States, and any state and foreign government."

SECTION 6.(a) G.S. 55-1-20, as amended by Section 3 of this act, reads as rewritten:

"**§ 55-1-20. Filing requirements.**

~~(a) through (e). Recodified.~~

~~(f) A document submitted by a domestic or foreign corporation or nonprofit corporation must be executed:~~

~~(1) By the chairman of the board of directors, by its president, or by another of its officers;~~

~~(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or~~

~~(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.~~

~~A document submitted by an unincorporated entity must be executed by a person authorized to execute documents (i) pursuant to G.S. 57C-1-20(f) if the unincorporated entity is a domestic or foreign limited liability company, (ii) pursuant to G.S. 59-204 if the unincorporated entity is a domestic or foreign limited partnership, or (iii) pursuant to G.S. 59-73.7(a)(4) if the unincorporated entity is any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State.~~

~~(g) through (j). Recodified.~~

(a) A document required or permitted by this Chapter to be filed by the Secretary of State must be filed under Chapter 55D of the General Statutes.

(b) A document submitted on behalf of a domestic or foreign corporation must be executed:

(1) By the presiding officer of the board of directors, by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary."

SECTION 6.(b) G.S. 55-1-22(a)(27) is repealed.

SECTION 7.(a) G.S. 55A-1-20 reads as rewritten:

"**§ 55A-1-20. Filing requirements.**

~~(a) To be entitled to filing by the Secretary of State under this Chapter, a document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements.~~

~~(b) The document must be one that is required or permitted by this Chapter to be filed in the office of the Secretary of State.~~

~~(c) The document shall contain the information required by this Chapter. It may contain other information as well.~~

~~(d) The document shall be typewritten or printed.~~

~~(e) The document shall be in the English language.~~

~~A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.~~

~~(f) A document submitted by a domestic or foreign corporation or business corporation shall be executed:~~

~~(1) By the presiding officer of the board of directors by its president, or by another of its officers;~~

~~(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or~~

~~(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.~~

~~A document submitted by an unincorporated entity must be executed by a person authorized to execute documents (i) pursuant to G.S. 57C-1-20(f) if the unincorporated entity is a domestic or foreign limited liability company, (ii) pursuant to G.S. 59-204 if the unincorporated entity is a domestic or foreign limited partnership, or (iii) pursuant to G.S. 59-73.7(a)(4) if the unincorporated entity is any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State.~~

~~(g) The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. The document may but need not contain:~~

~~(1) The corporate seal;~~

~~(2) An attestation by the secretary or an assistant secretary; and~~

~~(3) An acknowledgment, verification, or proof.~~

~~(h) If the Secretary of State has prescribed a mandatory form for the document under G.S. 55A-1-21, the document shall be in or on the prescribed form.~~

~~(i) The document shall be delivered to the office of the Secretary of State for filing and shall be accompanied by one exact or conformed copy (except as provided in G.S. 55A-5-03 and G.S. 55A-15-09), and all fees required by this Chapter.~~

~~(j) Any signature on any document authorized to be filed with the Secretary of State under any provision of this Chapter may be a facsimile.~~

(a) A document required or permitted by this Chapter to be filed by the Secretary of State must be filed under Chapter 55D of the General Statutes.

(b) A document submitted on behalf of a domestic or foreign corporation must be executed:

(1) By the presiding officer of the board of directors, by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary."

SECTION 7.(b) G.S. 55A-1-22.1, 55A-1-22.2, 55A-1-23, 55A-1-24, 55A-1-25, 55A-1-26, 55A-1-27, and 55A-1-29 are repealed.

SECTION 7.(c) G.S. 55A-1-22(a)(28) is repealed.

SECTION 8.(a) G.S. 57C-1-20 reads as rewritten:

"**§ 57C-1-20. Filing requirements.**

~~(a) To be entitled to filing by the Secretary of State under this Chapter, a document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements.~~

~~(b) The document must be one that is required or permitted by this Chapter to be filed in the Office of the Secretary of State.~~

~~(c) The document must contain the information required by this Chapter. It may contain other information as well.~~

~~(d) The document must be typewritten or printed.~~

~~(e) The document must be in the English language. The name of a limited liability company need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign limited liability companies need not be in English if accompanied by a reasonably authenticated English translation.~~

~~(f) A document submitted by a domestic or foreign limited liability company must be executed:~~

~~(1) By a manager of the limited liability company;~~

~~(2) If managers have not been selected, or if the limited liability company does not have a manager other than a member, by any member;~~

~~(3) If the limited liability company has not been formed or if no initial members of the limited liability company have been identified in the manner provided in this Chapter, by an organizer; or~~

~~(4) If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.~~

~~A document submitted by a business entity other than a domestic or foreign limited liability company must be executed by a person authorized to execute documents (i) pursuant to G.S. 55-1-20(f) if the business entity is a corporation or foreign corporation, (ii) pursuant to G.S. 55A-1-20(f) if the business entity is a domestic or foreign nonprofit corporation, (iii) pursuant to G.S. 59-204 if the business entity is a domestic or foreign limited partnership, or (iv) pursuant to G.S. 59-73.7(a)(4) if the business entity is any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State.~~

~~(g) The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. The document may, but need not, contain an acknowledgement, verification, or proof.~~

~~(h) If the Secretary of State has prescribed a mandatory form for the document under G.S. 57C-1-21, the document must be in or on the prescribed form unless the Secretary of State otherwise permits an alternative form.~~

~~(i) The document must be delivered to the Office of the Secretary of State for filing and must be accompanied by one exact or conformed copy and all fees required by this Chapter.~~

~~(j) Any signature on any document authorized to be filed with the Secretary of State under any provision of this Chapter may be a facsimile.~~

(a) A document required or permitted by this Chapter to be filed by the Secretary of State must be filed under Chapter 55D of the General Statutes.

(b) A document submitted on behalf of a domestic or foreign limited liability company must be executed:

(1) By a manager of the limited liability company;

(2) If managers have not been selected, or if the limited liability company does not have a manager other than a member, by any member;

(3) If the limited liability company has not been formed if no initial members of the limited liability company have been identified in the manner provided in this Chapter, by an organizer; or

(4) If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary."

SECTION 8.(b) G.S. 57C-1-22.1, 57C-1-22.2, 57C-1-23, 57C-1-24, 57C-1-25, 57C-1-26, 57C-1-27, and 57C-1-29 are repealed.

SECTION 8.(c) G.S. 57C-1-22(a)(27) is repealed.

SECTION 9. G.S. 59-73.7 reads as rewritten:

"**§ 59-73.7. Filing of documents.**

(a) ~~To be entitled to filing by the Secretary of State, a document submitted pursuant to this Part must meet all of the following requirements:~~

~~(1) The document must contain the information required by this Part. It may contain other information as well.~~

~~(2) The document must be typewritten or printed.~~

~~(3) The document must be in the English language.~~

~~(4) A document submitted by a partnership must be executed by a general partner of the partnership. A document submitted by a business entity other than a partnership must be executed by a person authorized to execute documents (i) pursuant to G.S. 55-1-20(f) if the business entity is a domestic or foreign corporation, (ii) pursuant to G.S. 55A-1-20(f) if the business entity is a domestic or foreign nonprofit corporation, (iii) pursuant to G.S. 57C-1-20(f) if the business entity is a domestic or foreign limited liability company, or (iv) pursuant to G.S. 59-204 if the business entity is a domestic or foreign limited partnership.~~

~~(5) The person executing the document must sign it and state beneath or opposite the person's signature, the person's name and the capacity in which the person signs. Any signature on the document may be a facsimile. The document may, but need not, contain an acknowledgment, verification, or proof.~~

~~(6) The document must be delivered to the Office of the Secretary of State for filing and must be accompanied by one exact or conformed copy and by the required filing fee.~~

A document required or permitted by this Act to be filed by the Secretary of State must be filed under Chapter 55D of the General Statutes.

~~(b) A partnership may correct a document filed by the Secretary of State pursuant to this Part if the document (i) contains a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively executed, attested, sealed, verified, or acknowledged.~~

~~A document is corrected by:~~

~~(1) Preparing articles of correction that (i) describe the document (including its filing date) or have attached to them a copy of the document, (ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective, and (iii) correct the incorrect statement or defective execution; and~~

~~(2) Delivering the articles of correction to the Secretary of State for filing, accompanied by one exact or conformed copy and the required filing fee.~~

~~Articles of correction are effective on the effective date of the document that is corrected except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.~~

(b1) A document submitted under this Act for filing by the Secretary of State must be executed by a general partner of the partnership.

(c) The Secretary of State shall collect the following fees when the documents described in this subsection are submitted by a partnership to the Secretary of State for filing:

Document	Fee
Articles of Merger	$50.00
Articles of Correction	$10.00

The Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary of State under this Part. The party to the proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of a document filed by a partnership pursuant to this Part:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) Five dollars ($5.00) for the certificate.

~~(d) The Secretary of State shall guarantee the expedited filing of a document upon receipt of the document in proper form and the payment of the required filing fee. The Secretary of State may collect the following additional fees for the expedited filing of a document received in good form:~~

~~(1) Two hundred dollars ($200.00) for the filing by the end of the same business day of a document received by 12:00 noon Eastern Standard Time; and~~

~~(2) One hundred dollars ($100.00) for the filing of a document within 24 hours after receipt, excluding weekends and holidays.~~

~~The Secretary of State shall not collect the fees allowed in this subsection unless the person submitting the document for filing requests an expedited filing and is informed by the Secretary of State of the fees prior to the filing of the document.~~

~~(e) Upon request, the Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Part. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this subsection and filings under subsection (d) of this section. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing.~~

~~(f) Except as provided in this subsection and in subsection (b) of this section, a document accepted for filing is effective:~~

~~(1) At the time of filing on the date it is filed, as evidenced by the Secretary of State's date and time endorsement on the original document; or~~

~~(2) At the time specified in the document as its effective time on the date it is filed.~~

~~A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at 11:59:59 p.m. on that date. A delayed effective date for a document may not be later than the 90th day after the date it is filed.~~

~~The fact that a document has become effective under this subsection does not determine its validity or invalidity or the correctness or incorrectness of the information contained in the document.~~

~~(g) If a document delivered to the Office of the Secretary of State for filing satisfies the requirements of this Part, the Secretary of State shall file it. Documents filed with the Secretary of State pursuant to this Part may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this Part, or under any predecessor act, by photographic, microfilm, optical disk media, or other means of reproduction, and may destroy the originals of those documents reproduced.~~

~~The Secretary of State files a document by stamping or otherwise endorsing "Filed", together with the Secretary of State's name and official title and the date and time of filing, on both the original and the document copy. After filing a document, the Secretary of State shall deliver the document copy to the partnership or its representative.~~

~~If the Secretary of State refuses to file a document, the Secretary of State shall return it to the partnership or its representative within five days after the document was received, together with a brief, written explanation of the reason for refusal. The Secretary of State may correct apparent errors and omissions on a document submitted for filing if authorized to make the corrections by the person submitting the document for filing. Prior to making the correction, the Secretary shall confirm the authorization to make the corrections according to procedures adopted by rule.~~

~~The Secretary of State's duty is to review and file documents that satisfy the requirements of this Part. The Secretary of State's filing or refusing to file a document does not:~~

~~(1) Affect the validity or invalidity of the document in whole or part;~~

~~(2) Relate to the correctness or incorrectness of information contained in the document; or~~

~~(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.~~

~~(h) If the Secretary of State refuses to file a document delivered to the Secretary of State's office for filing, the person tendering the document for filing may, within 30 days after the refusal, appeal the refusal to the Superior Court of Wake County. The appeal is commenced by filing a petition with the court and with the Secretary of State requesting the court to compel the Secretary of State to file the document. The petition shall have attached to it the document to be filed and the Secretary of State's explanation for the refusal to file. The appeal to the Superior Court is not governed by Chapter 150B of the General Statutes, the Administrative Procedure Act, and the court shall determine, based upon what is appropriate under the circumstances, any further notice and opportunity to be heard.~~

~~Upon consideration of the petition and any response made by the Secretary of State, the court may, prior to entering final judgment, order the Secretary of State to file the document or take other action the court considers appropriate.~~

~~The court's final decision may be appealed as in other civil proceedings.~~

~~(i) A certificate attached to a copy of a document filed by the Secretary of State, bearing the Secretary of State's signature (which may be in facsimile) and the seal of office and certifying that the copy is a true copy of the document, is conclusive evidence that the original document is on file with the Secretary of State. A photographic, microfilm, optical disk media, or other reproduced copy of a document filed pursuant to this Part or any predecessor act, when certified by the Secretary, shall be considered an original for all purposes and is admissible in evidence in like manner as an original.~~

~~(j) A person commits an offense if the person signs a document the person knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing. An offense under this subsection is a Class 1 misdemeanor.~~

(k) Whenever title to real property in this State held by a partnership is vested by operation of law in another entity upon merger, consolidation, or conversion of the partnership, a certificate reciting the merger, consolidation, or conversion shall be recorded in the office of the register of deeds of the county where the property is located, or if the property is located in more than one county, then in each county where any portion of the property is located.

The Secretary of State shall adopt uniform certificates to be furnished for registration in accordance with this subsection. In the case of a partnership formed under a law other than the laws of this State, a similar certificate by any competent authority of the jurisdiction of organization may be registered in accordance with this subsection.

The certificate required by this subsection ~~shall~~ must be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgment, probate, or approval by any other officer shall be required. The former name of the partnership holding title to the real property before the merger, consolidation, or conversion shall appear in the "Grantor" index and the name of the other entity holding title to the real property by virtue of the merger, consolidation, or conversion shall appear in the "Grantee" index."

SECTION 10.(a) G.S. 59-204(a) reads as rewritten:

"(a) Each certificate required by this Article to be filed in the office of the Secretary of State shall be executed in the following manner:

(1) An original certificate of limited partnership must be signed by all general partners;

(2) A certificate of amendment must be signed by at least one general partner and by each other partner designated in the certificate as a new general partner; and

(3) A certificate of cancellation must be signed by all general partners.

Any other document submitted by a domestic or foreign limited partnership for filing pursuant to this or any other Chapter must be signed by at least one general partner. ~~Any document submitted by a business entity other than a domestic or foreign limited partnership must be executed by a person authorized to execute documents (i) pursuant to G.S. 55-1-20(f) if the business entity is a domestic or foreign corporation, (ii) pursuant to G.S. 55A-1-20(f) if the business entity is a domestic or foreign nonprofit~~

~~corporation, (iii) pursuant to G.S. 57C-1-20(f) if the business entity is a domestic or foreign limited liability company, or (iv) pursuant to G.S. 59-73.7(a)(4) if the business entity is a partnership as defined in G.S. 59-36, whether or not formed under the laws of this State, other than a domestic or foreign limited partnership.~~"

SECTION 10.(b) G.S. 59-204(b1) is repealed.

SECTION 10.(c) G.S. 59-206 reads as rewritten:

"**§ 59-206. Filing requirements.**

(a) A document required or permitted by this Article to be filed by the Secretary of State must be filed under Chapter 55D of the General Statutes. Whenever the provisions of this Article require any document relating to a limited partnership to be executed and filed in accordance with this Article, unless otherwise specifically stated in this Article:

~~(1) There shall be an original executed document and also one conformed copy.~~

~~(2) The original document so signed, together with the conformed copy, shall be delivered to the Secretary of State. If the Secretary finds that it satisfies the requirements of this Article, the Secretary shall, when the proper fees have been tendered, endorse upon the original the word "filed" and the hour, day, month and year of the filing thereof and shall file the same in the Secretary's office. The Secretary of State shall thereupon immediately compare the copy with the original and if the Secretary finds that they are identical the Secretary shall make upon the conformed copy the same endorsement which appears on the original and shall attach to the copy a certificate stating that attached thereto is a true copy of the document, designated by an appropriate title, filed in the Secretary's office and showing the date of the filing. The Secretary shall thereupon return the copy so certified to the limited partnership or its representatives. Any documents filed with the Secretary of State pursuant to this Chapter may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this Chapter, or under any predecessor act, by photographic, microfilm, optical disk media, or other means of reproduction, and may destroy the originals of the documents reproduced. The Secretary of State may correct apparent errors and omissions on a document submitted for filing if authorized to make the corrections by the person submitting the document for filing. The authorization to make the corrections shall be confirmed, according to procedures adopted by rule, by the Secretary prior to making the correction.~~

~~(2b) A domestic or foreign limited partnership may correct a document filed by the Secretary of State if the document (i) contains a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively executed, attested, sealed, verified, or acknowledged.~~

~~(3) Repealed by Session Laws 1991, c. 153, s. 2.~~

(3a) Whenever the name of any domestic or foreign limited partnership holding title to real property in this State is changed upon amendment to the certificate of limited partnership, or whenever title to its real property is vested by operation of law in another entity upon merger, consolidation, or conversion of the domestic or foreign limited partnership, a certificate reciting the name change, merger, consolidation, or conversion shall be recorded in the office of the register of deeds of the county where the property lies, or if the property is located in more than one county, then in each county where any portion of the property lies.

(4) The Secretary of State shall adopt uniform certificates to be furnished for registration in accordance with this section. In the case of a foreign limited partnership, a similar certificate by any competent authority of the jurisdiction under which the limited partnership is organized may be registered in accordance with this section.

(5) The certificate required by subdivision (3a) of this subsection shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the domestic or foreign limited partnership holding title to the real property before the name change, merger, consolidation, or conversion shall appear in the "Grantor" index, and the new name of the domestic or foreign limited partnership or the name of the other entity holding title to the real property by virtue of the merger, consolidation, or conversion, as applicable, shall appear in the "Grantee" index.

~~(b) Repealed by Session Laws 1991, c. 153, s. 2.~~

~~(b1) Except as provided in subsection (b2), a document accepted for filing is effective:~~

~~(1) At the time of filing on the date it is filed, as evidenced by the Secretary of State's date and time endorsement on the original document; or~~

~~(2) At the time specified in the document as its effective time on the date it is filed.~~

~~(b2) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but not time is specified, the document is effective at 11:59:59 p.m. on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed.~~

~~(b3) The fact that a document has become effective under this section does not determine its validity or invalidity or the correctness or incorrectness of the information contained in the document.~~

~~(c) It shall be the duty of the Secretary of State, whenever so requested and upon tender of the proper fees, to certify as aforesaid any true copy of any document on file in~~

~~the office, or if requested, to make or cause to be made typewritten or photostatic copies of the documents and to certify the same as aforesaid.~~"

SECTION 10.(d) G.S. 59-206.1 and G.S. 59-206.2 are repealed.

SECTION 10.(e) G.S. 59-1106 reads as rewritten:

"**§ 59-1106. ~~Fees; expedited filing.~~ Fees.**

The Secretary of State shall collect the following fees and remit them to the State Treasurer for the use of the State:

(1)	For filing a certificate of limited partnership (G.S. 59-201)	$50.00
(2)	For filing a certificate of amendment (G.S. 59-202; 59-905)	25.00
(3)	For filing a certificate of cancellation (G.S. 59-203; 59-906)	25.00
(4)	For filing an application for reservation of name (G.S. 59-104(a))	10.00
(5)	For filing a transfer of name (G.S. 59-104(d))	10.00
(6)	For filing an application for registration as foreign limited partnership (G.S. 59-502)	50.00
(7)	For preparing and furnishing a copy of any document, instrument or paper filed or recorded relating to a limited partnership (G.S. 59-206(c))	
	For each page	1.00
	For affixing the certificate and official seal thereto	5.00
(8)	For comparing a copy furnished to him of any document, instrument or paper filed or recorded relating to a limited partnership	
	For each page	1.00
(9)	For filing any other document not ~~herein~~ specifically provided for	10.00
~~(10)~~	~~For the expedited filing by the end of the same business day of a document received in good order by 12:00 noon Eastern Standard Time~~	~~200.00~~ ~~additional fee~~
~~(11)~~	~~For the expedited filing of a document received in good order within 24 hours after receipt, excluding weekends and holidays~~	~~100.00~~ ~~additional fee~~
~~(12)~~	~~Advisory review of a document~~	~~200.00.~~

~~The Secretary of State shall not collect the fees allowed in subdivisions (10) and (11) of this section unless the person submitting the document for filing requests an expedited filing and is informed by the Secretary of State of the fees prior to the filing of the document. Upon receipt of a document in proper form and payment of the~~

~~required filing fee, the Secretary of State shall guarantee the expedited filing of the document.~~"

SECTION 11. G.S. 55B-3 reads as rewritten:

"**§ 55B-3. North Carolina Business Corporation Act ~~applicable.~~applicable; other applicable law.**

(a) Chapter 55 of the General Statutes, the ~~The~~ North Carolina Business Corporation ~~Act shall be applicable to such~~ Act, applies to professional corporations, including their organization, and professional corporations shall enjoy the powers and privileges and shall be subject to the duties, restrictions and liabilities of other corporations, except insofar as the same may be limited or enlarged by this Chapter. If any provision of this Chapter conflicts with the provisions of Chapter 55 of the General Statutes, the North Carolina Business Corporation Act, the provisions of this Chapter shall prevail.

(b) A document required or permitted by this Chapter to be filed by the Secretary of State shall be filed under Chapter 55D of the General Statutes, Filings for Corporations, Nonprofit Corporations, Limited Liability Companies, Limited Partnerships, and Limited Liability Partnerships."

SECTION 12. The Revisor of Statutes is authorized to transfer, as historical annotations, the Official Comments and the North Carolina Comments to those portions of Chapter 55 of the General Statutes that are recodified by this act to the corresponding locations in Chapter 55D of the General Statutes, as the Revisor deems appropriate.

PART III. EFFECTIVE DATE AND APPLICABILITY.

SECTION 13. This act becomes effective October 1, 2001, and applies to documents submitted for filing on or after that date.

HOUSE BILL 385:
Consolidate Business Provisions.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Rep. Culpepper
Date:	March 6, 2001	**Summary by:**	Robin Johnson
Version:	PCS (H385-CSRH-3[v.1])		Committee Counsel

SUMMARY: ***The proposed committee substitute makes technical and clarifying changes to the original bill.***

The PCS would create a new Chapter 55D in the General Statutes [Filings for Corporations, Nonprofit Corporations, Limited Liability Companies, Limited Partnerships, and Limited Liability Partnerships]. This would consolidate in one place the requirements that are applicable to the filing of business documents in the Secretary of State's Office. The bill also would make a number of conforming and clarifying changes.

The PCS would take effect October 1, 2001, and would apply to documents submitted for filing on or after that date.

CURRENT LAW: Currently, the filing requirements for each of these entities are found in Chapters 55 (NC Business Corporation Act), 55A (Nonprofit Corporation Act), 57C (NC Limited Liability Company Act), and 59 (Partners) of the General Statutes. The requirements are virtually identical.

BILL ANALYSIS: In addition to repealing and recodifying a number of repetitive statutes and consolidating them as a new Chapter, the PCS for House Bill 385 would eliminate the requirement that a copy of every filed document be submitted simultaneously with the Secretary of State. This would conform to current practice. It also would clarify that the signatures on filed documents can be facsimiles or electronic.

BACKGROUND: **House Bill 385 is a recommendation of the General Statutes Commission. The PCS makes changes recommended by the Bar Association and endorsed by the Commission.**

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

MEMORANDUM

To: House Judiciary II Committee

From: General Statutes Commission

Date: March 5, 2001

Re: House Bill 385 (Consolidate Business Provisions)

General Comments

House Bill 385 amends the General Statutes to centralize the requirements for filing documents with the Secretary of State under Chapters 55, 55A, 57C, and 59, relating to corporations, nonprofit corporations, limited liability companies, limited partnerships, and registered limited liability partnerships. The provisions for document filings in these chapters either duplicate or closely track each other, so that when an amendment is made in one place, the amendment must also be made in at least four other places in the General Statutes to keep these provisions standardized. Part I (Consolidation of Filing Requirements) creates a new Chapter 55D of the General Statutes, recodifies most of Part 2 of Article 1 of Chapter 55 into the new chapter, and makes the changes necessary to accommodate nonprofit corporations, limited liability companies, and partnerships. Part II makes conforming amendments to Chapters 55, 55A, 55B, 57C, and 59. Part II also makes a few miscellaneous amendments to these Chapters. Part III contains applicability and effective date provisions and authorization to transfer drafters' comments from the recodified sections of Chapter 55 to the equivalent sections in the new Chapter 55D.

Specific Comments

Part I.

Section 1. This section creates a new Chapter 55D of the General Statutes with one article and a definitions section. The terms in the definitions section are defined with reference to the definitions in Chapters 55, 55A, 57C, and 59.

Sections 2 and 3. Section 2 adds a second article to Chapter 55D, and Section 3 recodifies G.S. 55-1-22.1, 55-1-22.2, 55-1-23, 55-1-24, 55-1-25, 55-1-26, 55-1-27, 55-1-29, and most of G.S. 55-1-20 into this new article.

Section 4. This section amends the text of the recodified sections to include references to nonprofit corporations, limited liability companies, limited partnerships, and registered limited liability partnerships and conforming amendments and to make stylistic changes. Please note that the text being amended is the current text of Chapter 55 of the General Statutes. Other amendments include:

55D-10. The format of this section has been updated. No reference was added in new subdivision (b)(4) to certificates of existence for foreign limited partnerships because foreign limited partnerships are not required to submit these documents to be authorized to transact business in this State (instead, they include a different certification in their application for authorization). New subdivision (b)(3) is amended to include a specific reference to electronic filing. New subdivision (b)(8) removes the current requirement for submitting at least one copy along with the document to be filed, because the Department of the Secretary of State itself automatically generates a copy and no longer need to have copies submitted.

55D-11. This section was rewritten at the request of the Department of the Secretary of State to clarify that a request for an expedited filing must be made when the document is filed.

55D-12. To parallel the statutory treatment for expedited filings, the fee for advisory reviews is being moved from the substantive fee sections in Chapters 55, 55A, 57C, and 59 and inserted into this section.

Part II.

Section 5. This section amends the definition of "entity" in Chapters 55 and 55A of the General Statutes to make it clear that "entity" includes foreign business entities.

Section 6. This section rewrites G.S. 55-1-20, as amended in Part I, to contain a cross reference to the new Chapter 55D and to restate the requirements for execution of corporate documents. The section also repeals the advisory review fee in G.S. 55-1-22, which in Part I was inserted into new G.S. 55D-12.

Sections 7, 8, 9, and 10. These sections make essentially the same amendments to G.S. 55A-1-20, 55A-1-22, 57C-1-20, 57C-1-22, 59-73.7, 59-204, 59-206, and 59-1106 that Section 6 makes to the equivalent sections of Chapter 55. In addition, this section repeals the sections of Chapter 55A and 57C, Article 5 of Chapter 59, and those subsections of G.S. 59-73.7 that are essentially duplicates of the sections in new Chapter 55D.

Section 11. This section makes a conforming change to G.S. 55B-3.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 274

Short Title:	Training School to Youth Academy-AB.	(Public)
Sponsors:	Representatives Haire; and Wainwright.	
Referred to:	Judiciary II.	

February 27, 2001

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE TERM "TRAINING SCHOOL", AS IT APPLIES TO THE JUVENILE CODE, TO "YOUTH ACADEMY" IN THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-1501(26) is repealed.

SECTION 2. G.S. 7B-1501 is amended by adding a new subdivision to read:

"(29) Youth academy. – A secure residential facility authorized to provide long-term treatment, education, and rehabilitative services for delinquent juveniles committed by the court to the Department."

SECTION 3. Except for the section of the General Statutes amended in this act, the Revisor of Statutes shall substitute the term "youth academy" for the term "training school" everywhere that term appears in Chapter 7B of the General Statutes, G.S. 115D-1, 143B-515, 143B-516, and 143B-543.

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

HOUSE BILL 274:
Training School to Youth Academy

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Haire
Date:	March 6, 2001	**Summary by:**	Jeff Hudson
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 274 amends the General Statutes to replace the term "training school", as it applies to the Juvenile Code, with the term "youth academy". House Bill 274 is an agency bill requested by the Department of Juvenile Justice and Delinquency Prevention.***

CURRENT LAW: Under current law, a secure residential facility authorized to provide long-term treatment, education, and rehabilitative services for delinquent juveniles committed by the court to the Department of Juvenile Justice and Delinquency Prevention is designated as a "training school".

BILL ANALYSIS: House Bill 274 would designate a secure residential facility authorized to provide long-term treatment, education, and rehabilitative services for delinquent juveniles committed by the court to the Department of Juvenile Justice and Delinquency Prevention as a "youth academy".

EFFECTIVE DATE: This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

Judiciary II — 3-6-01

Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Margaret Westbrook	KCLH
[illegible] Pope	SOS
Elaine Denny	DJJDP
Lacey Dix	DJJDP
George R. Sweat	DJJDP
Floyd Lewis	General Statutes Commission
Zeb Alley	Alley Associates
Paula Wolf	Covenant w/ NC's Children
Hal Miller	NCACCT

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

March 13, 2001 – 10:00 a.m.

The House Committee on Judiciary II met on Tuesday, March 13, 2001, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairman Phil Haire, Representatives Bowie, Decker, Gulley, Hall, Jeffus, Justus, Miller, Pope, Sherrill, and Weiss. Robin Johnson, Esther Manheimer, Jeff Hudson, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order, and called for consideration of the following bill:

HB 275 Infant Homicide Prevention Act. Rep. Baddour recognized Rep. Haire, bill sponsor, to present the bill. Rep. Haire explained the history behind the bill, and noted that this was an issue that was discussed during the last session of the General Assembly. The chair recognized Sergeant Robert Holland of Macon County to discuss his experiences with an abandoned infant. Tom Bennett of the Child Fatality Task Force was then recognized to express the need for the bill, and gave the committee some statistics with regard to the number of children that were abandoned each year in North Carolina. Rep. Bowie questioned the numbers of abandoned infants in other states, and noted that there was no indication of influx. Rep. Decker discussed the experience his town had with an abandoned infant. Paula Wolfe, Covenant with North Carolina's Children, Steve Shore, North Carolina Pediatric Society, and Jennifer Tolley, Prevent Child Abuse North Carolina, all spoke in support of the bill. Rep. Haire moved for the adoption of an amendment, which is attached for the record. Motion passed. Esther Manheimer was then recognized to provide a section by section review of the bill. The committee questioned the issues of parental disclosure, medical record history, and the logistics of handing the child over to an individual. As a result of these questions, Rep. Baddour appointed a subcommittee to look at the bill. Rep. Haire was appointed Chairman, and members included: Reps. Miller, Hall, Bowie, and Sherrill. The chair asked the subcommittee to report to the next meeting. No vote was taken.

The meeting adjourned at 10:50 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

AGENDA

HOUSE JUDICIARY II COMMITTEE

March 13, 2001
10:00 A.M.

CALL TO ORDER
INTRODUCE PAGES

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Jeff Hudson
Elizabeth Kirkland (Committee Assistant)

BILLS TO BE CONSIDSERED:

HB 275 Infant Homicide Prevention Act
Sponsor: Rep. Haire

ADJOURNMENT

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 275*

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

H275-ASK-1 [v.0]

Date _____,2001

Comm. Sub. [NO]
Amends Title [NO]
First Edition

Representative Haire
moves to amend the bill
on page 1, lines 14-17, by rewriting those lines to read:

"the investigation within 72 hours following receipt of the report. When a report alleges abandonment, the director shall immediately initiate an investigation, take appropriate steps to assume temporary custody of the juvenile, and take appropriate steps to secure an order for nonsecure custody of the juvenile. The";

on page 1, lines 21-22, by rewriting those lines to read:

"for Missing Persons and other national and State resources to determine whether the juvenile is a missing child. All information received by the department of social services,"; and

on page 2, line 19, by replacing the word "Any" with "An".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 275*

Short Title:	Infant Homicide Prevention Act.	(Public)
Sponsors:	Representatives Haire, Alexander, Clary, Easterling; Allen, Barefoot, Boyd-McIntyre, Crawford, Goodwin, Hurley, Lucas, Luebke, Oldham, Teague, Tolson, Wainwright, Weiss, and Womble.	
Referred to:	Judiciary II.	

February 27, 2001

A BILL TO BE ENTITLED

AN ACT TO DECRIMINALIZE ABANDONMENT OF AN INFANT UNDER CERTAIN CIRCUMSTANCES AND TO MODIFY SOME PROCEDURES INVOLVING ABANDONED JUVENILES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-302(a) reads as rewritten:

"(a) When a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough investigation in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the director shall immediately, but no later than 24 hours after receipt of the report, initiate the investigation. When the report alleges neglect or dependency, the director shall initiate the investigation within 72 hours following receipt of the report. Notwithstanding the previous sentence, when a report alleges abandonment, the director shall immediately initiate an investigation and shall take appropriate steps to assume temporary custody of the juvenile and to secure an order for nonsecure custody of the juvenile. The investigation and evaluation shall include a visit to the place where the juvenile resides. When the report alleges abandonment, the investigation shall include a request from the director to law enforcement officials to investigate through the North Carolina Center for Missing Persons and other national and State resources to ensure that the juvenile is not a missing child. All information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department."

SECTION 2. G.S. 7B-500 reads as rewritten:

"**§ 7B-500. Taking a juvenile into temporary ~~custody.~~custody; civil and criminal immunity.**

(a) Temporary custody means the taking of physical custody and providing personal care and supervision until a court order for nonsecure custody can be obtained. A juvenile may be taken into temporary custody without a court order by a law enforcement officer or a department of social services worker if there are reasonable grounds to believe that the juvenile is abused, neglected, or dependent and that the juvenile would be injured or could not be taken into custody if it were first necessary to obtain a court order. If a department of social services worker takes a juvenile into temporary custody under this section, the worker may arrange for the placement, care, supervision, and transportation of the juvenile.

(b) A law enforcement officer, a department of social services worker, a health care provider as defined in G.S. 90-21.11 at a hospital or local or district health department, or an emergency medical technician at a fire station shall, without a court order, take into temporary custody an infant under 15 days of age that is voluntarily delivered to the individual by the infant's parent who does not express an intent to return for the infant. An individual who takes an infant into temporary custody under this subsection shall perform any act necessary to protect the physical health and well-being of the infant and shall immediately notify the department of social services. Any individual who takes an infant into temporary custody under this subsection may inquire as to the parents' identities and as to any relevant medical history, but the parent is not required to provide this information.

(c) Any adult may, without a court order, take into temporary custody an infant under 15 days of age that is voluntarily delivered to the individual by the infant's parent who does not express an intent to return for the infant. An individual who takes an infant into temporary custody under this subsection shall perform any act necessary to protect the physical health and well-being of the infant and shall immediately notify the department of social services. An individual who takes an infant into temporary custody under this subsection may inquire as to the parents' identities and as to any relevant medical history, but the parent is not required to provide this information.

(d) An individual who takes an infant into temporary custody under subsection (b) or (c) of this section is immune from any civil or criminal liability that might otherwise be incurred or imposed as a result of any omission or action taken pursuant to the requirements of subsection (b) or (c) of this section so long as that individual was acting in good faith. The immunity established by this subsection does not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable."

SECTION 3. G.S. 7B-1111(a)(7) reads as rewritten:

"(a) The court may terminate the parental rights upon a finding of one or more of the following:

...

(7) The parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition or ~~motion.~~motion, or the parent has voluntarily abandoned an infant

pursuant to G.S. 7B-500 for at least 60 consecutive days immediately preceding the filing of the petition or motion."

SECTION 4. G.S. 14-318.2 is amended by adding a new subsection to read:

"(c) A parent who abandons an infant less than 15 days of age pursuant to G.S. 14-322.3 shall not be prosecuted under this section for any acts or omissions related to the care of that infant."

SECTION 5. G.S. 14-318.4 is amended by adding a new subsection to read:

"(c) Abandonment of an infant less than 15 days of age pursuant to G.S. 14-322.3 may be treated as a mitigating factor in sentencing for a conviction under this section involving that infant."

SECTION 6. Article 40 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-322.3. Abandonment of an infant under 15 days of age.**

No parent shall be prosecuted under G.S. 14-322 or G.S. 14-322.1 for abandonment of an infant less than 15 days of age when that parent voluntarily delivers the infant to one of the following individuals and does not express an intent to return for the infant:

(1) A health care provider, as defined under G.S. 90-21.11, at a hospital or at a local or district health department.

(2) A law enforcement officer at a police station or sheriff's department.

(3) A social services worker at a local department of social services.

(4) An emergency medical technician at a fire station.

(5) Any other adult of suitable discretion who willingly accepts the infant."

SECTION 7. The Department of Health and Human Services, Division of Public Health, shall develop a media campaign to inform the public of the provisions of this act. This media campaign shall contain information on responsible parenting in addition to information about the provisions of the act. This media campaign shall be targeted at adolescents and young adults. This media campaign shall be developed in consultation with law enforcement officials, local departments of social services, medical personnel, and school administrators.

SECTION 8. There is appropriated from the General Fund the sum of one hundred fifty thousand dollars ($150,000) for the 2001-2002 fiscal year and the sum of one hundred fifty thousand dollars ($150,000) for the 2002-2003 fiscal year to the Department of Health and Human Services, Division of Public Health, to implement the provisions of Section 7 of this act.

SECTION 9. Sections 1 through 6 of this act become effective December 1, 2001, and apply to acts committed on or after that date. The remainder of this act becomes effective July 1, 2001.

HB 275:
Infant Homicide Prevention Act.

BILL ANALYSIS

Committee:	Judiciary II	**Introduced by:**	Representative Haire
Date:	March 13, 2001	**Summary by:**	Esther Manheimer
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 275 decriminalizes the abandonment of an infant less than 15 days old under certain circumstances. The bill requires certain persons and authorizes others to receive the infant. The bill shields a good faith "receiver" of the infant from civil and criminal liability. The bill shortens the required waiting period to terminate parental rights from six months to 60 days in cases of voluntary abandonment of infants less than 15 days old. The bill would also appropriate $300,000 to the Department of Health and Human Services to develop an ad campaign to publicize the provisions of this act.

BILL ANALYSIS:

Abandoning an Infant Less than 15 Days of Age and Immunity from Prosecution.

Under current law, an abandoned juvenile may be taken into temporary custody by a law enforcement officer or a department of social services worker (G.S. 7B-500). In other words, the parent of a newborn infant who desires to abandon the infant could turn the infant over to an officer or to a department of social services worker. However, the parent is potentially subject to prosecution under the following statutes:

- G.S. 14-318.2 - Misdemeanor Child Abuse
- G.S. 14-318.4 - Felony Child Abuse
- G.S. 14-322 - Misdemeanor to refuse to provide child support
- G.S. 14-322.1 - Felony Abandonment

This bill would allow the parent of an infant less than 15 days of age to turn their child over to one of the following persons:

- A health care provider at a hospital or local health department,
- A law enforcement officer at a police station or sheriff's department,
- A department of social services worker at a local department of social services,
- An emergency medical technician at a fire station, or
- Any adult of suitable discretion who willingly accepts the infant.

In addition, the parent would not be subject to prosecution under G.S. 14-322, misdemeanor to refuse to provide child support, and G.S. 14-322.1, felony abandonment. The abandoning parent would not be subject to prosecution under G.S. 14-318.2, misdemeanor child abuse, for acts or omissions related to the care of the infant. Finally, abandoning parents who also commit felony child abuse could still be prosecuted under G.S. 14-318.4, but abandoning an infant according to the provisions of this bill would be treated as a mitigating factor in the sentencing of a conviction under G.S. 14-318.4.

Taking a Juvenile into Temporary Custody.

The following persons **must** take an infant less than 15 days old into temporary custody without a court order when the infant is voluntarily delivered to the individual by the infant's parent and the parent does not express an intent to return for the infant:

- A law enforcement officer,
- A department of social services worker,
- A health care provider at a hospital or local health department, or
- An emergency medical technician at a fire station.

In addition, any adult **may**, under the same circumstances described above, take an infant less than 15 days old into temporary custody.

Obligation of the Individual Taking Temporary Custody.

Individuals taking an infant into temporary custody under the provisions of this bill must protect the health and well-being of the infant and must immediately inform the department of social services.

Identity of the Parents.

The individual may inquire as to the parents' identities and medical history but the parent is not required to provide this information.

Civil and Criminal Immunity.

Individuals taking an infant into temporary custody under the provisons of this bill are immune from civil or criminal liability under the temporary custody provisions of this bill so long as the individual acted in good faith. However, the immunity does not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable.

Director of DSS to Initiate Investigation Immediately in Cases of Abandonment.

Under current law, when abuse of a juvenile is alleged, the Director of the Division of Social Services (DSS) must initiate an investigation within 24 hours. When neglect or dependency is alleged the Director must initiate the investigation within 72 hours (G.S. 7B-302(a)).

When abandonment is alleged (abandonment is considered a type of neglect), this bill would require the Director to initiate an investigation immediately, to take temporary custody of the juvenile, and to secure an order of nonsecure custody. The Director must also request that law enforcement investigate through the N.C. Center for Missing Persons and other resources as to whether or not the juvenile is a missing child.

Termination of Parental Rights (TPR).

Under current law, a court may terminate parental rights upon various grounds including that the parent has willfully abandoned the child for at least six consecutive months immediately preceding the filing of the TPR petition.

Under this bill, the court may terminate parental rights when a parent voluntarily abandons an infant less than 15 days old for at least 60 consecutive days immediately preceding the filing of the petition.

Media Campaign and Appropriation.

This bill requires the Division of Public Health of the Department of Health and Human Services, to develop a media campaign to inform the public of the provisions of the act, targeted at adolescents and young adults. The media campaign is to be developed in consultation with law enforcement officials, local departments of social services, medical personnel, and school administrators. This bill authorizes the appropriation of $150,000 for FY 2001-2002 and $150,000 for FY 2002-2003 to the Department of Health and Human Services, Division of Public Health, to implement the media campaign.

Effective Date.

The provision regarding development of the media campaign is effective July 1, 2000. The statutory changes become effective December 1, 2000, and apply to acts committed on or after that date.

VISITOR REGISTRATION SHEET

JUDICIARY II — 3-13-01

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Carole Lawler	EGHS
John Kuster	NCFPC
Paula A. Sloop	Covenant w/ NC's Children
Bob Carpenter	N.C. Senate
Steve Shore	NC Pediatric Society
Tom Vitaglione	NC CHILD ADVOCACY INSTITUTE
Sharon Hirsch	NC Social Services Consortium
Thomas V. Bennett	NCCFTE
Jennifer Mc	PCANC
Cleve Nelson	ADC-GAL
Michelle Hughes	Prevent Child Abuse
Shannon Ransone	DHHS/DSS
JoAnn Lamm	DHHS/DSS
Esther High	DHHS/DSS
Deborah Radisch	NC-CFPT / OCME
AL DEITCH	DOA / YAIJ
Ed TURLINGTON	Brooks, Pierce
Ardis Watkins	SEANC

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

March 20, 2001 – 10:00 a.m.

The House Committee on Judiciary II met on Tuesday, March 20, 2001, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairman Phil Haire, Representatives Bowie, Culpepper, Decker, Gulley, Hall, Jeffus, Justus, Miller, Sherrill, and Weiss. Robin Johnson, Esther Manheimer, Jeff Hudson, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

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

HB 275 Infant Homicide Prevention Act. Rep. Haire moved that the proposed committee substitute be before the committee for purposes of discussion, and without objection, the PCS was before the committee. The chair recognized Rep. Haire to explain the changes made by the subcommittee. Rep. Justus questioned the issues of secure and non-secure custody, and how the age of the infant is to be established. Tom Bennett of the Child Fatality Task Force noted that there is some leeway in the statute to deal with these issues. Rep. Bowie moved for a favorable report as to committee substitute bill, unfavorable as to original bill. Motion passed.

Infant Homicide Prevention Appropriation. Rep. Haire explained that the subcommittee took the appropriation out of the original bill, and offered this bill as a committee bill. Without objection, the bill was before the committee for consideration. Reps. Justus and Sherrill moved that the bill be filed for introduction. Motion passed.

HB 277 Juvenile Extended Commitment Procedure. Rep. Haire moved that the proposed committee substitute be before committee for purposes of discussion, and without objection, the PCS was before the committee. Rep. Haire was recognized to explain the bill. Following questions from Rep. Justus and Rep. Decker, Rep. Haire moved for a favorable report as to committee substitute bill, unfavorable as to original bill. Motion passed.

HB 495 Left on Red. Rep. Baddour recognized Rep. Hensley, bill sponsor, to explain the bill. Rep. Hensley noted that the bill would allow for greater movement of traffic, turning left on red is legal in all but four states, and that the bill requires motorists to yield to pedestrians. Ben Eason, Legislative Chairman for the Association of the Blind, and Herman Gruber, former Director of the Division of Services for the Blind, spoke against the bill. No vote was taken.

The meeting adjourned at 10:55 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

AGENDA

HOUSE JUDICIARY II COMMITTEE

March 20, 2001
10:00 A.M.

CALL TO ORDER
INTRODUCE PAGES

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Jeff Hudson
Elizabeth Kirkland (Committee Assistant)

BILLS TO BE CONSIDSERED:

HB 275 Infant Homicide Prevention Act
Subcommittee Report - Rep. Haire (Chairman)

HB 277 Juvenile Extended Commitment Procedure
Sponsor - Rep. Haire

HB 495 Left Turn on Red
Sponsor - Rep. Hensley

ADJOURNMENT

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 275 A BILL TO BE ENTITLED AN ACT TO DECRIMINALIZE ABANDONMENT OF AN INFANT UNDER CERTAIN CIRCUMSTANCES AND TO MODIFY SOME PROCEDURES INVOLVING ABANDONED JUVENILES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 275*
PROPOSED COMMITTEE SUBSTITUTE H275-CSSK-7 [v.3]

3/19/2001 2:05:10 PM

Short Title: Infant Homicide Prevention Act. (Public)

Sponsors:

Referred to:

February 27, 2001

A BILL TO BE ENTITLED

AN ACT TO DECRIMINALIZE ABANDONMENT OF AN INFANT UNDER CERTAIN CIRCUMSTANCES AND TO MODIFY SOME PROCEDURES INVOLVING ABANDONED JUVENILES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-302(a) reads as rewritten:

"(a) When a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough investigation in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the director shall immediately, but no later than 24 hours after receipt of the report, initiate the investigation. When the report alleges neglect or dependency, the director shall initiate the investigation within 72 hours following receipt of the report. When the report alleges abandonment, the director shall immediately initiate an investigation, take appropriate steps to assume temporary custody of the juvenile, and take appropriate steps to secure an order for nonsecure custody of the juvenile. The investigation and evaluation shall include a visit to the place where the juvenile resides. When the report alleges abandonment, the investigation shall include a request from the director to law enforcement officials to investigate through the North Carolina Center for Missing Persons and other national and State resources whether the juvenile is a missing child. All information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department."

SECTION 2. G.S. 7B-500 reads as rewritten:

"**§ 7B-500. Taking a juvenile into temporary ~~custody.~~custody; civil and criminal immunity.**

(a) Temporary custody means the taking of physical custody and providing personal care and supervision until a court order for nonsecure custody can be obtained. A juvenile may be taken into temporary custody without a court order by a law

enforcement officer or a department of social services worker if there are reasonable grounds to believe that the juvenile is abused, neglected, or dependent and that the juvenile would be injured or could not be taken into custody if it were first necessary to obtain a court order. If a department of social services worker takes a juvenile into temporary custody under this section, the worker may arrange for the placement, care, supervision, and transportation of the juvenile.

(b) The following individuals shall, without a court order, take into temporary custody an infant under 15 days of age that is voluntarily delivered to the individual by the infant's parent who does not express an intent to return for the infant:

(1) A health care provider, as defined under G.S. 90-21.11, who is on duty or at a hospital or at a local or district health department.

(2) A law enforcement officer who is on duty or at a police station or sheriff's department.

(3) A social services worker who is on duty or at a local department of social services.

(4) An emergency medical technician who is on duty or at a fire station.

(c) An individual who takes an infant into temporary custody under subsection (b) of this section shall perform any act necessary to protect the physical health and well-being of the infant and shall immediately notify the department of social services or a local law enforcement agency. Any individual who takes an infant into temporary custody under subsection (b) of this section may inquire as to the parents' identities and as to any relevant medical history, but the parent is not required to provide this information.

(d) Any adult may, without a court order, take into temporary custody an infant under 15 days of age that is voluntarily delivered to the individual by the infant's parent who does not express an intent to return for the infant. Any individual who takes an infant into temporary custody under this section shall perform any act necessary to protect the physical health and well-being of the infant and shall immediately notify the department of social services or a local law enforcement agency. An individual who takes an infant into temporary custody under this subsection may inquire as to the parents' identities and as to any relevant medical history, but the parent is not required to provide this information.

(e) An individual who takes an infant into temporary custody under subsection (b) or (d) of this section is immune from any civil or criminal liability that might otherwise be incurred or imposed as a result of any omission or action taken pursuant to the requirements of subsection (b), (c), or (d) of this section so long as that individual was acting in good faith. The immunity established by this subsection does not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable."

SECTION 3. G.S. 7B-1111(a)(7) reads as rewritten:

"(a) The court may terminate the parental rights upon a finding of one or more of the following:

...

(7) The parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition or ~~motion.~~motion, or the parent has voluntarily abandoned an infant pursuant to G.S. 7B-500 for at least 60 consecutive days immediately preceding the filing of the petition or motion."

SECTION 4. G.S. 14-318.2 is amended by adding a new subsection to read:

"(c) A parent who abandons an infant less than 15 days of age pursuant to G.S. 14-322.3 shall not be prosecuted under this section for any acts or omissions related to the care of that infant."

SECTION 5. G.S. 14-318.4 is amended by adding a new subsection to read:

"(c) Abandonment of an infant less than 15 days of age pursuant to G.S. 14-322.3 may be treated as a mitigating factor in sentencing for a conviction under this section involving that infant."

SECTION 6. Article 40 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-322.3. Abandonment of an infant under 15 days of age.**

When a parent abandons an infant less than 15 days of age by voluntarily delivering the infant as provided in G.S. 7B-500(b) or G.S. 7B-500(d) and does not express an intent to return for the infant, that parent shall not be prosecuted under G.S. 14-322 or G.S. 14-322.1.

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

HB 275:
Infant Homicide Prevention Act.

BILL ANALYSIS

Committee:	Judiciary II	**Introduced by:**	Representative Haire
Date:	March 20, 2001	**Summary by:**	Esther Manheimer
Version:	H275-CSSk-7[v.3]		Committee Counsel

SUMMARY: House Bill 275 decriminalizes the abandonment of an infant less than 15 days old under certain circumstances. The bill requires certain persons and authorizes others to receive the infant. The bill shields a good faith "receiver" of the infant from civil and criminal liability. The bill shortens the required waiting period to terminate parental rights from six months to 60 days in cases of voluntary abandonment of infants less than 15 days old.

BILL ANALYSIS:

Abandoning an Infant Less than 15 Days of Age and Immunity from Prosecution.

Under current law, an abandoned juvenile may be taken into temporary custody by a law enforcement officer or a department of social services worker (G.S. 7B-500). In other words, the parent of a newborn infant who desires to abandon the infant could turn the infant over to an officer or to a department of social services worker. However, the parent is potentially subject to prosecution under the following statutes:

- G.S. 14-318.2 - Misdemeanor Child Abuse
- G.S. 14-318.4 - Felony Child Abuse
- G.S. 14-322 - Misdemeanor to refuse to provide child support
- G.S. 14-322.1 - Felony Abandonment

This bill would allow the parent of an infant less than 15 days of age to turn their child over to one of the following persons:

- A health care provider who is on duty or at a hospital or local health department,
- A law enforcement officer who is on duty or at a police station or sheriff's department,
- A department of social services worker who is on duty or at a local department of social services,
- An emergency medical technician who is on duty or at a fire station, or
- Any adult of suitable discretion who willingly accepts the infant.

In addition, the parent would not be subject to prosecution under G.S. 14-322, misdemeanor to refuse to provide child support, and G.S. 14-322.1, felony abandonment. The abandoning parent would not be subject to prosecution under G.S. 14-318.2, misdemeanor child abuse, for acts or omissions related to the care of the infant. Finally, abandoning parents who also commit felony child abuse could still be prosecuted under G.S. 14-318.4, but abandoning an infant according to the provisions of this bill would be treated as a mitigating factor in the sentencing of a conviction under G.S. 14-318.4.

Taking a Juvenile into Temporary Custody.

The persons listed above **must** take an infant less than 15 of age into temporary custody without a court order when the infant is voluntarily delivered to the individual by the infant's parent and the parent does not express an intent to return for the infant. In addition, any adult **may**, under the same circumstances, take an infant less than 15 days old into temporary custody.

Obligation of the Individual Taking Temporary Custody.

Individuals taking an infant into temporary custody under the provisions of this bill must protect the health and well-being of the infant and must immediately inform the department of social services or a local law enforcement agency.

Identity of the Parents.

The individual may inquire as to the parents' identities and medical history but the parent is not required to provide this information.

Civil and Criminal Immunity.

Individuals taking an infant into temporary custody under the provisions of this bill are immune from civil or criminal liability under the temporary custody provisions of this bill so long as the individual acted in good faith. However, the immunity does not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable.

Director of DSS to Initiate Investigation Immediately in Cases of Abandonment.

Under current law, when abuse of a juvenile is alleged, the Director of the Division of Social Services (DSS) must initiate an investigation within 24 hours. When neglect or dependency is alleged the Director must initiate the investigation within 72 hours (G.S. 7B-302(a)).

When abandonment is alleged (abandonment is considered a type of neglect), this bill would require the Director to initiate an investigation immediately, to take temporary custody of the juvenile, and to secure an order of nonsecure custody. The Director must also request that law enforcement investigate through the N.C. Center for Missing Persons and other resources as to whether or not the juvenile is a missing child.

Termination of Parental Rights (TPR).

Under current law, a court may terminate parental rights upon various grounds including that the parent has willfully abandoned the child for at least six consecutive months immediately preceding the filing of the TPR petition.

Under this bill, the court may terminate parental rights when a parent voluntarily abandons an infant less than 15 days old for at least 60 consecutive days immediately preceding the filing of the petition.

Effective Date.

This bill is effective when it becomes law.

2001 HOUSE OF REPRESENTATIVES
COMMITTEE REPORT - BILL INTRODUCTION

The following report(s) from standing committee(s) is/are presented:

Representative Baddour, for the Committee on Judiciary II
(Committee Chair's Name) (Committee Name)

submits the following bill with a favorable report for introduction.

A BILL TO BE ENTITLED AN ACT TO APPROPRIATE FUNDS TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR THE PURPOSE OF DEVELOPING A MEDIA CAMPAIGN ADVERTISING THE PROVISIONS OF HOUSE BILL 275.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 31(a), the bill is filed, assigned the number H. B. _____ and placed on the Calendar for its _____ reading.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE DRH9032-SK-4 (03/14)

Short Title:	Infant Homicide Prevention Appropriation.	(Public)
Sponsors:	Judiciary II Committee.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE FUNDS TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR THE PURPOSE OF DEVELOPING A MEDIA CAMPAIGN ADVERTISING THE PROVISIONS OF HOUSE BILL 275.

The General Assembly of North Carolina enacts:

SECTION 1. If House Bill 275 is enacted, the Department of Health and Human Services, Division of Public Health, shall develop a media campaign to inform the public of the provisions of House Bill 275. This media campaign shall contain information on responsible parenting in addition to information about the provisions of House Bill 275. This media campaign shall be targeted at adolescents and young adults. This media campaign shall be developed in consultation with law enforcement officials, local departments of social services, medical personnel, and school administrators.

SECTION 2. There is appropriated from the General Fund the sum of one hundred fifty thousand dollars ($150,000) for the 2001-2002 fiscal year and the sum of one hundred fifty thousand dollars ($150,000) for the 2002-2003 fiscal year to the Department of Health and Human Services, Division of Public Health, to implement the provisions of Section 1 of this act.

SECTION 3. This act becomes effective July 1, 2001.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 277 A BILL TO BE ENTITLED AN ACT TO REQUIRE JUVENILES TO SUBMIT REQUESTS FOR REVIEW OF EXTENDED COMMITMENT DECISIONS WITHIN TEN DAYS OF RECEIPT OF THE NOTIFICATIONS OF EXTENDED COMMITMENT.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill, which changes the title, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 277
PROPOSED COMMITTEE SUBSTITUTE H277-CSSK-4 [v.1]

3/6/2001 11:54:33 AM

Short Title: Juvenile Extended Commitment Procedure.-AB. (Public)

Sponsors:

Referred to:

February 27, 2001

A BILL TO BE ENTITLED

AN ACT TO REQUIRE JUVENILES TO SUBMIT REQUESTS FOR REVIEW OF EXTENDED COMMITMENT DECISIONS WITHIN FIFTEEN DAYS OF RECEIPT OF THE NOTIFICATION OF EXTENDED COMMITMENT AND TO REQUIRE THE JOINT LEGISLATIVE CORRECTIONS AND CRIME CONTROL OVERSIGHT COMMITTEE TO STUDY ISSUES IN THE JUVENILE CODE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-2515 reads as rewritten:

"**§ 7B-2515. Notification of extended commitment; plan of treatment.**

(a) In determining whether a juvenile should be released before the juvenile's 18th birthday, the Department shall consider the protection of the public and the likelihood that continued placement will lead to further rehabilitation. If the Department does not intend to release the juvenile prior to the juvenile's eighteenth birthday, or if the Department determines that the juvenile's commitment should be continued beyond the maximum commitment period as set forth in G.S. 7B-2513(a), the Department shall notify the juvenile and the juvenile's parent, guardian, or custodian in ~~writing~~ writing, by certified mail, at least 30 days in advance of the juvenile's eighteenth birthday or the end of the maximum commitment period, of the additional specific commitment period proposed by the Department, the basis for extending the commitment period, and the plan for future care or treatment.

(b) The Department shall modify the plan of care or treatment developed pursuant to G.S. 7B-2513(f) to specify (i) the specific goals and outcomes that require additional time for care or treatment of the juvenile; (ii) the specific course of treatment or care that will be implemented to achieve the established goals and outcomes; and (iii) the efforts that will be taken to assist the juvenile's family in creating an environment that will increase the likelihood that the efforts to treat and rehabilitate the juvenile will be successful upon release. If appropriate, the Department may place the juvenile in a setting other than a training school.

(c) The juvenile and the juvenile's parent, guardian, or custodian may request a review by the court of the Department's decision to extend the juvenile's commitment beyond the juvenile's eighteenth birthday or maximum commitment ~~period, in which case the court shall conduct a review hearing.~~ period. The juvenile, and the juvenile's parent, guardian, or custodian must make the request for review within 15 days of receipt of the written notification required under subsection (a) of this section. The court shall conduct a review hearing upon receipt of a request for review made in compliance with this subsection. The court may modify the Department's decision and the juvenile's maximum commitment period. If the juvenile or the juvenile's parent, guardian, or custodian does not request a review of the Department's decision, the Department's decision shall become the juvenile's new maximum commitment period."

SECTION 2. The Joint Legislative Corrections and Crime Control Oversight Committee shall study the juvenile commitment procedures and any other issues related to Subchapter II and Subchapter III of Chapter 7B of the General statutes. In studying these issues, the Committee shall consult with the Department of Juvenile Justice and Delinquency Prevention. The Joint Legislative Corrections and Crime Control Oversight Committee shall report its findings and any legislative recommendations to the General Assembly on or before April 1, 2002.

SECTION 3. This act becomes effective October 1, 2001, and applies to decisions of the Department of Juvenile Justice and Delinquency Prevention to extend commitment noticed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 277

Short Title:	Juvenile Extended Commitment Procedure-AB.	(Public)
Sponsors:	Representative Haire.	
Referred to:	Judiciary II.	

February 27, 2001

A BILL TO BE ENTITLED

AN ACT TO REQUIRE JUVENILES TO SUBMIT REQUESTS FOR REVIEW OF EXTENDED COMMITMENT DECISIONS WITHIN TEN DAYS OF RECEIPT OF THE NOTIFICATION OF EXTENDED COMMITMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-2515(c) reads as rewritten:

"(c) The juvenile and the juvenile's parent, guardian, or custodian may request a review by the court of the Department's decision to extend the juvenile's commitment beyond the juvenile's eighteenth birthday or maximum commitment ~~period, in which case the court shall conduct a review hearing.~~ period within 10 days of receipt of the written notification that the Department plans to extend the juvenile's commitment. The court shall conduct a review hearing upon receipt of a request for review authorized by this subsection. The court may modify the Department's decision and the juvenile's maximum commitment period. If the juvenile or the juvenile's parent, guardian, or custodian does not request a review of the Department's decision, the Department's decision shall become the juvenile's new maximum commitment period."

SECTION 2. This act becomes effective October 1, 2001, and applies to decisions of the Department to extend commitment noticed on or after that date.

HB 277:
Juvenile Extended Commitment Procedure

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Haire
Date:	March 20, 2001	**Summary by:**	Esther Manheimer
Version:	H277-CSSK-4[v.1]		Committee Counsel

SUMMARY: House Bill 277 is recommended by the Department of Juvenile Justice and Delinquency Prevention (Department). This bill would require that when the Department is seeking to extend a juvenile's commitment period in a training school beyond the maximum statutory term or beyond their 18th birthday, that the Department notify the juvenile (and guardian) by certified mail. This bill would also require that when the juvenile is seeking a court's review of the Department's desired extension, the juvenile must notify the Department within 15 days of receiving the notice. Finally, this bill would allow the Joint Legislative Corrections and Crime Control Oversight Committee to study juvenile commitment procedures and any other issue related to Subchapter II and Subchapter III of Chapter 7B of the General Statutes (the Juvenile Code).

This bill becomes effective October 1, 2001, and applies to decisions of the Department to extend commitment noticed on or after that date.

CURRENT LAW: Under current law, there is no requirement as to **how** the Department must notify a juvenile of its intention to extend the juvenile's commitment in a training school beyond the maximum term. Also under current law, the juvenile may request a review of the extension at any time after having been notified of the Department's intension to extend the term.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 495
PROPOSED COMMITTEE SUBSTITUTE H495-CSRH-4 [v.4]

3/20/2001 9:56:35 AM

Short Title: Left Turn on Red. (Public)

Sponsors:

Referred to:

March 6, 2001

A BILL TO BE ENTITLED

AN ACT TO ALLOW LEFT TURNS ON RED IN CERTAIN SITUATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-158(b) reads as rewritten:

"(b) Control of Vehicles at Intersections. –

(1) When a stop sign has been erected or installed at an intersection, it shall be unlawful for the driver of any vehicle to fail to stop in obedience thereto and yield the right-of-way to vehicles operating on the designated main-traveled or through highway. When stop signs have been erected at three or more entrances to an intersection, the driver, after stopping in obedience thereto, may proceed with caution.

(2) ~~Vehicles facing a red light controlling traffic passing straight through an intersection from a steady or strobe beam stoplight shall not enter the intersection while the steady or strobe beam stoplight is emitting a red light controlling traffic passing straight through an intersection; provided that, where prohibited by an appropriate sign vehicular traffic facing a red light controlling traffic passing straight through an intersection, after coming to a complete stop at the intersection, may enter the intersection to make a right turn but such~~ When a steady or strobe beam stoplight is emitting a red light controlling traffic passing straight through an intersection, an approaching vehicle facing the red light shall come to a stop and shall not enter the intersection. After coming to a complete stop and unless prohibited by an appropriate sign, that approaching vehicle may turn under one of the following conditions:

a. That vehicle may make a right turn. The turning vehicle shall yield the right-of-way to pedestrians and to other traffic using the intersection.

b. If that vehicle is in the leftmost lane of travel on a one-way street that intersects with another one-way street with traffic traveling from the turning driver's right to the turning driver's left, then that vehicle may enter the intersection and make a left turn into the extreme left-hand lane lawfully available to traffic. The turning vehicle shall yield the right-of-way to pedestrians and to other traffic using the intersection.

(2a) When ~~the~~ a stoplight is emitting a steady yellow circular light on a traffic signal controlling traffic passing straight through an intersection or a steady yellow arrow light on a traffic signal controlling traffic turning at an intersection, vehicles facing the yellow light are warned that the related green light is being terminated or a red light will be immediately forthcoming. When the stoplight is emitting a steady green light, vehicles may proceed with due care through the intersection subject to the rights of pedestrians and other vehicles as may otherwise be provided by law.

(3) When a flashing red light has been erected or installed at an intersection, approaching vehicles facing the red light shall stop and yield the right-of-way to vehicles in or approaching the intersection. The right to proceed shall be subject to the rules applicable to making a stop at a stop sign.

(4) When a flashing yellow light has been erected or installed at an intersection, approaching vehicles facing the yellow flashing light may proceed through the intersection with caution, yielding the right-of-way to vehicles in or approaching the intersection.

(5) When a stop sign, stoplight, flashing light, or other traffic-control device authorized by subsection (a) of this section requires a vehicle to stop at an intersection, the driver shall stop at (i) an appropriately marked stop line, or if none, (ii) before entering a marked crosswalk, or if none, (iii) before entering the intersection at the point nearest the intersecting street where the driver has a view of approaching traffic on the intersecting street."

SECTION 2. This act becomes effective December 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 495

Short Title:	Left Turn on Red.	(Public)
Sponsors:	Representatives Hensley, Gulley; Adams, Allen, Allred, Baddour, Barbee, Barefoot, Blue, Blust, Bonner, Bowie, Boyd-McIntyre, Brubaker, Buchanan, Church, Clary, Coates, Cole, Cox, Crawford, Creech, Culp, Culpepper, Cunningham, Daughtry, Dedmon, Dockham, Edwards, Fitch, Fox, Gibson, Goodwin, Grady, Haire, Hall, Harrington, Hill, Holliman, Holmes, Howard, Hunter, Hurley, Insko, Jarrell, Jeffus, Justus, Lucas, McAllister, McComas, McCombs, McMahan, Michaux, Miner, Mitchell, Morris, Nye, Oldham, Owens, Preston, Rayfield, Russell, Saunders, Setzer, Sexton, Shubert, Smith, Starnes, Sutton, Teague, Thompson, Tolson, Underhill, Wainwright, Walend, Warner, Warren, Warwick, Weatherly, Weiss, West, C. Wilson, G. Wilson, Womble, and Yongue.	
Referred to:	Judiciary II.	

March 6, 2001

A BILL TO BE ENTITLED

AN ACT TO ALLOW LEFT TURNS ON RED IN CERTAIN SITUATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-158(b) reads as rewritten:

"(b) Control of Vehicles at Intersections. –

(1) When a stop sign has been erected or installed at an intersection, it shall be unlawful for the driver of any vehicle to fail to stop in obedience thereto and yield the right-of-way to vehicles operating on the designated main-traveled or through highway. When stop signs have been erected at three or more entrances to an intersection, the driver, after stopping in obedience thereto, may proceed with caution.

(2) Vehicles facing a red light controlling traffic passing straight through an intersection from a steady or strobe beam stoplight shall not enter the intersection while the steady or strobe beam stoplight is emitting a red light controlling traffic passing straight through an ~~intersection; provided that, except~~ intersection with the following exceptions:

a. ~~where~~ Where prohibited by an appropriate sign, vehicular traffic facing a red light controlling traffic passing straight

through an intersection, after coming to a complete stop at the intersection, may enter the intersection to make a right turn but ~~such~~ the turning vehicle shall yield the right-of-way to pedestrians and to other traffic using the intersection.

b. Where prohibited by an appropriate sign, vehicular traffic that is (i) in the leftmost lane of travel on a one-way street, (ii) facing a red light, and (iii) at an intersection with another one-way street with traffic traveling from the turning driver's right to the turning driver's left may enter the intersection and make a left turn into the extreme left-hand lane lawfully available to traffic. The turning vehicle shall come to a complete stop and shall yield the right-of-way to pedestrians and to other traffic using the intersection.

When the stoplight is emitting a steady yellow circular light on a traffic signal controlling traffic passing straight through an intersection or a steady yellow arrow light on a traffic signal controlling traffic turning at an intersection, vehicles facing the yellow light are warned that the related green light is being terminated or a red light will be immediately forthcoming. When the stoplight is emitting a steady green light, vehicles may proceed with due care through the intersection subject to the rights of pedestrians and other vehicles as may otherwise be provided by law.

(3) When a flashing red light has been erected or installed at an intersection, approaching vehicles facing the red light shall stop and yield the right-of-way to vehicles in or approaching the intersection. The right to proceed shall be subject to the rules applicable to making a stop at a stop sign.

(4) When a flashing yellow light has been erected or installed at an intersection, approaching vehicles facing the yellow flashing light may proceed through the intersection with caution, yielding the right-of-way to vehicles in or approaching the intersection.

(5) When a stop sign, stoplight, flashing light, or other traffic-control device authorized by subsection (a) of this section requires a vehicle to stop at an intersection, the driver shall stop at (i) an appropriately marked stop line, or if none, (ii) before entering a marked crosswalk, or if none, (iii) before entering the intersection at the point nearest the intersecting street where the driver has a view of approaching traffic on the intersecting street."

SECTION 2. This act becomes effective December 1, 2001.

HOUSE BILL 495:
Left Turn on Red.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Reps. Hensley & Gulley
Date:	March 20, 2001	**Summary by:**	Robin S. Johnson
Version:	PCS: H495-SMRH-4[4]		Committee Counsel

SUMMARY: ***The PCS for House Bill 495 makes technical changes to the original bill.***

The bill would permit a left turn on red from the leftmost lane of travel on a one-way street to the leftmost lane of travel of an intersecting one-way street. The turning driver must first come to a complete stop and must yield the right-of-way to pedestrians and traffic using the intersection.

The bill would take effect December 1, 2001.

CURRENT LAW: At present, a right turn on red is allowed in North Carolina, except where prohibited by a sign. Left turns on red are prohibited.

BACKGROUND: In 1999, the House passed a similar bill, which subsequently failed to pass in the Senate. At that time, it was reported that 44 states allowed some form of left turn on red.

H495-SMRH-003

VISITOR REGISTRATION SHEET

Judiary II — 3-20-01

Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ron Faulkner	Nurse of Day
Jennifer Jolly	PCANC
Jon V. Bennett	NCCFTF
Paula A. Wolf	Covenant w/ NC's Children
Sharon Hirsch	NCSSC
[illegible]	
William B. Waters	
Christian Polking	NCRTL
Karen Gottovi	Asst. - DHHS
Michael Schweitzer	DHDP
[illegible]	NCDSS
Chuck Hamm	NCDSS
Esther High	NC DSS
Stephen T. Smith	Vision Impaired Citizens of North Carolina
John DeLuca	D.V. of the Blind
R.D. Watson	Vision Impaired of North Carolina
Bill Waters	Vision Impaired of North Carolina
Ben S. Epson	Vision Impaired of North Carolina
Trish Wilson	NTO
AL DEITCH	DOA/YATD
Larry Nix	OJJDP
R Powell	Aoc
ANN LOVE	OUHS

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jane Pinsky	UCCAJ
Bess Eason	NCAWB Inc -
Mildred Wood	"
Herman Stanley	NFB of NC
Dixie Stanley	NFB of NC
Ben Eason	UAB
Glenn Lacina	United Transportation Union
Richard Westbrook	UTU
Carole Lawson	EGHS
John Kuhn	NCFPC
Jimmy Lynch	NCDOT
Dot Parker	GHSP
Ruth Sapphire	NCDOT

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

March 22, 2001 – 10:00 a.m.

The House Committee on Judiciary II met on Thursday, March 22, 2001, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairman Phil Haire, Representatives Bowie, Decker, Gulley, Hall, Jeffus, Justus, Miller, Pope, Sherrill, and Weiss. Robin Johnson, Esther Manheimer, Jeff Hudson, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

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

HB 495 Left on Red. Rep. Haire moved that the proposed committee substitute be before the committee for purposes of discussion, and without objection, the PCS was before the committee. Robin Johnson and Rep. Hensley explained the changes. R. D. Watts spoke with regard to the blind pedestrian experience. Joseph Johnson of the Raleigh Transit Authority noted that this bill prohibits left on red when pedestrians are crossing. Following comments from Bill Waters, Division of Services for the Blind, Ruth Sappie of DMV, and members of the committee, Rep. Hall moved for a favorable report as to committee substitute bill, unfavorable as to original bill, and to make technical changes. Motion passed.

HB 689 Tennessee Valley Authority Officers' Authority. Rep. Baddour recognized Rep. Haire, bill sponsor, to explain the bill. Rep. Bowie moved for a favorable report. Motion passed unanimously.

HB 439 Civil Procedure Rule Changes. Rep. Haire moved that the proposed committee substitute be before the committee for purposes of discussion, and without objection, the PCS was before the committee. The chair then recognized Rep. Haire, bill sponsor, to provide a section by section review of the bill. Rep. Haire noted that the changes contained in the bill were the work of the Civil Litigation Study Commission. Rep. Pope also served on the study commission, and added his support to the bill. Eddie Caldwell of the Sheriff's Association asked that the first section of the bill allowing notary publics to serve papers be deleted. Sheriff Worth Hill of Durham County expressed his concern for the safety and training of these individuals. Rep. Justus noted that he would also like to see this section removed. Speaking as a notary public, Rep. Sherrill said that she would not want the responsibility of serving papers. Rep. Bowie questioned whether or not a notary public has to serve papers, and Rep. Haire noted that this gave them discretionary authority. Dick Taylor of the Academy of Trial Lawyers, presented another side of the argument. Questions and comments from the committee continued until the chair had to adjourn the meeting due to the hour. No vote was taken.

The meeting adjourned at 10:50 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

AGENDA

HOUSE JUDICIARY II COMMITTEE

March 22, 2001
10:00 A.M.

CALL TO ORDER
INTRODUCE PAGES

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Jeff Hudson
Elizabeth Kirkland (Committee Assistant)

BILLS TO BE CONSIDSERED:

HB 495 Left Turn on Red
Sponsor - Rep. Hensley

HB 689 Tennessee Valley Authority Officers' Authority
Sponsor – Rep. Haire

HB 439 Civil Procedure Rule Changes
Sponsor – Rep. Haire

ADJOURNMENT

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 495 A BILL TO BE ENTITLED AN ACT TO ALLOW LEFT TURNS ON RED IN CERTAIN SITUATIONS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill, which changes the title, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 2

HOUSE BILL 495

Committee Substitute Favorable 3/26/01

Short Title: Left Turn on Red. (Public)

Sponsors:

Referred to:

March 6, 2001

A BILL TO BE ENTITLED

AN ACT TO ALLOW LEFT TURNS ON RED IN CERTAIN SITUATIONS, AND TO MAKE TECHNICAL CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-158(b) reads as rewritten:

"(b) Control of Vehicles at Intersections. –

(1) When a stop sign has been erected or installed at an intersection, it shall be unlawful for the driver of any vehicle to fail to stop in obedience thereto and yield the right-of-way to vehicles operating on the designated main-traveled or through highway. When stop signs have been erected at three or more entrances to an intersection, the driver, after stopping in obedience thereto, may proceed with caution.

(2) ~~Vehicles facing a red light controlling traffic passing straight through an intersection from a steady or strobe beam stoplight shall not enter the intersection while the steady or strobe beam stoplight is emitting a red light controlling traffic passing straight through an intersection; provided that, where prohibited by an appropriate sign vehicular traffic facing a red light controlling traffic passing straight through an intersection, after coming to a complete stop at the intersection, may enter the intersection to make a right turn but such~~ When a steady or strobe beam stoplight is emitting a red light controlling traffic passing through an intersection, an approaching vehicle facing the red light shall come to a stop and shall not enter the intersection. After coming to a complete stop and unless prohibited by an appropriate sign, that approaching vehicle may turn under one of the following conditions:

a. That vehicle may make a right turn. The turning vehicle shall yield the right-of-way to pedestrians and to other traffic using the intersection.

b. If that vehicle is in the leftmost lane of travel on a one-way street that intersects with another one-way street with traffic traveling from the turning driver's right to the turning driver's left, then that vehicle may enter the intersection and make a left turn into the extreme left-hand lane lawfully available to traffic. The turning vehicle shall yield the right-of-way to pedestrians and to other traffic using the intersection.

(2a) When ~~the~~ a stoplight is emitting a steady yellow circular light on a traffic signal controlling traffic passing straight through an intersection or a steady yellow arrow light on a traffic signal controlling traffic turning at an intersection, vehicles facing the yellow light are warned that the related green light is being terminated or a red light will be immediately forthcoming. When the stoplight is emitting a steady green light, vehicles may proceed with due care through the intersection subject to the rights of pedestrians and other vehicles as may otherwise be provided by law.

(3) When a flashing red light has been erected or installed at an intersection, approaching vehicles facing the red light shall stop and yield the right-of-way to vehicles in or approaching the intersection. The right to proceed shall be subject to the rules applicable to making a stop at a stop sign.

(4) When a flashing yellow light has been erected or installed at an intersection, approaching vehicles facing the yellow flashing light may proceed through the intersection with caution, yielding the right-of-way to vehicles in or approaching the intersection.

(5) When a stop sign, stoplight, flashing light, or other traffic-control device authorized by subsection (a) of this section requires a vehicle to stop at an intersection, the driver shall stop at (i) an appropriately marked stop line, or if none, (ii) before entering a marked crosswalk, or if none, (iii) before entering the intersection at the point nearest the intersecting street where the driver has a view of approaching traffic on the intersecting street."

SECTION 2. This act becomes effective December 1, 2001.

HOUSE BILL 495:
Left Turn on Red.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Reps. Hensley & Gulley
Date:	March 22, 2001	**Summary by:**	Robin S. Johnson
Version:	PCS: H495-CSRH-4[v.5]		Committee Counsel

SUMMARY: The PCS for House Bill 495 makes technical changes to the original bill.

The bill would permit a left turn on red from the leftmost lane of travel on a one-way street to the leftmost lane of travel of an intersecting one-way street. The turning driver must first come to a complete stop and must yield the right-of-way to pedestrians and traffic using the intersection.

The bill would take effect December 1, 2001.

CURRENT LAW: At present, a right turn on red is allowed in North Carolina, except where prohibited by a sign. Left turns on red are prohibited.

BACKGROUND: In 1999, the House passed a similar bill, which subsequently failed to pass in the Senate. At that time, it was reported that 44 states allowed some form of left turn on red.

H495-SMRH-003

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 689 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE TENNESSEE VALLEY AUTHORITY OFFICERS TO PROVIDE ASSISTANCE TO STATE AND LOCAL LAW ENFORCEMENT AGENCIES IN THE SAME MANNER AS OTHER FEDERAL LAW ENFORCEMENT OFFICERS.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 689

Short Title:	TVA Officers' Authority.	(Public)
Sponsors:	Representative Haire.	
Referred to:	Judiciary II.	

March 19, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE TENNESSEE VALLEY AUTHORITY OFFICERS TO PROVIDE ASSISTANCE TO STATE AND LOCAL LAW ENFORCEMENT AGENCIES IN THE SAME MANNER AS OTHER FEDERAL LAW ENFORCEMENT OFFICERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-406(a) reads as rewritten:

"(a) For purposes of this section, "federal law enforcement officer" means any of the following persons who are employed as full-time law enforcement officers by the federal government and who are authorized to carry firearms in the performance of their duties:

(1) United States Secret Service special agents;
(2) Federal Bureau of Investigation special agents;
(3) Bureau of Alcohol, Tobacco and Firearms special agents;
(4) United States Naval Investigative Service special agents;
(5) Drug Enforcement Administration special agents;
(6) United States Customs Service officers;
(7) United States Postal Service inspectors;
(8) Internal Revenue Service special agents;
(9) United States Marshals Service marshals and deputies;
(10) United States Forest Service officers;
(11) National Park Service officers;
(12) United States Fish and Wildlife Service officers; ~~and~~
(13) Immigration and Naturalization Service ~~officers~~officers; and
(14) Tennessee Valley Authority officers."

SECTION 2. This act becomes effective October 1, 2001.

HOUSE BILL 689:
TVA Officers' Authority.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Rep. Haire
Date:	March 22, 2001	**Summary by:**	Robin Johnson
Version:	One		Committee Counsel

SUMMARY: ***The bill would add Tennessee Valley Authority (TVA) officers to the list of federal law enforcement officers who, when asked to assist State or local law enforcement agencies, acting within the scope of their subject matter and territorial jurisdiction, are empowered with the same authority and the same personal civil immunity as is given to North Carolina law enforcement officers.***

The bill would take effect October 1, 2001.

CURRENT LAW: Currently, 13 different categories of law enforcement officers, employed full-time by the federal government, are given this authority and personal civil immunity.

BILL ANALYSIS: The bill would amend G.S. 15A-406(a) (see page 2) by adding TVA officers to the list of federal law enforcement officers who, currently, when asked to assist State or local law enforcement agencies, acting within the scope of their subject matter and territorial jurisdiction, are empowered with the same authority and the same personal civil immunity as is given to North Carolina law enforcement officers. While providing temporary assistance to State or local law enforcement agencies, the federal agent would not be considered an employee of any State or local agency, would still be acting within the scope of the agent's duties under the Federal Tort Claims Act, and would not have authority to initiate or conduct independent investigations of violations of State law.

BACKGROUND: The TVA is a federal corporation that is the nation's largest public power company, the steward of the Tennessee River system, and a regional economic development agency. There are seven states, including North Carolina, in TVA's power service area. In North Carolina, the TVA owns and operates four hydroelectric dams (Apalachia and Hiwassee in Cherokee County, Chatuge in Clay County, and Fontana in Swain and Graham Counties) and manages the recreational use of their reservoirs.

The TVA Police is a federally commissioned, internationally accredited law enforcement agency that provides protection for TVA properties and employees and for the users of the TVA's recreation facilities. Qualifications for officers include the following:

- At least 21 years old, U.S. citizen, with no criminal convictions or dishonorable discharge from military service.
- Associate's degree and two years of related law enforcement experience, or a bachelor's degree.
- Successful background investigation, completion of required tests, and basic computer skills.
- Recruits must successfully complete a 12-week federal training academy at the Federal Law Enforcement Training Center and a 10-week field-training program.
- Recruits serve a one-year probationary period.

H689-SMRH-001

TVA information from http://www.tva.com

§ 15A-406. Assistance by federal officers.

(a) For purposes of this section, "federal law enforcement officer" means any of the following persons who are employed as full-time law enforcement officers by the federal government and who are authorized to carry firearms in the performance of their duties:

(1) United States Secret Service special agents;
(2) Federal Bureau of Investigation special agents;
(3) Bureau of Alcohol, Tobacco and Firearms special agents;
(4) United States Naval Investigative Service special agents;
(5) Drug Enforcement Administration special agents;
(6) United States Customs Service officers;
(7) United States Postal Service inspectors;
(8) Internal Revenue Service special agents;
(9) United States Marshals Service marshals and deputies;
(10) United States Forest Service officers;
(11) National Park Service officers;
(12) United States Fish and Wildlife Service officers; and
(13) Immigration and Naturalization Service officers.

(b) A federal law enforcement officer is authorized under the following circumstances to enforce criminal laws anywhere within the State:

(1) If the federal law enforcement officer is asked by the head of a state or local law enforcement agency, or his designee, to provide temporary assistance and the request is within the scope of the state or local law enforcement agency's subject matter and territorial jurisdiction; or
(2) If the federal law enforcement officer is asked by a state or local law enforcement officer to provide temporary assistance when at the time of the request the state or local law enforcement officer is acting within the scope of his subject matter and territorial jurisdiction.

(c) A federal law enforcement officer shall have the same powers as those invested by statute or common law in a North Carolina law enforcement officer, and shall have the same legal immunity from personal civil liability as a North Carolina law enforcement officer, while acting pursuant to this section.

(d) A federal law enforcement officer who acts pursuant to this section shall not be considered an officer, employee, or agent of any state or local law enforcement agency.

(e) For purposes of the Federal Tort Claims Act, a federal law enforcement officer acts within the scope of his office or employment while acting pursuant to this section.

(f) Nothing in this section shall be construed to expand the authority of federal officers to initiate or conduct an independent investigation into violation of North Carolina law.

(1991, c. 262, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 8; 1993 (Reg. Sess., 1994), c. 571, s. 1.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 439

Short Title:	Civil Procedure Rule Changes.	(Public)
Sponsors:	Representatives Haire, Pope; and Barefoot.	
Referred to:	Judiciary II.	

March 1, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE RULES OF CIVIL PROCEDURE AS RECOMMENDED BY THE CIVIL LITIGATION STUDY COMMISSION.

The General Assembly of North Carolina enacts:

SERVICE BY NOTARIES (RULE 4(a))

SECTION 1. G.S. 1A-1, Rule 4(a) reads as rewritten:

"(a) Summons – Issuance; who may serve. – Upon the filing of the complaint, summons shall be issued forthwith, and in any event within five days. The complaint and summons shall be delivered to some proper person for service. In this State, such proper person shall be the sheriff of the county where service is to be ~~made~~ made, a notary public commissioned under Chapter 10A of the General Statutes, or some other person duly authorized by law to serve summons. Outside this State, such proper person shall be anyone who is not a party and is not less than 21 years of age or anyone duly authorized to serve summons by the law of the place where service is to be made. Upon request of the plaintiff separate or additional summons shall be issued against any defendants. A summons is issued when, after being filled out and dated, it is signed by the officer having authority to do so. The date the summons bears shall be prima facie evidence of the date of issue."

SUMMONS ALIVE FOR 60 DAYS (RULE 4(c))

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

"(c) Summons – Return. – Personal service or substituted personal service of summons as prescribed by Rule 4(j)(1) a and b must be made within ~~30~~60 days after the date of the issuance of ~~summons, except that in tax and assessment foreclosures under G.S. 47-108.25 or G.S. 105-374 the time allowed for service is 60 days.~~ summons. When a summons has been served upon every party named in the summons, it shall be returned immediately to the clerk who issued it, with notation thereon of its service.

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

SERVICE BY DESIGNATED DELIVERY SERVICE (RULE 4(j)) AND CONFORMING CHANGES TO PROOF OF SERVICE

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

"(j) Process – Manner of service to exercise personal jurisdiction. – In any action commenced in a court of this State having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in G.S. 1-75.4, the manner of service of process within or without the State shall be as follows:

(1) Natural Person. – Except as provided in subsection (2) below, upon a natural ~~person:~~person by one of the following:

a. By delivering a copy of the summons and of the complaint to him or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing ~~therein; or~~therein.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the party to be served, and delivering to the addressee.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the party to be served, delivering to the addressee, and obtaining a delivery receipt.

(2) Natural Person under Disability. – Upon a natural person under disability by serving process in any manner prescribed in this section (j) for service upon a natural person and, in addition, where required by paragraph a or b below, upon a person therein designated.

a. Where the person under disability is a minor, process shall be served separately in any manner prescribed for service upon a natural person upon a parent or guardian having custody of the child, or if there be none, upon any other person having the care and control of the child. If there is no parent, guardian, or other person having care and control of the child when service is made upon the child, then service of process must also be made

upon a guardian ad litem who has been appointed pursuant to Rule 17.

b. If the plaintiff actually knows that a person under disability is under guardianship of any kind, process shall be served separately upon his guardian in any manner applicable and appropriate under this section (j). If the plaintiff does not actually know that a guardian has been appointed when service is made upon a person known to him to be incompetent to have charge of his affairs, then service of process must be made upon a guardian ad litem who has been appointed pursuant to Rule 17.

(3) The State. – Upon the State by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney ~~general or~~ general; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General or to a deputy or assistant attorney ~~general.~~general; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or to a deputy or assistant attorney general, delivering to the addressee, and obtaining a delivery receipt.

(4) An Agency of the State. –

a. Upon an agency of the State by personally delivering a copy of the summons and of the complaint to the process agent appointed by the agency in the manner hereinafter ~~provided~~ provided; ~~or~~ by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to said process ~~agent.~~agent; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the process agent, delivering to the addressee, and obtaining a delivery receipt.

b. Every agency of the State shall appoint a process agent by filing with the Attorney General the name and address of an agent upon whom process may be served.

c. If any agency of the State fails to comply with paragraph b above, then service upon such agency may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney ~~general or~~ general; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General, or to a deputy or assistant attorney ~~general.~~ general; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. §

7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or to a deputy or assistant attorney general, delivering to the addressee, and obtaining a delivery receipt.

d. For purposes of this rule, the term "agency of the State" includes every agency, institution, board, commission, bureau, department, division, council, member of Council of State, or officer of the State government of the State of North Carolina, but does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State, county or city boards of education, other local public districts, units, or bodies of any kind, or private corporations created by act of the General Assembly.

(5) Counties, Cities, Towns, Villages and Other Local Public Bodies. –

a. Upon a city, town, or village by personally delivering a copy of the summons and of the complaint to its mayor, city manager or ~~clerk or~~clerk; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its mayor, city manager or ~~clerk.~~clerk; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the mayor, city manager, or clerk, delivering to the addressee, and obtaining a delivery receipt.

b. Upon a county by personally delivering a copy of the summons and of the complaint to its county manager or to the chairman, clerk or any member of the board of commissioners for such ~~county or~~ county; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its county manager or to the chairman, clerk, or any member of this board of commissioners for such ~~county.~~county; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the county manager or to the chairman, clerk, or any member of the board of commissioners of that county, delivering to the addressee, and obtaining a delivery receipt.

c. Upon any other political subdivision of the State, any county or city board of education, or other local public district, unit, or body of any kind (i) by personally delivering a copy of the summons and of the complaint to an officer or director thereof, ~~or~~ (ii) by personally delivering a copy of the summons and of the complaint to an agent or attorney-in-fact authorized by appointment or by statute to be served or to accept service in its behalf, ~~or~~ (iii) by mailing a copy of the summons and of the

complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent, or attorney-in-fact as specified in (i) and ~~(ii).~~(ii); or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, agent, or attorney-in-fact as specified in (i) and (ii), delivering to the addressee, and obtaining a delivery receipt.

d. In any case where none of the officials, officers or directors specified in paragraphs a, b and c can, after due diligence, be found in the State, and that fact appears by affidavit to the satisfaction of the court, or a judge thereof, such court or judge may grant an order that service upon the party sought to be served may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or any deputy or assistant attorney general of the State of North ~~Carolina, or~~ Carolina; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General or any deputy or assistant attorney general of the State of North ~~Carolina.~~Carolina; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or any deputy or assistant attorney general of the State of North Carolina, delivering to the addressee, and obtaining a delivery receipt.

(6) Domestic or Foreign Corporation. – Upon a domestic or foreign corporation:

a. By delivering a copy of the summons and of the complaint to an officer, director, or managing agent of the corporation or by leaving copies thereof in the office of such officer, director, or managing agent with the person who is apparently in charge of the office; or

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service ~~or [of]~~ of process or by serving process upon such agent or the party in a manner specified by any ~~statute.~~statute;

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director or agent to be served as specified in paragraphs ~~a and b.~~a. and b.; or

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, or agent to be

served as specified in paragraphs a. and b., delivering to the addressee, and obtaining a delivery receipt.

(7) Partnerships. – Upon a general or limited partnership:

a. By delivering a copy of the summons and of the complaint to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its ~~behalf, or~~ behalf; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its ~~behalf, or~~ behalf; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to any general partner or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf, delivering to the addressee, and obtaining a delivery receipt; or by leaving copies thereof in the office of such general partner, attorney-in-fact or agent with the person who is apparently in charge of the office.

b. If relief is sought against a partner specifically, a copy of the summons and of the complaint must be served on such partner as provided in this section (j).

(8) Other Unincorporated Associations and Their Officers. – Upon any unincorporated association, organization, or society other than a partnership:

a. By delivering a copy of the summons and of the complaint to an officer, director, managing agent or member of the governing body of the unincorporated association, organization or society, or by leaving copies thereof in the office of such officer, director, managing agent or member of the governing body with the person who is apparently in charge of the office; ~~or~~

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be -served or to accept service of process or by serving process upon such agent or the party in a manner specified by any ~~statute.~~statute;

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent or member of the governing body to be served as specified in paragraphs ~~a and b.~~a. and b.; or

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, agent, or member of the governing body to be served as specified in paragraphs a.

and b., delivering to the addressee, and obtaining a delivery receipt.

(9) Service upon a foreign state or a political subdivision, agency, or instrumentality thereof shall be effected pursuant to 28 U.S.C. § 1608."

SECTION 3.1. G.S. 1A-1, Rule 4(j1) reads as rewritten:

"(j1) Service by publication on party that cannot otherwise be served. – A party that cannot with due diligence be served by personal ~~delivery or~~ delivery, registered or certified ~~mail~~ mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) may be served by publication. Except in actions involving jurisdiction in rem or quasi in rem as provided in section (k), service of process by publication shall consist of publishing a notice of service of process by publication once a week for three successive weeks in a newspaper that is qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 and circulated in the area where the party to be served is believed by the serving party to be located, or if there is no reliable information concerning the location of the party then in a newspaper circulated in the county where the action is pending. If the party's post-office address is known or can with reasonable diligence be ascertained, there shall be mailed to the party at or immediately prior to the first publication a copy of the notice of service of process by publication. The mailing may be omitted if the post-office address cannot be ascertained with reasonable diligence. Upon completion of such service there shall be filed with the court an affidavit showing the publication and mailing in accordance with the requirements of G.S. 1-75.10(2), the circumstances warranting the use of service by publication, and information, if any, regarding the location of the party served.

The notice of service of process by publication shall (i) designate the court in which the action has been commenced and the title of the action, which title may be indicated sufficiently by the name of the first plaintiff and the first defendant; (ii) be directed to the defendant sought to be served; (iii) state either that a pleading seeking relief against the person to be served has been filed or has been required to be filed therein not later than a date specified in the notice; (iv) state the nature of the relief being sought; (v) require the defendant being so served to make defense to such pleading within 40 days after a date stated in the notice, exclusive of such date, which date so stated shall be the date of the first publication of notice, or the date when the complaint is required to be filed, whichever is later, and notify the defendant that upon his failure to do so the party seeking service of process by publication will apply to the court for the relief sought; (vi) in cases of attachment, state the information required by G.S. 1-440.14; (vii) be subscribed by the party seeking service or his attorney and give the post-office address of such party or his attorney; and (viii) be substantially in the following form:

NOTICE OF SERVICE OF PROCESS BY PUBLICATION

STATE OF NORTH CAROLINA _____ COUNTY

IN THE _____ COURT

[Title of action or special proceeding] [To Person to be served]:

taking a deposition on oral examination, the proponent of the question shall complete the examination on all other matters before he adjourns the examination in order to apply for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(c).

(3) Evasive or Incomplete Answer. – For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) Award of Expenses of Motion. – If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner."

PRESERVING EXCEPTIONS TO RULINGS (RULE 46)

SECTION 7. G.S. 1A-1, Rule 46 reads as rewritten:

"Rule 46. Objections and exceptions.

(a) Rulings on admissibility of evidence. –

(1) When there is objection to the admission of evidence on the ground that the witness is for a specified reason incompetent or not qualified or disqualified, it shall be deemed that a like objection has been made to any subsequent admission of evidence from the witness in question. Similarly, when there is objection to the admission of evidence involving a specified line of questioning, it shall be deemed that a like objection has been taken to any subsequent admission of evidence involving the same line of questioning.

(2) If there is proper objection to the admission of evidence and the objection is overruled, the ruling of the court shall be deemed excepted to by the party making the objection. If an objection to the admission of evidence is sustained or if the court for any reason excludes evidence offered by a party, the ruling of the court shall be deemed excepted to by the party offering the evidence.

(3) No objections are necessary with respect to questions propounded to a witness by the court or a juror but it shall be deemed that each such question has been properly objected to and that the objection has been overruled and that an exception has been taken to the ruling of the court by all parties to the action.

(b) ~~Rulings~~ Pretrial rulings, interlocutory orders, trial rulings, and other orders not directed to the admissibility of evidence. – With respect to ~~rulings~~pretrial rulings, interlocutory orders, trial rulings, and other orders of the court not directed to the admissibility of evidence, formal objections and exceptions are unnecessary. In order to preserve an exception to any such ruling or order or to the court's failure to make any such ruling or order, it shall be sufficient if a party, at the time the ruling or order is made or sought, makes known to the court ~~his~~ the party's objection to the action of the court or makes known the action ~~which he~~ that the party desires the court to take and ~~his ground therefor;~~ the party's grounds for its position. ~~and if~~ If a party has no opportunity to object or except to a ruling or order at the time it is made, the absence of an objection or exception does not thereafter prejudice ~~him.~~that party; however, in order to preserve exceptions to these rulings and orders for appellate review, a party shall promptly present to the court a request, objection, or motion that states the specific grounds for the ruling that the party desires the court to make upon having an opportunity to do so.

~~(c) Instruction. If there is error, either in the refusal of the judge to grant a prayer for instructions, or in granting a prayer, or in his instructions generally, the same is deemed excepted to without the filing of any formal objections.~~"

EXPAND CIRCUMSTANCES FOR SUBSTITUTION OF A JUDGE (RULE 63)

SECTION 8. G.S. 1A-1, Rule 63 reads as rewritten:

"Rule 63. Disability of a judge.

If by reason of death, ~~sickness,~~ sickness or other disability, resignation, retirement, expiration of term, removal from office, or other reason, a judge before whom an action has been tried or a hearing has been held is unable to perform the duties to be performed by the court under these rules after a verdict is returned or ~~findings of fact and conclusions of law are filed,~~ a trial or hearing is otherwise concluded, then those ~~duties~~ duties, including entry of judgment, may be performed:

(1) In actions in the superior court by the judge senior in point of continuous service on the superior court regularly holding the courts of the district. If ~~such~~ this judge is ~~himself~~ under a disability, then the resident judge of the district senior in point of service on the superior court may perform those duties. If a resident judge, while holding court in ~~his~~ the judge's own district suffers disability and there is no other resident judge of the district, such duties may be performed by a judge of the superior court designated by the Chief Justice of the Supreme Court.

(2) In actions in the district court, by the chief judge of the district, or if the chief judge is disabled, by any judge of the district court designated by the Director of the Administrative Office of the Courts.

If the substituted judge is satisfied that he or she cannot perform those duties because ~~he~~ the judge did not preside at the trial or hearing or for any other reason, ~~he~~ the judge ~~may in his discretion~~ may, in the judge's discretion, grant a new ~~trial.~~ trial or hearing."

ENHANCED NOTICE FOR TEMPORARY RESTRAINING ORDER (RULE 65)

SECTION 9. G.S. 1A-1, Rule 65(b) reads as rewritten:

"(b) Temporary restraining order; notice; hearing; duration. – A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (i) it clearly appears from specific facts shown by affidavit or by verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before ~~notice can be served and a hearing had thereon.~~ the adverse party or that party's attorney can be heard in opposition, and (ii) the applicant's attorney certifies to the court in writing the efforts, if any, that have been made to give the notice and the reasons supporting the claim that notice should not be required. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the judge fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice and a motion for a preliminary injunction is made, it shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character; and when the motion comes on for hearing, the party who obtained the temporary restraining order shall proceed with a motion for a preliminary injunction, and, if he does not do so, the judge shall dissolve the temporary restraining order. On two days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the judge may prescribe, the adverse party may appear and move its dissolution or modification and in that event the judge shall proceed to hear and determine such motion as expeditiously as the ends of justice require. Damages may be awarded in an order for dissolution as provided in section (e)."

EFFECTIVE DATE

SECTION 10. This act becomes effective October 1, 2001, and applies to actions filed on or after that date.

HOUSE BILL 439:
Civil Procedure Rule Changes

BILL ANALYSIS

Committee: House Judiciary II
Date: March 22, 2001
Version: First Edition

Introduced by: Representatives Haire and Pope
Summary by: Jeff Hudson
Committee Counsel

SUMMARY: House Bill 439 would amend Rules 4, 5(b), 28(c), 37(a), 46, 63, and 65(b) of the Rules of Civil Procedure as recommended by the Civil Litigation Study Commission. This act would become effective October 1, 2001, and would apply to actions filed on or after that date.

RULE	CURRENT LAW	HOUSE BILL 439
Rule 4(a) Summons – Issuance, who may serve.	Current Rule 4(a) requires in-State service of a summons and complaint to be made by a sheriff or some other person duly authorized by law to serve summons.	**Section 1** would amend Rule 4(a) to also allow in-State service of a summons and complaint to be made by a notary public commissioned in North Carolina.
Rule 4(c) Summons – Return.	Current Rule 4(c) requires service of summons to be made within **30 days** after the issuance of the summons.	**Section 2** would amend Rule 4(c) to require service of summons to be made within **60 days** after the date of issuance of the summons.
Rule 4(j) Process – Manner of service to exercise personal jurisdiction.	Current Rule 4(j) provides that natural persons, governmental agencies, and most other entities can be served with a summons and complaint (i) by personal delivery to the person or the person's authorized agent or (ii) by certified or registered mail, return receipt requested.	**Section 3** would amend Rule 4(j) to also allow service by a "designated delivery service." This term is defined in the Internal Revenue Code, which authorizes taxpayers to use delivery services designated by the United States Secretary of the Treasury. The designated delivery services that are currently authorized are: Airborne Express, DHL Worldwide Express, Federal Express, and United Parcel Service. **Sections 3.1, 3.2 and 3.3** would make conforming changes to Rule 4(j1), Rule 4(j2), and G.S. 1-75.10 respectively.

Note: Trina Griffin, Co-Counsel to the Civil Litigation Study Commission, contributed to the preparation of this summary.

RULE	CURRENT LAW	HOUSE BILL 439
Rule 5(b) Service – How made.	Current Rule 5(b) provides that service can be made by delivering a copy of the pleadings or papers to the party or the party's attorney or by mailing it to the party's or attorney's last known address.	**Section 4** would amend Rule 5(b) to also authorize service of pleadings and papers on the attorney by fax. The fax must be sent to the attorney's office for receipt by 5:00 p.m. Eastern Time on a regular business day, as evidenced by a fax receipt confirmation. If the fax is received after 5:00 p.m., service is deemed completed on the next business day.
Rule 28(c) Disqualification for interest.	Current Rule 28(c) provides that unless the parties agree otherwise, deposition may not be taken by employees of the parties' attorneys. Current Rule 28(c) has the effect of preventing the deposing attorney's employee from operating the videotape during a videotaped deposition.	**Section 5** would amend Rule 28(c) to allow a videotaped deposition to be taken by an employee of the attorney if the deposition notice discloses the name of the employee and by whom he or she is employed and the deposition is recorded by stenographic means by a non-disqualified person.
Rule 37(a) Motion for order compelling discovery.	Current Rule 37(a) provides that when an opposing party fails to respond to discovery, the discovering party may apply to the court for an order compelling discovery.	**Section 6** would amend Rule 37(a)(2) to require the moving party to certify that has in good faith conferred or attempted confer with the person failing to make discovery in an effort to secure the information or material without court action.
Rule 46. Objections and exceptions.	Current Rule 46(b) provides that a formal objection or exception to a ruling or order that is not directed to the admissibility of evidence is unnecessary. Current Rule 46(c) provides that no formal objection is required to preserve an exception to the judge's instructions or failure to instruct. Current Rule 46(c) is inconsistent with Rule 10(b)(2) of the Rules of Appellate Procedure, which requires a formal objection to jury instructions to preserve the exception on appeal.	**Section 7** would amend Rule 46(b) to clarify that it applies not only to trial rulings, but also to pretrial rulings and interlocutory orders. Section 7 would further amend Rule 46(b) to provide that in order to preserve an exception on appeal, a party must, upon opportunity to do so, present an objection to the ruling or order. Section 7 would also delete Rule 46(c) in order to eliminate the conflict with Rule 10(b)(2) of the Rules of Appellate Procedure.

Note: *Trina Griffin, Co-Counsel to the Civil Litigation Study Commission, contributed to the preparation of this summary.*

RULE	CURRENT LAW	HOUSE BILL 439
Rule 63. Disability of a judge.	Current Rule 63 authorizes certain judges to be substituted for a disabled or deceased judge before whom an action has been tried. The substitute judge may perform the duties remaining after a verdict has been returned or findings of fact and conclusions of law have been filed. Current Rule 63 does not provide for substitution in an event other than death, sickness, or disability.	**Section 8** would amend Rule 63 to expand the situations in which a judge may be substituted to include resignation, retirement, expiration of term, removal from office, or any other reason why the judge is unable to perform his or her duties. Section 8 would also amend Rule 63 to authorize the substitute judge to perform any duties remaining after a verdict is returned or a trial or hearing is otherwise concluded, including entry of judgment.
Rule 65(b) Temporary restraining order; notice; hearing; duration.	Current Rule 65(b) allows a judge to grant a temporary restraining order (TRO) without notice to the adverse party if the party seeking the TRO can show that the party will suffer immediate and irreparable harm before notice could be issued and a hearing conducted.	**Section 9** would amend Rule 65(b) to require the party seeking the TRO to also certify in writing what efforts, if any, it made to give notice to the adverse party and the reasons that it believes notice should not be required.

e: Trina Griffin, Co-Counsel to the Civil Litigation Study Commission, contributed to the preparation of this summary.

motion to dismiss plaintiff's claim due to the incorrect designation of the county on the civil summons form. Hazelwood v. Bailey, 339 N.C. 578, 453 S.E.2d 522 (1995).

III. DECISIONS UNDER PRIOR LAW.

Editor's Note. — The cases cited below were decided under former §§ 1-14, 1-88 and 1-89.

As to meaning of word "issue" in relation to summons as affecting commencement of actions, see Williams v. Bray, 273 N.C. 198, 159 S.E.2d 556 (1968), decided under former § 1-88.

The issuance of a summons is not a judicial act which must be performed by the clerk in person, but is rather a ministerial act which may be done in his name by a deputy. Beck v. Voncannon, 237 N.C. 707, 75 S.E.2d 895 (1953), decided under former § 1-89.

When Summons Sufficient to Confer Jurisdiction. — To confer jurisdiction, the process relied on must in fact issue from the court and show upon its face that it emanated therefrom and was intended to bring the defendant into court to answer the complaint of the plaintiff. And when this is clearly shown by evidence appearing on the face of the summons, ordinarily the writ will be deemed sufficient to meet the requirements of due process and bring the party served into court, and formal defects appearing on the face of the record will be treated as nonjurisdictional irregularities, subject to amendment. If, however, there is nothing upon the face of the paper which stamps upon it unmistakably an official character, it is not a defective summons, but no summons at all. Beck v. Voncannon, 237 N.C. 707, 75 S.E.2d 895 (1953), decided under former § 1-89.

If there has been no service of summons and no waiver by appearance, the court has no jurisdiction, and any judgment rendered would be void. B-W Acceptance Corp. v. Spencer, 268 N.C. 1, 149 S.E.2d 570 (1966), decided under former § 1-14.

But Personal Service, Acceptance of Service or Voluntary Appearance Gives Jurisdiction. — When the defendant has been duly served with summons personally within the State, or has accepted service, or has voluntarily appeared in court, jurisdiction over the person exists, and the court may proceed to render a personal judgment against the defendant. B-W Acceptance Corp. v. Spencer, 268 N.C. 1, 149 S.E.2d 570 (1966), decided under former § 1-14.

Conflict of Laws. — In an action in a United States district court in North Carolina for wrongful death under the Louisiana wrongful death statute, the procedural law of North Carolina and not the Federal Rules of Civil Procedure determined when the action was commenced. Rios v. Drennan, 209 F. Supp. 927 (E.D.N.C. 1962), decided under former § 1-14.

OPINIONS OF ATTORNEY GENERAL

In order for a court to revoke an irrevocable preneed contract a civil action must be initiated by the filing of a complaint with the necessary parties being the purchaser, the preneed funeral home license and, if other than the purchaser, the preneed funeral contract beneficiary. See opinion of Attorney General to Mr. William R. Hoke, Attorney for the North Carolina State Board of Mortuary Science, — N.C.A.G. — (November 3, 1995).

Rule 4. Process.

(a) *Summons — Issuance; who may serve.* — Upon the filing of the complaint, summons shall be issued forthwith, and in any event within five days. The complaint and summons shall be delivered to some proper person for service. In this State, such proper person shall be the sheriff of the county where service is to be made or some other person duly authorized by law to serve summons. Outside this State, such proper person shall be anyone who is not a party and is not less than 21 years of age or anyone duly authorized to serve summons by the law of the place where service is to be made. Upon request of the plaintiff separate or additional summons shall be issued against any defendants. A summons is issued when, after being filled out and dated, it is signed by the officer having authority to do so. The date the summons bears shall be prima facie evidence of the date of issue.

(b) *Summons — Contents.* — The summons shall run in the name of the State and be dated and signed by the clerk, assistant clerk, or deputy clerk of the court in the county in which the action is commenced. It shall contain the title of the cause and the name of the court and county wherein the action has been commenced. It shall be directed to the defendant or defendants and shall notify each defendant to appear and answer within 30 days after its service

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(c) *Summons — Return.* — Personal service or substituted personal service of summons as prescribed by Rule 4(j)(1) a and b must be made within 30 days after the date of the issuance of summons, except that in tax and assessment foreclosures under G.S. 47-108.25 or G.S. 105-374 the time allowed for service is 60 days. When a summons has been served upon every party named in the summons, it shall be returned immediately to the clerk who issued it, with notation thereon of its service.

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

(d) *Summons — Extension; endorsement, alias and pluries.* — When any defendant in a civil action is not served within the time allowed for service, the action may be continued in existence as to such defendant by either of the following methods of extension:

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

(2) The plaintiff may sue out an alias or pluries summons returnable in the same manner as the original process. Such alias or pluries summons may be sued out at any time within 90 days after the date of issue of the last preceding summons in the chain of summonses or within 90 days of the last prior endorsement.

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

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

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

(e) *Summons — Discontinuance.* — When there is neither endorsement by the clerk nor issuance of alias or pluries summons within the time specified in Rule 4(d), the action is discontinued as to any defendant not theretofore served

with summons within the time allowed. Thereafter, alias or pluries summons may issue, or an extension be endorsed by the clerk, but, as to such defendant, the action shall be deemed to have commenced on the date of such issuance or endorsement.

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

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

(h) *Summons — When proper officer not available.* — If at any time there is not in a county a proper officer, capable of executing process, to whom summons or other process can be delivered for service, or if a proper officer refuses or neglects to execute such process, or if such officer is a party to or otherwise interested in the action or proceeding, the clerk of the issuing court, upon the facts being verified before him by written affidavit of the plaintiff or his agent or attorney, shall appoint some suitable person who, after he accepts such process for service, shall execute such process in the same manner, with like effect, and subject to the same liabilities, as if such person were a proper officer regularly serving process in that county.

(h1) *Summons — When process returned unexecuted.* — If a proper officer returns a summons or other process unexecuted, the plaintiff or his agent or attorney may cause service to be made by anyone who is not less than 21 years of age, who is not a party to the action, and who is not related by blood or marriage to a party to the action or to a person upon whom service is to be made. This subsection shall not apply to executions pursuant to Article 28 of Chapter 1 or summary ejectment pursuant to Article 3 of Chapter 42 of the General Statutes.

(i) *Summons — Amendment.* — At any time, before or after judgment, in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to substantial rights of the party against whom the process issued.

(j) *Process — Manner of service to exercise personal jurisdiction.* — In any action commenced in a court of this State having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in G.S. 1-75.4, the manner of service of process within or without the State shall be as follows:

(1) Natural Person. — Except as provided in subsection (2) below, upon a natural person:
   a. By delivering a copy of the summons and of the complaint to him or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; or
   b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.
   c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the party to be served, and delivering to the addressee.

(2) Natural Person under Disability. — Upon a natural person under disability by serving process in any manner prescribed in this section

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(j) for service upon a natural person and, in addition, where required by paragraph a or b below, upon a person therein designated.

a. Where the person under disability is a minor, process shall be served separately in any manner prescribed for service upon a natural person upon a parent or guardian having custody of the child, or if there be none, upon any other person having the care and control of the child. If there is no parent, guardian, or other person having care and control of the child when service is made upon the child, then service of process must also be made upon a guardian ad litem who has been appointed pursuant to Rule 17.

b. If the plaintiff actually knows that a person under disability is under guardianship of any kind, process shall be served separately upon his guardian in any manner applicable and appropriate under this section (j). If the plaintiff does not actually know that a guardian has been appointed when service is made upon a person known to him to be incompetent to have charge of his affairs, then service of process must be made upon a guardian ad litem who has been appointed pursuant to Rule 17.

(3) The State. — Upon the State by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney general or by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General or to a deputy or assistant attorney general.

(4) An Agency of the State. —

a. Upon an agency of the State by personally delivering a copy of the summons and of the complaint to the process agent appointed by the agency in the manner hereinafter provided or by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to said process agent.

b. Every agency of the State shall appoint a process agent by filing with the Attorney General the name and address of an agent upon whom process may be served.

c. If any agency of the State fails to comply with paragraph b above, then service upon such agency may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney general or by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General, or to a deputy or assistant attorney general.

d. For purposes of this rule, the term "agency of the State" includes every agency, institution, board, commission, bureau, department, division, council, member of Council of State, or officer of the State government of the State of North Carolina, but does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State, county or city boards of education, other local public districts, units, or bodies of any kind, or private corporations created by act of the General Assembly.

(5) Counties, Cities, Towns, Villages and Other Local Public Bodies. —

a. Upon a city, town, or village by personally delivering a copy of the summons and of the complaint to its mayor, city manager or clerk or by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its mayor, city manager or clerk.

b. Upon a county by personally delivering a copy of the summons and of the complaint to its county manager or to the chairman, clerk

or any member of the board of commissioners for such county or by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its county manager or to the chairman, clerk, or any member of this board of commissioners for such county.

c. Upon any other political subdivision of the State, any county or city board of education, or other local public district, unit, or body of any kind (i) by personally delivering a copy of the summons and of the complaint to an officer or director thereof, or (ii) by personally delivering a copy of the summons and of the complaint to an agent or attorney-in-fact authorized by appointment or by statute to be served or to accept service in its behalf, or (iii) by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent, or attorney-in-fact as specified in (i) and (ii).

d. In any case where none of the officials, officers or directors specified in paragraphs a, b and c can, after due diligence, be found in the State, and that fact appears by affidavit to the satisfaction of the court, or a judge thereof, such court or judge may grant an order that service upon the party sought to be served may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or any deputy or assistant attorney general of the State of North Carolina, or by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General or any deputy or assistant attorney general of the State of North Carolina.

(6) Domestic or Foreign Corporation. — Upon a domestic or foreign corporation:

a. By delivering a copy of the summons and of the complaint to an officer, director, or managing agent of the corporation or by leaving copies thereof in the office of such officer, director, or managing agent with the person who is apparently in charge of the office; or

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service or [of] process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director or agent to be served as specified in paragraphs a and b.

(7) Partnerships. — Upon a general or limited partnership:

a. By delivering a copy of the summons and of the complaint to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf, or by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf, or by leaving copies thereof in the office of such general partner, attorney-in-fact or agent with the person who is apparently in charge of the office.

b. If relief is sought against a partner specifically, a copy of the summons and of the complaint must be served on such partner as provided in this section (j).

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(8) Other Unincorporated Associations and Their Officers. — Upon any unincorporated association, organization, or society other than a partnership:

a. By delivering a copy of the summons and of the complaint to an officer, director, managing agent or member of the governing body of the unincorporated association, organization or society, or by leaving copies thereof in the office of such officer, director, managing agent or member of the governing body with the person who is apparently in charge of the office; or

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent or member of the governing body to be served as specified in paragraphs a and b.

(9) Service upon a foreign state or a political subdivision, agency, or instrumentality thereof shall be effected pursuant to 28 U.S.C. § 1608.

(j1) *Service by publication on party that cannot otherwise be served.* — A party that cannot with due diligence be served by personal delivery or registered or certified mail may be served by publication. Except in actions involving jurisdiction in rem or quasi in rem as provided in section (k), service of process by publication shall consist of publishing a notice of service of process by publication once a week for three successive weeks in a newspaper that is qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 and circulated in the area where the party to be served is believed by the serving party to be located, or if there is no reliable information concerning the location of the party then in a newspaper circulated in the county where the action is pending. If the party's post-office address is known or can with reasonable diligence be ascertained, there shall be mailed to the party at or immediately prior to the first publication a copy of the notice of service of process by publication. The mailing may be omitted if the post-office address cannot be ascertained with reasonable diligence. Upon completion of such service there shall be filed with the court an affidavit showing the publication and mailing in accordance with the requirements of G.S. 1-75.10(2), the circumstances warranting the use of service by publication, and information, if any, regarding the location of the party served.

The notice of service of process by publication shall (i) designate the court in which the action has been commenced and the title of the action, which title may be indicated sufficiently by the name of the first plaintiff and the first defendant; (ii) be directed to the defendant sought to be served; (iii) state either that a pleading seeking relief against the person to be served has been filed or has been required to be filed therein not later than a date specified in the notice; (iv) state the nature of the relief being sought; (v) require the defendant being so served to make defense to such pleading within 40 days after a date stated in the notice, exclusive of such date, which date so stated shall be the date of the first publication of notice, or the date when the complaint is required to be filed, whichever is later, and notify the defendant that upon his failure to do so the party seeking service of process by publication will apply to the court for the relief sought; (vi) in cases of attachment, state the information required by G.S. 1-440.14; (vii) be subscribed by the party seeking service or his attorney and give the post-office address of such party or his attorney; and (viii) be substantially in the following form:

NOTICE OF SERVICE OF PROCESS BY PUBLICATION
STATE OF NORTH CAROLINA _____ COUNTY

In the _____ Court

[Title of action or special proceeding] To [Person to be served]:

Take notice that a pleading seeking relief against you (has been filed) (is required to be filed not later than _____, ____) in the above-entitled (action) (special proceeding). The nature of the relief being sought is as follows: (State nature.)

You are required to make defense to such pleading not later than (_____, ____) and upon your failure to do so the party seeking service against you will apply to the court for the relief sought.

This, the _____ day of _____, ____

_____ (Attorney) (Party)
_____ (Address)

(j2) *Proof of service.* — Proof of service of process shall be as follows:

(1) Personal Service. — Before judgment by default may be had on personal service, proof of service must be provided in accordance with the requirements of G.S. 1-75.10(1).

(2) Registered or Certified Mail. — Before judgment by default may be had on service by registered or certified mail, the serving party shall file an affidavit with the court showing proof of such service in accordance with the requirements of G.S. 1-75.10(4). This affidavit together with the return receipt signed by the person who received the mail if not the addressee raises a presumption that the person who received the mail and signed the receipt was an agent of the addressee authorized by appointment or by law to be served or to accept service of process or was a person of suitable age and discretion residing in the addressee's dwelling house or usual place of abode. In the event the presumption described in the preceding sentence is rebutted by proof that the person who received the receipt at the addressee's dwelling house or usual place of abode was not a person of suitable age and discretion residing therein, the statute of limitation may not be pleaded as a defense if the action was initially commenced within the period of limitation and service of process is completed within 60 days from the date the service is declared invalid. Service shall be complete on the day the summons and complaint are delivered to the address.

(3) Publication. — Before judgment by default may be had on service by publication, the serving party shall file an affidavit with the court showing the circumstances warranting the use of service by publication, information, if any, regarding the location of the party served which was used in determining the area in which service by publication was printed and proof of service in accordance with G.S. 1-75.10(2).

(j3) *Service in a foreign country.* — Unless otherwise provided by federal law, service upon a defendant, other than an infant or an incompetent person, may be effected in a place not within the United States:

(1) By any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(2) If there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

a. In the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction;

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(3) By other means
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b. As directed by the foreign authority in response to a letter rogatory or letter of request; or
c. Unless prohibited by the law of the foreign country, by
1. Delivery to the individual personally of a copy of the summons and the complaint and, upon a corporation, partnership, association or other such entity, by delivery to an officer or a managing or general agent;
2. Any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or

(3) By other means not prohibited by international agreement as may be directed by the court.

Service under subdivision (2)c.1. or (3) of this subsection may be made by any person authorized by subsection (a) of this Rule or who is designated by order of the court or by the foreign court.

On request, the clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign court or officer who will make the service. Proof of service may be made as prescribed in G.S. 1-75.10, by the order of the court, or by the law of the foreign country.

Proof of service by mail shall include an affidavit or certificate of addressing and mailing by the clerk of court.

(j4) *Process or judgment by default not to be attacked on certain grounds.* — No party may attack service of process or a judgment of default on the basis that service should or could have been effected by personal service rather than service by registered or certified mail. No party that receives timely actual notice may attack a judgment by default on the basis that the statutory requirement of due diligence as a condition precedent to service by publication was not met.

(j5) *Personal jurisdiction by acceptance of service.* — Any party personally, or through the persons provided in Rule 4(j), may accept service of process by notation of acceptance of service together with the signature of the party accepting service and the date thereof on an original or copy of a summons, and such acceptance shall have the same force and effect as would exist had the process been served by delivery of copy and summons and complaint to the person signing said acceptance.

(k) *Process — Manner of service to exercise jurisdiction in rem or quasi in rem.* — In any action commenced in a court of this State having jurisdiction of the subject matter and grounds for the exercise of jurisdiction in rem or quasi in rem as provided in G.S. 1-75.8, the manner of service of process shall be as follows:

(1) Defendant Known. — If the defendant is known, he may be served in the appropriate manner prescribed for service of process in section (j), or, if otherwise appropriate section (j1); except that the requirement for service by publication in (j1) shall be satisfied if made in the county where the action is pending and proof of service is made in accordance with section (j2).
(2) Defendant Unknown. — If the defendant is unknown, he may be designated by description and process may be served by publication in the manner provided in section (j1), except that the requirement for service by publication in (j1) shall be satisfied if made in the county where the action is pending and proof of service is made in accordance with section (j2). (1967, c. 954, s. 1; 1969, c. 895, ss. 1-4; 1971, c. 962; c. 1156, s. 2; 1975, cc. 408, 609; 1977, c. 910, ss. 1-3; 1981, c. 384, s. 3; c. 540, ss. 1-8; 1983, c. 679, ss. 1, 2; 1989, c. 330; c. 575, ss. 1, 2; 1995, c. 275, s. 1; c. 389, ss. 2, 3; c. 509, s. 135.1(e), (f); 1997-469, s. 1; 1999-456, s. 59.)

CASE NOTES

Applied in Canterbury v. Monroe Lange Hardwood Imports, 48 N.C. App. 90, 268 S.E.2d 868 (1980).

§ 1-75.10. Proof of service of summons, defendant appearing in action.

Where the defendant appears in the action and challenges the service of the summons upon him, proof of the service of process shall be as follows:

(1) Personal Service or Substituted Personal Service. —
   a. If served by the sheriff of the county or the lawful process officer in this State where the defendant was found, by the officer's certificate thereof, showing place, time and manner of service; or
   b. If served by any other person, his affidavit thereof, showing place, time and manner of service; his qualifications to make service under Rule 4(a) or Rule 4(j3) of the Rules of Civil Procedure; that he knew the person served to be the party mentioned in the summons and delivered to and left with him a copy; and if the defendant was not personally served, he shall state in such affidavit when, where and with whom such copy was left. If such service is made outside this State, the proof thereof may in the alternative be made in accordance with the law of the place where such service is made.

(2) Service of Publication. — In the case of publication, by the affidavit of the publisher or printer, or his foreman or principal clerk, showing the same and specifying the date of the first and last publication, and an affidavit of mailing of a copy of the complaint or notice, as the case may require, made by the person who mailed the same.

(3) Written Admission of Defendant. — The written admission of the defendant, whose signature or the subscription of whose name to such admission shall be presumptive evidence of genuineness.

(4) Service by Registered or Certified Mail. — In the case of service by registered or certified mail, by affidavit of the serving party averring:
   a. That a copy of the summons and complaint was deposited in the post office for mailing by registered or certified mail, return receipt requested;
   b. That it was in fact received as evidenced by the attached registry receipt or other evidence satisfactory to the court of delivery to the addressee; and
   c. That the genuine receipt or other evidence of delivery is attached. (1967, c. 954, s. 2; 1969, c. 895, s. 14; 1973, c. 643; 1979, c. 525, s. 2; 1981, c. 540, ss. 9, 10.)

COMMENT

Paragraph b of subdivision (1) now provides that proof of service of process may, in the alternative, be made in accordance with the law of the place where service is effected. It is intended to prevent technical objections to a return of service prepared by a foreign process server in accordance with the practices and requirements of his own jurisdiction.

Editor's Note. — The Rules of Civil Procedure are found in § 1A-1.

Legal Periodicals. — For article on legislative changes to the new rules of civil procedure, see 6 Wake Forest Intra. L. Rev. 267 (1970).

For survey of 1980 law on civil procedure, see 59 N.C.L. Rev. 1049 (1981).

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VII. DISCONTINUANCE AND EXTENSIONS.

The provisions relating to issuance of alias or pluries summonses did not apply where both individual defendants were served personally with the original summons; the provisions under subsection (d) of this rule for an endorsement on the original summons or issuance of an alias or pluries summons apply only when the original summons was not served, and their purpose is to keep the action alive until service can be made. Thomas v. Washington, — N.C. App. —, 525 S.E.2d 839, 2000 N.C. App. LEXIS 154 (2000).

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

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

(a1) *Service of briefs or memoranda in support or opposition of certain dispositive motions.* — In actions in superior court, every brief or memorandum in support of or in opposition to a motion to dismiss, a motion for judgment on the pleadings, a motion for summary judgment, or any other motion seeking a final determination of the rights of the parties as to one or more of the claims or parties in the action shall be served upon each of the parties at least two days before the hearing on the motion. If the brief or memorandum is not served on the other parties at least two days before the hearing on the motion, the court may continue the matter for a reasonable period to allow the responding party to prepare a response, proceed with the matter without considering the untimely served brief or memorandum, or take such other action as the ends of justice require. The parties may, by consent, alter the period of time for service. For the purpose of this two-day requirement only, service shall mean personal delivery, facsimile transmission, or other means such that the party actually receives the brief within the required time.

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

(c) *Service — Numerous defendants.* — In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own

initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any crossclaim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

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

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

(2) Filing by telefacsimile transmission. — If, pursuant to G.S. 7A-34 and G.S. 7A-343, the Supreme Court and the Administrative Officer of the Courts establish uniform rules, regulations, procedures and specifications for the filing of pleadings or other court papers by telefacsimile transmission, filing may be made by the transmission when, in the manner, and to the extent provided therein. (1967, c. 954, s. 1; 1971, c. 538; c. 1156, s. 2.5; 1975, c. 762, s. 1; 1983, c. 201, s. 1; 1985, c. 546; 1991, c. 168, s. 1; 2000-127, s. 1.)

COMMENT

Comment to the 2000 Amendment. — The rule does not require any party to submit a brief or memorandum; it only applies in certain instances in which a party intends to submit a brief or memorandum to the court. The rule would not preclude a party from providing the judge with copies of cases or statutes at a hearing.

Editor's Note. —

Session Laws 2000-127, s. 3, provides that the 2000 addition to the Official Comment shall only be for annotation purposes and shall not be construed to be the law.

Effect of Amendments. — Session Laws 2000-127, s. 1, effective October 1, 2000, and applicable to motions subject to the act and to briefs, memoranda, and affidavits subject to the act filed on or after that date, inserted "of orders, subsequent pleadings, discovery papers, written motions, written notices, and other similar papers" in the heading to subsection (a); and added subsection (a1).

CASE NOTES

Last Known Address. — Where plaintiff mailed notice of hearing on her motion for default to an address other than that provided on defendant's filed response, notice was ineffective. Barnett v. King, 134 N.C. App. 348, 517 S.E.2d 397 (1999).

CASE NOTES

For cases construing former section (b) of this rule, which was eliminated by the 1975 amendment, see In re Lewis, 11 N.C. App. 541, 181 S.E.2d 806, cert. denied, 279 N.C. 394, 183 S.E.2d 242 (1971); Williams v. Blount, 14 N.C. App. 139, 187 S.E.2d 464 (1972).

Cited in In re Mark, 15 N.C. App. 574, 190 S.E.2d 381 (1972); State Farm Fire & Cas. Co. v. Taylor, 118 F.R.D. 426 (M.D.N.C. 1988).

Rule 28. Persons before whom depositions may be taken.

(a) *Within the United States.* — Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before a person authorized to administer oaths by the laws of this State, of the United States or of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony.

(b) *In foreign countries.* — Depositions may be taken in a foreign country:

(1) Pursuant to any applicable treaty or convention;

(2) Pursuant to a letter of request, whether or not captioned a letter rogatory;

(3) On notice before a person authorized to administer oaths in the place where the examination is held, either by the law thereof or by the law of the United States; or

(4) Before a person commissioned by the court, and a person so commissioned shall have the power by virtue of his commission to administer any necessary oath and take testimony. A commission or a letter of request shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter of request that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter of request may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter of request may be addressed "To the Appropriate Authority in (here name the country)." When a letter of request or any other device is used pursuant to any applicable treaty or convention, it shall be captioned in the form prescribed by that treaty or convention. Evidence obtained in response to a letter of request need not be excluded merely because the testimony was not taken under oath, or any similar departure from the requirements for depositions taken within the United States under these rules.

(c) *Disqualification for interest.* — Unless the parties agree otherwise by stipulation as provided in Rule 29, no deposition shall be taken before a person who is any of the following:

(1) A relative, employee, or attorney of any of the parties;

(2) A relative or employee of an attorney of the parties;

(3) Financially interested in the action; or

(4) An independent contractor if the contractor or the contractor's principal is under a blanket contract for the court reporting services with an attorney of the parties, party to the action, or party having a financial interest in the action. Notwithstanding the disqualification under this rule, the party desiring to take the deposition under a stipulation shall disclose the disqualification in writing in a Rule 30(b) notice of deposition and shall inform all parties to the litigation on the record of the existence of the disqualification under this rule and of the proposed stipulation waiving the disqualification. Any party opposing

the proposed stipulation as provided in the notice of deposition shall give timely written notice of his or her opposition to all parties.

For the purposes of this rule, a blanket contract means a contract to perform court reporting services over a fixed period of time or an indefinite period of time, rather than on a case by case basis, or any other contractual arrangement which compels, guarantees, regulates, or controls the use of particular court reporting services in future cases.

Notwithstanding any other provision of law, a person is prohibited from taking a deposition under any contractual agreement that requires transmission of the original transcript without the transcript having been certified as provided in Rule 30(f) by the person before whom the deposition was taken.

(d) *Depositions to be used outside this State.* —

(1) A person desiring to take depositions in this State to be used in proceedings pending in the courts of any other state or country may present to a judge of the superior or district court a commission, order, notice, consent, or other authority under which the deposition is to be taken, whereupon it shall be the duty of the judge to issue the necessary subpoenas pursuant to Rule 45. Orders of the character provided in Rules 30(b), 30(d), and 45(b) may be made upon proper application therefor by the person to whom such subpoena is directed. Failure by any person without adequate excuse to obey a subpoena served upon him pursuant to this rule may be deemed a contempt of the court from which the subpoena issued.

(2) The commissioner herein provided for shall not proceed to act under and by virtue of his appointment until the party seeking to obtain such deposition has deposited with him a sufficient sum of money to cover all costs and charges incident to the taking of the deposition, including such witness fees as are allowed to witnesses in this State for attendance upon the superior court. From such deposit the commissioner shall retain whatever amount may be due him for services, pay the witness fees and other costs that may have been incurred by reason of taking such deposition, and if any balance remains in his hands, he shall pay the same to the party by whom it was advanced. (1967, c. 954, s. 1; 1975, c. 762, s. 2; 1995, c. 389, s. 4; 1999-264, s. 1.)

COMMENT

Comment to this Rule as Originally Enacted. — This rule is the same as the federal rule except that "of this State" has been inserted in section (a), and section (d) has been added.

Under section (a) depositions for use in North Carolina need not be taken within the State. They may be taken wherever the party taking the deposition desires, subject to the protective provisions of Rule 30(b). However, a subpoena to require a witness to attend the deposition will not run outside the State. Many states have statutes comparable to present § 8-84, making their subpoena power available to compel residents to appear for depositions to be used in foreign states.

Section (d) has no counterpart in the federal rules. It is designed to permit courts in this State to assist parties in proceedings in other states to take depositions in this State for use in such proceedings. North Carolina now has such a statute as indicated above. This rule also requires the party taking a deposition to make a deposit insuring the payment of all fees and costs incident to the taking of the deposition. This practice will be new.

Comment to the 1975 Amendment. — This section is amended slightly to conform to the federal rule, but its substance remains unchanged.

Editor's Note. — Session L
s. 4, which rewrote subsection
to civil actions filed on or after
Effect of Amendments.
1999-264, s. 1, effective Octo
applicable to depositions take
tober 1, 1999, rewrote subsec

I. In General.
II. Decisions under Prior Law

I. IN GENERA

Applied in Brown v. Neal,
S.E.2d 505 (1973); Saintsing
App. 467, 291 S.E.2d 880 (198
80 N.C. App. 599, 343 S.E.2d
v. Morrison, 84 N.C. App. 41
(1987); Stokes County v. Pa
616, 372 S.E.2d 726 (1988); I
Inc., 92 N.C. App. 161, 374 S
State v. Aytche, 98 N.C. App.
(1990); State v. Thompson, 1
429 S.E.2d 590 (1993).

Cited in Woods v. Smith,
S.E.2d 174 (1979); In re Scea
531, 345 S.E.2d 404 (1986); H
of Durham, 99 N.C. App. 34
(1990); Pugh v. Pugh, 111 N
S.E.2d 873 (1993); Metropo
Cas. Ins. Co. v. Lindquist, 1
463 S.E.2d 574 (1995); Tierne
N.C. App. 415, 477 S.E.2d
granted, 345 N.C. 760, 485 S
aff'd, 347 N.C. 258, 490 S.E.2
v. Autos Unlimited, Inc., 124
S.E.2d 86 (1996), cert. deni
486 S.E.2d 546 (1997); State

Rule 29. Stipulat

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action may not be used against the party who made them in any other proceeding outside of the one pending. Fieldcrest Cannon, Inc. v. Fireman's Fund Ins. Co., 124 N.C. App. 232, 477 S.E.2d 59 (1996), aff'd per curiam, — N.C. App. —, 489 S.E.2d 452 (1997), aff'd, 127 N.C. App. 729, 493 S.E.2d 658 (1997).

Applied in Bowes v. Bowes, 43 N.C. App. 586, 259 S.E.2d 389 (1979); Laing v. Liberty Loan Co., 46 N.C. App. 67, 264 S.E.2d 381 (1980); Shreve v. Combs, 54 N.C. App. 18, 282 S.E.2d 568 (1981); VEPCO v. Tillett, 80 N.C. App. 383, 343 S.E.2d 188 (1986); Georgia-Pacific Corp. v. Bondurant, 81 N.C. App. 362, 344 S.E.2d 302 (1986).

Quoted in Eury v. North Carolina Emp. Sec. Comm'n, 115 N.C. App. 590, 446 S.E.2d 383, cert. denied, 338 N.C. 309, 451 S.E.2d 635 (1994).

Stated in Overnite Transp. Co. v. Styer, 57 N.C. App. 146, 291 S.E.2d 179 (1982).

Cited in Kessing v. National Mtg. Corp., 278 N.C. 523, 180 S.E.2d 823 (1971); Riggins v. County of Mecklenburg, 14 N.C. App. 624, 188 S.E.2d 749 (1972); Jernigan v. State Farm Mut. Auto. Ins. Co., 16 N.C. App. 46, 190 S.E.2d 866 (1972); Austin v. Wilder, 26 N.C. App. 229, 215 S.E.2d 794 (1975); Reavis v. Campbell, 27 N.C. App. 231, 218 S.E.2d 873 (1975); Emerson v. Great Atl. & Pac. Tea Co., 41 N.C. App. 715, 255 S.E.2d 768 (1979); Cunningham v. Brown, 51 N.C. App. 264, 276 S.E.2d 718 (1981); Wake County ex rel. Carrington v. Townes, 53 N.C. App. 649, 281 S.E.2d 765 (1981); McDowell v. Estate of Anderson, 69 N.C. App. 725, 318 S.E.2d 258 (1984); Murphrey v. Winslow, 70 N.C. App. 10, 318 S.E.2d 849 (1984); Watkins v. Hellings, 83 N.C. App. 430, 350 S.E.2d 590 (1986); WXQR Marine Broadcasting Corp. v. JAI, Inc., 83 N.C. App. 520, 350 S.E.2d 912 (1986); G.R. Little Agency, Inc. v. Jennings, 88 N.C. App. 107, 362 S.E.2d 807 (1987); McKinney v. Avery Journal, Inc., 99 N.C. App. 529, 393 S.E.2d 295 (1990); Roberts v. Young, 120 N.C. App. 720, 464 S.E.2d 78 (1995); Rahim v. Truck Air of Carolinas, Inc., 123 N.C. App. 609, 473 S.E.2d 688 (1996).

Rule 37. Failure to make discovery; sanctions.

(a) *Motion for order compelling discovery.* — A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) Appropriate Court. — An application for an order to a party or a deponent who is not a party may be made to a judge of the court in which the action is pending, or, on matters relating to a deposition where the deposition is being taken in this State, to a judge of the court in the county where the deposition is being taken, as defined by Rule 30(h).

(2) Motion. — If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question shall complete the examination on all other matters before he adjourns the examination in order to apply for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(c).

(3) Evasive or Incomplete Answer. — For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) Award of Expenses of Motion. — If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or unjust.

tially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) *Failure to comply with order.* —

(1) Sanctions by Court in County Where Deposition Is Taken. — If a deponent fails to be sworn or to answer a question after being directed to do so by a judge of the court in the county in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) Sanctions by Court in Which Action Is Pending. — If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under section (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f) a judge of the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

a. An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

b. An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

c. An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

d. In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

e. Where a party has failed to comply with an order under Rule 35(a) requiring him to produce another for examination, such orders as are listed in subdivisions a, b, and c of this subsection, unless the party failing to comply shows that he is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) *Expenses on failure to admit.* — If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (i) the request was held objectionable pursuant to

Rule 36(a), or (ii) the admission sought was of no substantial importance, or (iii) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (iv) there was other good reason for the failure to admit.

(d) *Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection.* — If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (i) to appear before the person who is to take his deposition, after being served with a proper notice, or (ii) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (iii) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subdivisions a, b, and c of subsection (b)(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this section may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c).

(e), (f) Reserved for future codification purposes.

(g) *Failure to participate in the framing of a discovery plan.* — If a party or his attorney fails to participate in good faith in the framing of a discovery plan by agreement as is required by Rule 26(f), the court may, after opportunity for hearing, require such party or his attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure. (1967, c. 954, s. 1; 1973, c. 827, s. 1; 1975, c. 762, s. 2; 1985, c. 603, ss. 5-7.)

COMMENT

Comment to this Rule as Originally Enacted. — Under § 8-78 and former §§ 1-568.18 and 1-568.19, sanctions against either a deponent or adverse party for failure to answer or to appear are provided for. Under § 8-78 a deponent may be committed to jail upon warrant of the commissioner before whom the deposition is taken. Under former §§ 1-568.18 and 1-568.19 sanctions could be applied only upon order of court issued either by the clerk of superior court in which the action was pending or the judge having jurisdiction.

Under this rule sanctions can be applied only for failure to comply with a court order. Hence, if discovery procedure requires a court order as under Rules 34 or 35, failure to obey the order can be punished immediately under section (b)(2). But where the discovery procedure is set in motion by the parties themselves, the party seeking discovery must first obtain a court order under section (a) requiring the recalcitrant party or witness to make discovery. The only exception to this is found in section (d), which permits an immediate sanction against parties, their officers, or managing agents for a willful failure to appear.

Comment to the 1975 Amendment. — Rule 37 provides generally for sanctions against parties or persons unjustifiably resisting discovery. Experience in the federal courts brought to light a number of the defects in the language of the rule as well as instances in which it was not serving the purposes for which it was designed. In addition, changes being made in other discovery rules require conforming amendments to Rule 37.

Rule 37 sometimes refers to a "failure" to afford discovery and at other times to a "refusal" to do so. Taking note of this dual terminology, federal courts imported into "refusal" a requirement of "willfullness." In Societe Internationale v. Rogers, 357 U.S. 197, 78 S. Ct. 1087, 2 L. Ed. 2d 1255 (1958), the United States Supreme Court concluded that the rather random use of these two terms in Rule 37 showed no design to use them with consistently distinctive meanings, that "refused" in Rule 37(b)(2) meant simply a failure to comply, and that willfulness was relevant only to the selection of sanctions, if any, to be imposed. Substitution of "failure" for "refusal" throughout Rule 37 should eliminate confusion.

Section (a). — Rule 37(a) provides relief to a party seeking discovery against one who, with or without stated objections, fails to afford the discovery sought. It has always fully served

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37(a). Existing Rule 34, since
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Legal Periodicals. — For article, "The 1980 Amendments to the Federal Rules of Civil Procedure and Proposals for North Carolina Practice," see 16 Wake Forest L. Rev. 915 (1980).

For article analyzing the 1983 amendments to Rules 6, 7, 11, 16, 26, 52, 53 and 67, FRCP, comparing these rules with North Carolina practice, and suggesting changes in certain state and federal rules, see 20 Wake Forest L. Rev. 819 (1984).

For article, "Taking a Deposition Under North Carolina Law," see 21 N.C. Cent. L.J. 215 (1995).

CASE NOTES

Subpoenas are not available by statute until an action has been commenced. In re Superior Court Order Dated April 8, 1983, 70 N.C. App. 63, 318 S.E.2d 843 (1984), rev'd on other grounds, 315 N.C. 378, 338 S.E.2d 307 (1986).

At the investigatory stage there is insufficient evidence to support a finding of probable cause, and administrative or criminal search warrants cannot be used. In re Superior Court Order Dated April 8, 1983, 70 N.C. App. 63, 318 S.E.2d 843 (1984), rev'd on other grounds, 315 N.C. 378, 338 S.E.2d 307 (1986).

Corporations have never possessed the kind of protection under U.S. Const., Amend. XIV accorded to persons and their homes. Corporations' special status as creatures of the state exposes them to exhaustive state scrutiny in exchange for the privilege of state recognition. In re Superior Court Order Dated April 8, 1983, 70 N.C. App. 63, 318 S.E.2d 843 (1984), rev'd on other grounds, 315 N.C. 378, 338 S.E.2d 307 (1986).

Nothing in common law prohibits an order requiring production of bank records as part of an investigation of criminal activities of the bank's customers, and, if anything, the common law courts affirmatively possessed such power. By extension, then, the Superior Courts of North Carolina continue to possess such power where the interests of justice so require. In re Superior Court Order Dated April 8, 1983, 70 N.C. App. 63, 318 S.E.2d 843 (1984), rev'd on other grounds, 315 N.C. 378, 338 S.E.2d 307 (1986).

In order to compel the deposition testimony of a nonparty, a subpoena must be issued from the county in which the deposition is to be taken, and a proper subpoena should have been issued from the Clerk of Superior Court of Wake County directing a nonparty in a divorce case to appear in Wake County; therefore, nonparty and her attorney were substantially justified in opposing the discovery sought pursuant to the subpoena issued from Mecklenburg County, and the trial court's imposition of attorneys' fees under § 1A-1, Rule 37(a)(4) was error. Cochran v. Cochran, 93 N.C. App. 574, 378 S.E.2d 580 (1989).

Where it was evident that plaintiffs waited until the last minute to serve an extremely broad subpoena, the court properly found that the subpoena was unreasonable and oppressive and did not abuse its discretion in quashing it. Ward v. Taylor, 68 N.C. App. 74, 314 S.E.2d 814, cert. denied, 311 N.C. 769, 321 S.E.2d 157 (1984).

Applied in State v. Neely, 26 N.C. App. 707, 217 S.E.2d 94 (1975); State v. Wells, 290 N.C. 485, 226 S.E.2d 325 (1976); Wilson v. Wilson, 124 N.C. App. 371, 477 S.E.2d 254 (1996).

Quoted in North Carolina State Bar v. Speckman, 87 N.C. App. 116, 360 S.E.2d 129 (1987).

Cited in Greene v. Greene, 15 N.C. App. 314, 190 S.E.2d 258 (1972); Williams v. Williams, 18 N.C. App. 635, 197 S.E.2d 629 (1973); Bowes v. Bowes, 287 N.C. 163, 214 S.E.2d 40 (1975); State v. Bowden, 290 N.C. 702, 228 S.E.2d 414 (1976); North Carolina Ass'n for Retarded Children v. North Carolina, 420 F. Supp. 451 (M.D.N.C. 1976); State v. Richardson, 59 N.C. App. 558, 297 S.E.2d 921 (1982); Hall v. Cumberland County Hosp. Sys., 121 N.C. App. 425, 466 S.E.2d 317 (1996); Chamberlain v. Thames, 131 N.C. App. 705, 509 S.E.2d 443 (1998); Fallis v. Watauga Medical Ctr., Inc., — N.C. App. —, 510 S.E.2d 199 (1999).

Rule 46. Objections and exceptions.

(a) *Rulings on admissibility of evidence.* —

(1) When there is objection to the admission of evidence on the ground that the witness is for a specified reason incompetent or not qualified or disqualified, it shall be deemed that a like objection has been made to any subsequent admission of evidence from the witness in question. Similarly, when there is objection to the admission of evidence involving a specified line of questioning, it shall be deemed that a like

objection has been taken to any subsequent admission of evidence involving the same line of questioning.

(2) If there is proper objection to the admission of evidence and the objection is overruled, the ruling of the court shall be deemed excepted to by the party making the objection. If an objection to the admission of evidence is sustained or if the court for any reason excludes evidence offered by a party, the ruling of the court shall be deemed excepted to by the party offering the evidence.

(3) No objections are necessary with respect to questions propounded to a witness by the court or a juror but it shall be deemed that each such question has been properly objected to and that the objection has been overruled and that an exception has been taken to the ruling of the court by all parties to the action.

(b) *Rulings and orders not directed to the admissibility of evidence.* — With respect to rulings and orders of the court not directed to the admissibility of evidence, formal objections and exceptions are unnecessary. In order to preserve an exception to any such ruling or order or to the court's failure to make any such ruling or order, it shall be sufficient if a party, at the time the ruling or order is made or sought, makes known to the court his objection to the action of the court or makes known the action which he desires the court to take and his ground therefor; and if a party has no opportunity to object or except to a ruling or order at the time it is made, the absence of an objection or exception does not thereafter prejudice him.

(c) *Instruction.* — If there is error, either in the refusal of the judge to grant a prayer for instructions, or in granting a prayer, or in his instructions generally, the same is deemed excepted to without the filing of any formal objections. (1967, c. 954, s. 1.)

COMMENT

Section (a)(1) is aimed at situations where repeated objections in respect to the admission of evidence have been necessary in order to assure review. In Shelton v. Southern Ry., 193 N.C. 670, 139 S.E. 232 (1927), the court declared:

"It is thoroughly established in this State that, if incompetent evidence is admitted over objection, but the same evidence has theretofore or thereafter been given in other parts of the examination, the benefit of the exception is ordinarily lost."

This proposition has recently been reaffirmed in Dunes Club, Inc. v. Cherokee Ins. Co., 259 N.C. 293, 130 S.E.2d 625 (1963). Thus, apparently the only course of safety for counsel to follow under prior practice would be to object at every opportunity. It would seem that a single objection should suffice in either of the two situations specified in subsection (a)(1).

Section (a)(2) continues the present practice.

Section (a)(3) continues the present practice of making unnecessary objection or exception with respect to questions propounded by a juror or the judge. See former § 1-206(d).

Section (b), it will be noted, applies to all nonevidentiary rulings and orders. In this respect, it is new. However, the general principle of the section has been in North Carolina practice for some time in respect to rulings on motions for nonsuit. See former § 1-183.

Section (c) continues present practice. See former § 1-206, subsection (b), and the note to Rule 51.

Cross References. — As to instructions generally, see § 1-181 and § 1A-1, Rule 51.

Legal Periodicals. — For article discussing North Carolina jury instruction practice, see 52 N.C.L. Rev. 719 (1974).

For survey of 1976 case law on evidence, see 55 N.C.L. Rev. 1033 (1977).

For article, "Toward a Codification of the Law of Evidence in North Carolina," see 16 Wake Forest L. Rev. 669 (1980).

For survey of 1980 law on civil procedure, see 59 N.C.L. Rev. 1067 (1981).

For survey of 1980 law on evidence, see 59 N.C.L. Rev. 1173 (1981).

For article discussing the mechanics of objecting, see 4 Campbell L. Rev. 339 (1982).

I. In General.
II. Decisions under Prior

I. IN GEN

Subsection (a)(1) of t preserve the continue objection, once made, to questioning. It eliminat dens and tactical disad otherwise result to obje necessity for repeated st the same objection. Winebarger, 300 N.C. (1980).

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In order to obtain tion (a)(1) of this ru party must precisely d line of questioning, or t objected to must be app the parties. Butler & Si Baptist Church, 90 N. 380 (1988).

Requirement of sul rule that counsel ob line of questioning w where the "line" of que apparent to the court Power Co. v. Wineba S.E.2d 227 (1980); Mc App. 349, 304 S.E.2d 7 310 N.C. 477, 312 S.E.

Section (b) of this statement of t not the case la Fowler, 49 N.C. App. (1980).

OPINIONS OF ATTORNEY GENERAL

Rule Inapplicable to Execution on Small Claim Judgment. — A judgment creditor is entitled as a matter of right to have execution issued on a small claim judgment irrespective of this rule, as since there is specific statutory authorization for issuance of execution, this rule is not applicable. See opinion of Attorney General to Mr. James R. Sugg, 41 N.C.A.G. 368 (1971).

Rule 63. Disability of a judge.

If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the court under these rules after a verdict is returned or findings of fact and conclusions of law are filed, then those duties may be performed:

(1) In actions in the superior court by the judge senior in point of continuous service on the superior court regularly holding the courts of the district. If such judge is himself under a disability, then the resident judge of the district senior in point of service on the superior court may perform those duties. If a resident judge, while holding court in his own district suffers disability and there is no other resident judge of the district, such duties may be performed by a judge of the superior court designated by the Chief Justice of the Supreme Court.

(2) In actions in the district court, by the chief judge of the district, or if the chief judge is disabled, by any judge of the district court designated by the Director of the Administrative Office of the Courts.

If the substituted judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial. (1967, c. 954, s. 1.)

COMMENT

Formerly, there was no statutory prescription in respect to the problem dealt with by this rule. It can be seen, however, that in particular cases where a verdict has already been returned or findings of fact and conclusions of law filed and then the trial judge is unable to continue to function, it will be highly useful to have some judge authorized to step into the breach.

CASE NOTES

Original Judge Need Not Have Become Incapacitated. — Trial court did not err in having their post-judgment motions ruled upon by another judge; this rule neither requires nor implies that before a different judge can rule on post-trial motions, the judge who heard the case must have become incapacitated. Borg-Warner Acceptance Corp. v. Johnston, 107 N.C. App. 174, 419 S.E.2d 195 (1992), cert. denied, 333 N.C. 254, 424 S.E.2d 918 (1993).

Substitute Judge to Function Only After Return of Verdict or Filing of Findings and Conclusions. — Under this rule an appropriate judge may substitute for a disabled or deceased judge before whom an action has been tried only with respect to duties remaining to be performed after a verdict has been returned or findings of fact and conclusions of law have been filed. Girard Trust Bank v. Easton, 12 N.C. App. 153, 182 S.E.2d 645, cert. denied, 279 N.C. 393, 183 S.E.2d 245 (1971).

So as to Effectuate Decision Already Made. — This rule does not contemplate that a substitute judge, who did not hear the witnesses and participate in the trial, may nevertheless participate in the decision making process; it contemplates only that he may perform such acts as are necessary under the rules of procedure to effectuate a decision already made. Girard Trust Bank v. Easton, 12 N.C. App. 153, 182 S.E.2d 645, cert. denied, 279 N.C. 393, 183 S.E.2d 245 (1971); In re Whisnant, 71 N.C. App. 439, 322 S.E.2d 434 (1984).

Judge's Oral Statements Held Insufficient to Support Entry of Judgment by Substitute. — Where, at the conclusion of the evidence in an action tried before the court without a jury, the trial judge orally indicated

answers in favor of plaintiff to issues which had been prepared by counsel for defendant in anticipation of a jury trial, and instructed plaintiff's counsel to submit a proposed judgment containing appropriate findings of fact and conclusions of law, the issues and the court's answers thereto constituted neither a verdict nor findings of fact and conclusions of law which would permit a substitute judge to proceed under this rule to enter judgment in the case. Girard Trust Bank v. Easton, 12 N.C. App. 153, 182 S.E.2d 645, cert. denied, 279 N.C. 393, 183 S.E.2d 245 (1971).

Entry of judgment in open court by another district court judge without notice to the parties that the judgment was entered was error, but as the notice of appeal was timely filed, there was no prejudice. Brower v. Brower, 75 N.C. App. 425, 331 S.E.2d 170 (1985).

ARTICLE 8.

Miscellaneous.

Rule 64. Seizure of person or property.

At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of this State. (1967, c. 954, s. 1.)

COMMENT

This rule seems to be self-explanatory.

Rule 65. Injunctions.

(a) *Preliminary injunction; notice.* — No preliminary injunction shall be issued without notice to the adverse party.

(b) *Temporary restraining order; notice; hearing; duration.* — A temporary restraining order may be granted without notice to the adverse party if it clearly appears from specific facts shown by affidavit or by verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the judge fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice and a motion for a preliminary injunction is made, it shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character; and when the motion comes on for hearing, the party who obtained the temporary restraining order shall proceed with a motion for a preliminary injunction, and, if he does not do so, the judge shall dissolve the temporary restraining order. On two days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the judge may prescribe, the adverse party may appear and move its dissolution or modification and in that event the judge shall proceed to hear and determine such motion as expeditiously as the ends of justice require. Damages may be awarded in an order for dissolution as provided in section (e).

(c) *Security.* — No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the judge deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the State of North Carolina or of any county or municipality thereof, or any officer or agency thereof acting in an official capacity, but damages may be awarded against such party in accord with this rule. In suits between spouses relating to support, alimony, custody of children, separation, divorce from bed and board, and absolute divorce no such security shall be required of the plaintiff spouse as a condition precedent to the issuing of a temporary restraining order or preliminary injunction enjoining the defendant spouse from interfering with, threatening, or in any way molesting the plaintiff spouse during pendency of the suit, until further order of the court, but damages may be awarded against such party in accord with this rule.

A surety upon a bond or undertaking under this rule submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the persons giving the security and the sureties thereon if their addresses are known.

(d) *Form and scope of injunction or restraining order.* — Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts enjoined or restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice in any manner of the order by personal service or otherwise.

(e) *Damages on dissolution.* — An order or judgment dissolving an injunction or restraining order may include an award of damages against the party procuring the injunction and the sureties on his undertaking without a showing of malice or want of probable cause in procuring the injunction. The damages may be determined by the judge, or he may direct that they be determined by a referee or jury. (1967, c. 954, s. 1.)

COMMENT

Practice Prior to Rule. — While a plaintiff may be entitled to legal and equitable relief in a civil action, the preliminary injunction continues to be an extraordinary and provisional remedy and will not be granted except where adequate relief cannot be had without it. Town of Clinton v. Ross, 226 N.C. 682, 40 S.E.2d 593 (1946).

When temporary injunction issued. — The form of relief may be a preliminary injunction or restraining order, which may be issued:

(1) To preserve the status quo pending the action. As a rule, a mandatory order or injunction will not be made as a preliminary injunction except when the injury is immediate, pressing, irreparable, and clearly established. Seaboard Air Line Ry. v. Atlantic Coast Line Ry., 237 N.C. 88, 74 S.E.2d 430 (1953).

(2) To protect the subject matter of the action.

(3) To prevent fraudulent transfer. See § 1-485.

Time of issuing. — The preliminary injunction may be granted at the time of commencing the action or at any time afterwards, before judgment. Requisites are (a) affidavits; (b) summons.

When notice required. — When the restraining order is asked for as a preliminary motion, notice is not required, but if the judge deems it proper that the other party should be heard, he may issue a show cause order, and the defendant may, in the meantime, be restrained. A restraining order cannot be granted by a judge for a longer time than twenty days, without notice. After the defendant has answered, an injunction will not be granted except upon

VISITOR REGISTRATION SHEET

Judiciary II — 3-22-01

Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tony Peoples	NCDOT
Tony Wyatt	NCDOT
JOHN PEARCE	NCDOT
DONNA MAGNARD	NC SHERIFFS' ASSOC
SHERIFF WORTH HILL	DURHAM CO
GLENN LAMM	UTU
Dickey WESTBROOK	UTU
Michelle Frazier	NC Bar Assoc
John McMillan	MF+S P.A.
FRAN PRESTON	NCCRMA
PB Powell	AOC
BILL SCOGGIN	KENNEDY COVINGTON
Jeff Gray	Fraternal Order of Police
JOSEPH JOHNSTON	1515 EDGESIDE CT RAL 27609
John PELUCA	DIVISION OF SERVICES FOR the BLIND
Herman Gruber	NFB of NC
Dixie Gruber	NFB of NC
Romaine Mashburn	
Emily Fulghum	Smith Anderson
John Cyrus	N.C. State Grange
Brad Adams	UAB

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

March 27, 2001 – 10:00 a.m.

The House Committee on Judiciary II met on Tuesday, March 27, 2001, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairman Phil Haire, Representatives Bowie, Culpepper, Decker, Gulley, Hall, Jeffus, Justus, Miller, Sherrill, and Weiss. Robin Johnson, Esther Manheimer, Jeff Hudson, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order, and then called for consideration of the following bills:

HB 668 Settlement Procedures in District Court Actions. Rep. Baddour, bill sponsor, asked Rep. Haire to take the chair while the committee considered the bill. Rep. Baddour moved that the proposed committee substitute be before the committee for purposes of discussion, and without objection, the PCS was before the committee. Rep. Baddour explained the bill and the bill's history. Judge Ralph Walker, North Carolina Court of Appeals, spoke in support of the bill. Andy Little of the Dispute Resolution Commission explained the certification process for mediators. Rep. Justus questioned the cost to the state and involved parties. Pete Powell of the Administrative Office of the Courts noted that they have had positive results with these settlement procedures. Rep. Culpepper offered an amendment to add clarifying language to the bill, and Rep. Baddour moved adoption of the amendment. Motion passed. Rep. Weiss moved that amendment be rolled into a new committee substitute, and that the committee substitute be given a favorable report, unfavorable as to original bill, and recommendation that the bill be re-referred to the Committee on Finance. Motion passed unanimously.

HB 439 Civil Procedure Rule Changes. Rep. Haire continued his section by section review of the bill. Rep. Bowie questioned the section dealing with the service of pleadings and papers by fax. Burton Craig, a member of the study commission, spoke in support of the bill. Questions and comments from the members continued until time expired. No vote was taken.

The meeting adjourned at 10:55 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

HOUSE JUDICIARY II COMMITTEE
AGENDA

March 27, 2001
10:00 A.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Jeff Hudson
Elizabeth Kirkland (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDSERED:

HB 668 Settlement Procedures in District Court Actions
Sponsor – Rep. Baddour

HB 439 Civil Procedure Rule Changes
Sponsor – Rep. Haire

ADJOURNMENT

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 668 A BILL TO BE ENTITLED AN ACT TO ESTABLISH MEDIATED SETTLEMENT PROCEDURES IN DISTRICT COURT ACTIONS INVOLVING FAMILY FINANCIAL ISSUES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill, unfavorable as to original bill, and recommendation that the committee substitute bill be re-referred to the Committee on Finance.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 668
PROPOSED COMMITTEE SUBSTITUTE H668-CSRH-9 [v.1]

3/27/2001 9:48:28 AM

Short Title: Settlement Procedures in Dist. Court Actions. (Public)

Sponsors:

Referred to:

March 19, 2001

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH MEDIATED SETTLEMENT PROCEDURES IN DISTRICT COURT ACTIONS INVOLVING FAMILY FINANCIAL ISSUES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-38.4 is repealed.

SECTION 2. Article 5 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-38.4A. Settlement procedures in district court actions.**

(a) The General Assembly finds that a system of settlement events should be established to facilitate the settlement of district court actions involving equitable distribution, alimony, or support and to make that litigation more economical, efficient, and satisfactory to the parties, their representatives, and the State. District courts should be able to require parties to those actions and their representatives to attend a pretrial mediated settlement conference or other settlement procedure conducted under this section and rules adopted by the Supreme Court to implement this section.

(b) The definitions in G.S. 7A-38.1(b)(2) and (b)(3) apply in this section.

(c) Any chief district court judge in a judicial district may order a mediated settlement conference or another settlement procedure for any action pending in that district involving issues of equitable distribution, alimony, child or post separation support, or claims arising out of contracts between the parties under G.S. 52-10, G.S. 52-10.1, or Chapter 52B of the General Statutes. The chief district court judge may adopt local rules that order settlement procedures in all of the foregoing actions and designate other district court judges or administrative personnel to issue orders implementing those settlement procedures. However, local rules adopted by a chief district court judge shall not be inconsistent with any rules adopted by the Supreme Court.

(d) The parties to a district court action where a mediated settlement conference or other settlement procedure is ordered, their attorneys, and other persons or entities with authority, by law or contract, to settle a party's claim, shall attend the mediated

settlement conference or other settlement procedure, unless the rules ordering the settlement procedure provide otherwise. No party or other participant in a mediated settlement conference or other settlement procedure is required to make a settlement offer or demand that the party or participant deems contrary to that party's or participant's best interests. Parties who have been victims of domestic violence may be excused from physically attending or participating in a mediated settlement conference or other settlement procedure.

(e) Any person required to attend a mediated settlement conference or other settlement procedure under this section who, without good cause fails to attend, is subject to any appropriate monetary sanction imposed by a district court judge, including the payment of attorneys' fees, mediator fees, and expenses incurred in attending the settlement procedure. If the court imposes sanctions, it shall do so, after notice and hearing, in a written order, making findings of fact and conclusions of law. An order imposing sanctions shall be reviewable upon appeal, and the entire record shall be reviewed to determine whether the order is supported by substantial evidence.

(f) The parties to a district court action in which a mediated settlement conference is to be held under this section shall have the right to designate a mediator. Upon failure of the parties to designate within the time established by the rules adopted by the Supreme Court, a mediator shall be appointed by a district court judge.

(g) A chief district court judge or that judge's designee, at the request of a party and with the consent of all parties, may order the parties to attend and participate in any other settlement procedure authorized by rules adopted by the Supreme Court or adopted by local district court rules, in lieu of attending a mediated settlement conference. Neutrals acting under this section shall be selected and compensated in accordance with rules adopted by the Supreme Court. Nothing herein shall prohibit the parties from participating in other dispute resolution procedures, including arbitration, to the extent authorized under State or federal law. Nothing herein shall prohibit the parties from participating in mediation at a community mediation center operating under G.S. 71-38.5.

(h) Mediators and other neutrals acting under this section shall have judicial immunity in the same manner and to the same extent as a judge of the General Court of Justice, except that mediators and other neutrals may be disciplined in accordance with enforcement procedures adopted by the Supreme Court under G.S. 7A-38.2.

(i) Costs of mediated settlement conferences and other settlement procedures shall be borne by the parties. Unless otherwise ordered by the court or agreed to by the parties, the mediator's fees shall be paid in equal shares by the parties. The rules adopted by the Supreme Court shall set out a method whereby a party found by the court to be unable to pay the costs of settlement procedures is afforded an opportunity to participate without cost to that party and without expenditure of State funds.

(j) Evidence of statements made and conduct occurring in a settlement proceeding conducted under this section shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same claim, except

in proceedings for sanctions or proceedings to enforce a settlement of the action. No settlement proceeding conducted under this section shall be enforceable unless it has been reduced to writing and signed by the parties and in all other respects complies with the requirements of Chapter 50 of the General Statutes. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a settlement proceeding.

No mediator, or other neutral conducting a settlement procedure under this section, shall be compelled to testify or produce evidence concerning statements made and conduct occurring in a mediated settlement conference or other settlement procedure in any civil proceeding for any purpose, including proceedings to enforce a settlement of the action, except to attest to the signing of any of these agreements, and except proceedings for sanctions under this section, disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators, and proceedings to enforce laws concerning juvenile or elder abuse.

(k) The Supreme Court may adopt standards for the certification and conduct of mediators and other neutrals who participate in settlement procedures conducted under 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.

(l) An administrative fee not to exceed two hundred dollars ($200.00) may be charged by the Administrative Office of the Courts to applicants for certification and annual renewal of certification for mediators and mediator training programs operating under this section. The fees collected may be used by the Director of the Administrative Office of the Courts to establish and maintain the operations of the Commission and its staff. The administrative fee shall be set by the Director of the Administrative Office of the Courts in consultation with the Dispute Resolution Commission.

(m) The Administrative Office of the Courts, in consultation with the Dispute Resolution Commission, may require the chief district court judge of any district to report statistical data about settlement procedures conducted under this section for administrative purposes.

(n) Nothing in this section or in rules adopted by the Supreme Court implementing this section shall restrict a party's right to a trial by jury.

(o) The Supreme Court may adopt rules to implement this section."

SECTION 3. G.S. 7A-38.4A(o), as enacted by Section 2 of this act, becomes effective July 1, 2001. The remainder of this act becomes effective October 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 668

Short Title:	Settlement Procedures in Dist. Court Actions.	(Public)
Sponsors:	Representatives Baddour; Adams, Alexander, Hackney, Luebke, and Sutton.	
Referred to:	Judiciary II.	

March 19, 2001

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH MEDIATED SETTLEMENT PROCEDURES IN DISTRICT COURT ACTIONS INVOLVING FAMILY FINANCIAL ISSUES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-38.4 is repealed.

SECTION 2. Article 5 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-38.4A. Settlement procedures in district court actions.**

(a) The General Assembly finds that a system of settlement events should be established to facilitate the settlement of district court actions involving equitable distribution, alimony, or support and to make that litigation more economical, efficient, and satisfactory to the parties, their representatives, and the State. District courts should be able to require parties to those actions and their representatives to attend a pretrial mediated settlement conference or other settlement procedure conducted pursuant to this section and rules adopted by the Supreme Court to implement this section.

(b) The definitions in G.S. 7A-38.1(b)(2) and (b)(3) apply in this section.

(c) Any chief district court judge in a judicial district may order a mediated settlement conference or another settlement procedure for any action pending in that district involving issues of equitable distribution, alimony, child or post separation support, or claims arising out of contracts between the parties under G.S. 52-10, G.S. 52-10.1, or Chapter 52B of the General Statutes. The chief district court judge may adopt local rules that order settlement procedures in all of the foregoing actions and designate other district court judges or administrative personnel to issue orders implementing those settlement procedures. However, local rules adopted by a chief district court judge shall not be inconsistent with any rules adopted by the Supreme Court.

(d) The parties to a district court action where a mediated settlement conference or other settlement procedure is ordered, their attorneys, and other persons or entities with authority, by law or contract, to settle a party's claim, shall attend the mediated settlement conference or other settlement procedure, unless the rules ordering the settlement procedure provide otherwise. No party or other participant in a mediated settlement conference or other settlement procedure is required to make a settlement offer or demand that the party or participant deems contrary to that party's or participant's best interests. Parties who have been victims of domestic violence may be excused from physically attending or participating in a mediated settlement conference or other settlement procedure.

(e) Any person required to attend a mediated settlement conference or other settlement procedure pursuant to this section who, without good cause fails to attend, is subject to any appropriate monetary sanction imposed by a district court judge, including the payment of attorneys' fees, mediator fees, and expenses incurred in attending the settlement procedure. If the court imposes sanctions, it shall do so, after notice and hearing, in a written order, making findings of fact and conclusions of law. An order imposing sanctions shall be reviewable upon appeal, and the entire record shall be reviewed to determine whether the order is supported by substantial evidence.

(f) The parties to a district court action in which a mediated settlement conference is to be held pursuant to this section shall have the right to designate a mediator. Upon failure of the parties to designate within the time established by the rules adopted by the Supreme Court, a mediator shall be appointed by a district court judge.

(g) A chief district court judge or that judge's designee, at the request of a party and with the consent of all parties, may order the parties to attend and participate in any other settlement procedure authorized by rules adopted by the Supreme Court or adopted by local district court rules, in lieu of attending a mediated settlement conference. Neutrals acting pursuant to this section shall be selected and compensated in accordance with rules adopted by the Supreme Court. Nothing herein shall prohibit the parties from participating in other dispute resolution procedures, including arbitration, to the extent authorized under State or federal law.

(h) Mediators and other neutrals acting pursuant to this section shall have judicial immunity in the same manner and to the same extent as a judge of the General Court of Justice, except that mediators and other neutrals may be disciplined in accordance with enforcement procedures adopted by the Supreme Court pursuant to G.S. 7A-38.2.

(i) Costs of mediated settlement conferences and other settlement procedures shall be borne by the parties. Unless otherwise ordered by the court or agreed to by the parties, the mediator's fees shall be paid in equal shares by the parties. The rules adopted by the Supreme Court shall set out a method whereby a party found by the court to be unable to pay the costs of settlement procedures is afforded an opportunity to participate without cost to that party and without expenditure of State funds.

(j) Evidence of statements made and conduct occurring in a settlement proceeding conducted pursuant to this section shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same claim,

except in proceedings for sanctions or proceedings to enforce a settlement of the action. No settlement proceeding conducted pursuant to this section shall be enforceable unless it has been reduced to writing and signed by the parties and in all other respects complies with the requirements of Chapter 50 of the General Statutes. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a settlement proceeding.

No mediator, or other neutral conducting a settlement procedure pursuant to this section, shall be compelled to testify or produce evidence concerning statements made and conduct occurring in a mediated settlement conference or other settlement procedure in any civil proceeding for any purpose, including proceedings to enforce a settlement of the action, except to attest to the signing of any of these agreements, and except proceedings for sanctions under this section, disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators, and proceedings to enforce laws concerning juvenile or elder abuse.

(k) 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.

(l) An administrative fee not to exceed two hundred dollars ($200.00) may be charged by the Administrative Office of the Courts to applicants for certification and annual renewal of certification for mediators and mediator training programs operating under this section. The fees collected may be used by the Director of the Administrative Office of the Courts to establish and maintain the operations of the Commission and its staff. The administrative fee shall be set by the Director of the Administrative Office of the Courts in consultation with the Dispute Resolution Commission.

(m) The Administrative Office of the Courts, in consultation with the Dispute Resolution Commission, may require the chief district court judge of any participating district to report statistical data about settlement procedures conducted pursuant to this section for administrative purposes.

(n) Nothing in this section or in rules adopted by the Supreme Court implementing this section shall restrict a party's right to a trial by jury.

(o) The Supreme Court may adopt rules to implement this section."

SECTION 3. G.S. 7A-38.4A(o), as enacted by Section 2 of this act, becomes effective July 1, 2001. The remainder of this act becomes effective October 1, 2001.

HOUSE BILL 668:
Settlement Procedures in Dist. Court Actions.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Rep. Baddour
Date:	March 27, 2001	**Summary by:**	Robin Johnson
Version:	First		Committee Counsel

SUMMARY: ***House Bill 668 would repeal a pilot program and make permanent the authorization for chief district court judges to order a mediated settlement conference or other settlement procedure for any pending action involving issues of equitable distribution, alimony, child or post-separation support, or claims arising out of contracts and releases between husband and wife, separation agreements, or premarital agreements.***

Generally, the bill would take effect October 1, 2001.

CURRENT LAW: There is no statutory authority to order mediation in cases involving equitable distribution, alimony, child or spousal support, or related financial claims between spouses. However, a pilot program has been in place since 1997. District court judges in participating districts have been allowed, subject to rules of the Supreme Court, to order mediated settlement conferences in these cases.

BILL ANALYSIS:

Section 1 of House Bill 668 would repeal G.S. 7A-38.4, which established the pilot program.

Section 2 would create a new G.S. 7A-38.4A, establishing permanent authorization for mediated settlement procedures in any pending action in the district involving equitable distribution, alimony, child support, post-separation support, or claims arising out of contracts and releases between husband and wife, separation agreements, or premarital agreements.

(a) Sets out a legislative finding.

(b) Defines "mediation" as an informal process conducted by a mediator with the objective of helping parties voluntarily settle their dispute.

Defines "mediator" as a neutral person who acts to encourage and facilitate a resolution of a pending civil action. A mediator does not make an award or render a judgment as to the action's merits.

(c) Authorizes (but does not require) chief district court judges to order mediated settlement conferences in these pending actions.

Authorizes (but does not require) these judges to adopt local rules that order settlement procedures in these actions. These rules cannot be inconsistent with Supreme Court rules.

(d) Requires parties and their attorneys to attend an ordered settlement procedure, unless excused by the rules of the Supreme Court or by order of the chief district court judge.

Does not require any party or participant to make settlement offers or demands contrary to that person's best interests.

Parties who were victims of domestic violence may be excused from physically attending.

(e) Persons who fail to comply without just cause, if ordered to attend, are subject to a monetary sanction.

(f) Parties have the right to designate a mediator or one will be appointed.

(g) Allows the chief district court judge to order other settlement procedures, at a party's request and with the consent of all parties.

Requires "neutrals" to be selected and compensated in accordance with Supreme Court rules.

Does not prohibit parties from participating in other dispute resolution procedures, including arbitration.

(h) Provides judicial immunity to mediators and other neutrals acting under this law.

(i) Requires parties to bear the costs. Unless ordered by the court or agreed upon by the parties, the mediator's fees shall be shared equally.

Directs Supreme Court to adopt rules that set out a method for indigent parties to participate at no cost to themselves or the State.

(j) Specifies that evidence of statements made and conduct occurring in a settlement proceeding are not subject to discovery and are inadmissible in any proceeding in the action, except in proceedings for sanctions or enforcement of the settlement.

Provides that mediators or neutrals cannot be compelled to testify or produce evidence concerning statements made or conduct occurring in a settlement proceeding, except to attest to the signing of any agreements, and except for in certain specified proceedings.

Requires settlements to be in writing and signed by parties in order to be enforceable.

(k) Authorizes Supreme Court to adopt standards for, and directs the Dispute Resolution Commission (Commission) to administer, the certification, training, and conduct of mediators and other neutrals who participate in settlement procedures under this section.

(l) Allows the AOC to charge a fee not to exceed $200 annually to certify mediators and mediator training programs and to use fees to offset operating costs of the Commission.

(m) Authorizes the AOC, in consultation with the Commission, to require the chief district court judges to report statistical data about settlement procedures under this section.

(n) Specifies that this section and rules to implement it shall not restrict a party's right to a trial by jury.

(o) Authorizes the Supreme Court to adopt rules to implement this section, effective July 1, 2001.

BACKGROUND: In 1997, the General Assembly established a pilot program of mediated settlement conferences in district court actions involving equitable distribution, alimony, and support. The following organizations were involved in the planning and design phase: Conference of Chief District Court Judges, the AOC Child Custody Mediation Advisory Committee, the Court Ordered Arbitration Subcommittee on the Supreme Court's Dispute Resolution Committee, the NC Mediation Network, the NC Association of Professional Family Mediators, the NC Association of Clerks of Superior Court, the NC Association of Trial Court Administrators, the Family Law Section of the NC Bar Association, and the Dispute Resolution Section of the NC Bar Association.

The language in House Bill 668 is virtually identical to the statute that established the pilot program.

H668-SMRH-001

Statutes referenced in House Bill 668

§ 7A-38.4. Settlement procedures in district court actions.

(a) The purpose of this section is to authorize the design, implementation, and evaluation of a pilot program in which parties to district court actions involving equitable distribution, alimony, and support may be required to attend a pretrial mediated settlement conference or other settlement procedure.

(b) Repealed by Session Laws 1998-212, s. 16.19(a), effective October 1, 1998.

(c) The Supreme Court may adopt rules to implement this section. The definitions in G.S. 7A-38.1(b)(2) and (b)(3) apply to this section.

(d) District court judges of any participating district may order a mediated settlement conference or another settlement procedure for any action pending in the district involving issues of equitable distribution, alimony, or child or spousal support, pursuant to rules adopted by the Supreme Court. The chief district court judge may by local rule order all such cases, not otherwise exempted by Supreme Court rule, to mediated settlement conference.

(e) The parties to a district court action in which a mediated settlement conference is ordered, their attorneys, and other persons or entities with authority, by law or by contract, to settle the parties' claims shall attend the mediated settlement conference, or other settlement procedure ordered by a district court judge pursuant to rules of the Supreme Court, unless excused by those rules. Nothing in this section shall require any party or other participant in the conference to make a settlement offer or demand which it deems is contrary to its best interests.

(f) Any person required to attend a mediated settlement conference or other settlement procedure ordered by the court who, without good cause, fails to attend in compliance with this section and the rules adopted under this section, shall be subject to any appropriate monetary sanction imposed by a district court judge pursuant to rules of the Supreme Court, including the payment of attorneys' fees, mediator fees, and expenses incurred in attending the settlement procedure. If the court imposes sanctions, it shall do so, after notice and hearing, in a written order, making findings of fact and conclusions of law. An order imposing sanctions shall be reviewable upon appeal where the entire record as submitted shall be reviewed to determine whether the order is supported by substantial evidence.

(g) The parties to a district court action in which a mediated settlement conference is to be held pursuant to this section shall have the right to designate a mediator. Upon failure of the parties to designate within the time established by the rules of the Supreme Court, a mediator shall be appointed by a district court judge pursuant to rules of the Supreme Court.

(h) Pursuant to rules of the Supreme Court, a chief district court judge, at the request of a party and with the consent of all parties, may order the parties to attend and participate in any other settlement procedure authorized by rules adopted by the Supreme Court or adopted by local district court rules, in lieu of attending a mediated settlement conference. Neutrals acting pursuant to this section shall be selected and compensated in accordance with rules of the Supreme Court or pursuant to agreement of the parties. Nothing herein shall prohibit the parties from participating in other dispute resolution procedures, including arbitration, to the extent authorized under State or federal law.

(i) Mediators and other neutrals acting pursuant to this section shall have judicial immunity in the same manner and to the same extent as a judge of the General Court of Justice, except that mediators and other neutrals may be disciplined in accordance with enforcement procedures adopted by the Supreme Court pursuant to G.S. 7A-38.2.
(j) Costs of mediated settlement conferences and other settlement procedures shall be borne by the parties. Unless otherwise ordered by the court or agreed to by the parties, the mediator's fees shall be paid in equal shares by the parties. The rules adopted by the Supreme Court implementing this section shall set out a method whereby parties found by the court to be unable to pay the costs of settlement procedures are afforded an opportunity to participate without cost to an indigent party and without expenditure of State funds.
(k) Evidence of statements made and conduct occurring in a settlement proceeding conducted pursuant to this section shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same claim, except in proceedings for sanctions or proceedings to enforce a settlement of the action. No such settlement shall be enforceable unless it has been reduced to writing and signed by the parties. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a settlement proceeding.
No mediator, or other neutral conducting a settlement procedure pursuant to this section, shall be compelled to testify or produce evidence concerning statements made and conduct occurring in a mediated settlement conference or other settlement procedure in any civil proceeding for any purpose, including proceedings to enforce a settlement of the action, except to attest to the signing of any such agreements, and except proceedings for sanctions under this section, disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators, and proceedings to enforce laws concerning juvenile or elder abuse.
(l) 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.
(m) An administrative fee not to exceed two hundred dollars ($200.00) may be charged by the Administrative Office of the Courts to applicants for certification and annual renewal of certification for mediators and mediator training programs operation under this section. The fees collected may be used by the Director of the Administrative Office of the Courts to establish and maintain the operations of the Commission and its staff. The administrative fee shall be set by the Director of the Administrative Office of the Courts in consultation with the Dispute Resolution Commission.
(m1) The Administrative Office of the Courts, in consultation with the Dispute Resolution Commission, may require the chief district court judge of any participating district to report statistical data about settlement procedures conducted pursuant to this section for administrative purposes.
(o) Nothing in this section or rules adopted pursuant to it shall restrict the right to jury trial.

§ 7A-38.1. Mediated settlement conferences in superior court civil actions.

...

(b) Definitions. - As used in this section:

...

(2) "Mediation" means an informal process conducted by a mediator with the objective of helping parties voluntarily settle their dispute.

(3) "Mediator" means a neutral person who acts to encourage and facilitate a resolution of a pending civil action. A mediator does not make an award or render a judgment as to the merits of the action.

...

§ 52-10. Contracts between husband and wife generally; releases.

(a) Contracts between husband and wife not inconsistent with public policy are valid, and any persons of full age about to be married and married persons may, with or without a valuable consideration, release and quitclaim such rights which they might respectively acquire or may have acquired by marriage in the property of each other; and such releases may be pleaded in bar of any action or proceeding for the recovery of the rights and estate so released. No contract or release between husband and wife made during their coverture shall be valid to affect or change any part of the real estate of either spouse, or the accruing income thereof for a longer time than three years next ensuing the making of such contract or release, unless it is in writing and is acknowledged by both parties before a certifying officer.

(b) Such certifying officer shall be a notary public, or a justice, judge, magistrate, clerk, assistant clerk or deputy clerk of the General Court of Justice, or the equivalent or corresponding officers of the state, territory or foreign country where the acknowledgment is made. Such officer must not be a party to the contract.

(c) This section shall not apply to any judgment of the superior court or other State court of competent jurisdiction, which, by reason of its being consented to by a husband and wife, or their attorneys, may be construed to constitute a contract or release between such husband and wife.

§ 52-10.1. Separation agreements.

Any married couple is hereby authorized to execute a separation agreement not inconsistent with public policy which shall be legal, valid, and binding in all respects; provided, that the separation agreement must be in writing and acknowledged by both parties before a certifying officer as defined in G.S. 52-10(b). Such certifying officer must not be a party to the contract. This section shall not apply to any judgment of the superior court or other State court of competent jurisdiction, which, by reason of its being consented to by a husband and wife, or their attorneys, may be construed to constitute a separation agreement between such husband and wife.

Chapter 52B. Uniform Premarital Agreement Act.

§ 7A-38.2. Regulation of mediators.

(a) The Supreme Court is authorized to adopt standards for the certification and conduct of mediators who participate in the mediated settlement conference program established pursuant to G.S. 7A-38.1. The standards may also regulate mediator training programs. The Supreme Court may adopt procedures for the enforcement of those standards.

(b) The administration of mediator certification, regulation of mediator conduct, and decertification shall be conducted through the Dispute Resolution Commission, established under the Judicial Department. The rules and regulations governing the operation of the Commission shall be adopted by the Supreme Court. The Commission shall be administered under the direction and supervision of the Director of the Administrative Office of the Courts. The Commission shall exercise all of its duties independently of the Director, except all management functions shall be performed under the direction and supervision of the Director.

(c) The Dispute Resolution Commission shall consist of 14 members: five judges appointed by the Chief Justice of the Supreme Court, at least two of whom shall be superior court judges, and at least two of whom shall be district court judges; two mediators certified to conduct superior court mediated settlement conferences and two mediators certified to conduct equitable distribution mediated settlement conferences appointed by the Chief Justice of the Supreme Court; two practicing attorneys who are not certified as mediators appointed by the President of the North Carolina State Bar, one of whom shall be a family law specialist; and three citizens knowledgeable about mediation, one of whom shall be appointed by the Governor, one by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and one by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. Members shall initially serve four-year terms, except that one judge, one mediator, one attorney, and the citizen member appointed by the Governor, shall be appointed for an initial term of two years. Incumbent members as of September 30, 1998 shall serve the remainder of the terms to which they were appointed. Members appointed to newly-created membership positions effective October 1, 1998 shall serve initial terms of two years. Thereafter, members shall serve three-year terms and shall be ineligible to serve more than two consecutive terms. The Chief Justice shall designate one of the members to serve as chair for a two-year term. Members of the Commission shall be compensated pursuant to G.S. 138-5.

Vacancies shall be filled for unexpired terms and full terms in the same manner as incumbents were appointed. Appointing authorities may receive and consider suggestions and recommendations of persons for appointment from the Dispute Resolution Commission, the Family Law, Litigation, and Dispute Resolution Sections of the North Carolina Bar Association, the North Carolina Association of Professional Family Mediators, the North Carolina Association of Clerks of Superior Court, the North Carolina Conference of Court Administrators, the Mediation Network of North Carolina, the Dispute Resolution Committee of the Supreme Court, the Conference of Chief District Court Judges, the Conference of Superior Court Judges, the Director of the

Administrative Office of the Courts, and the Child Custody Mediation Advisory Committee of the Administrative Office of the Courts.

(d) An administrative fee, not to exceed two hundred dollars ($200.00), may be charged by the Administrative Office of the Courts to applicants for certification and annual renewal of certification for mediators and mediation training programs operation under this Article. The fees collected may be used by the Director of the Administrative Office of the Courts to establish and maintain the operations of the Commission and its staff.

Chapter 50. Divorce and Alimony.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 439

Short Title:	Civil Procedure Rule Changes.	(Public)
Sponsors:	Representatives Haire, Pope; and Barefoot.	
Referred to:	Judiciary II.	

March 1, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE RULES OF CIVIL PROCEDURE AS RECOMMENDED BY THE CIVIL LITIGATION STUDY COMMISSION.

The General Assembly of North Carolina enacts:

SERVICE BY NOTARIES (RULE 4(a))

SECTION 1. G.S. 1A-1, Rule 4(a) reads as rewritten:

"(a) Summons – Issuance; who may serve. – Upon the filing of the complaint, summons shall be issued forthwith, and in any event within five days. The complaint and summons shall be delivered to some proper person for service. In this State, such proper person shall be the sheriff of the county where service is to be ~~made~~ made, a notary public commissioned under Chapter 10A of the General Statutes, or some other person duly authorized by law to serve summons. Outside this State, such proper person shall be anyone who is not a party and is not less than 21 years of age or anyone duly authorized to serve summons by the law of the place where service is to be made. Upon request of the plaintiff separate or additional summons shall be issued against any defendants. A summons is issued when, after being filled out and dated, it is signed by the officer having authority to do so. The date the summons bears shall be prima facie evidence of the date of issue."

SUMMONS ALIVE FOR 60 DAYS (RULE 4(c))

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

"(c) Summons – Return. – Personal service or substituted personal service of summons as prescribed by Rule 4(j)(1) a and b must be made within ~~30~~60 days after the date of the issuance of ~~summons, except that in tax and assessment foreclosures under G.S. 47-108.25 or G.S. 105-374 the time allowed for service is 60 days.~~ summons. When a summons has been served upon every party named in the summons, it shall be returned immediately to the clerk who issued it, with notation thereon of its service.

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

SERVICE BY DESIGNATED DELIVERY SERVICE (RULE 4(j)) AND CONFORMING CHANGES TO PROOF OF SERVICE

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

"(j) Process – Manner of service to exercise personal jurisdiction. – In any action commenced in a court of this State having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in G.S. 1-75.4, the manner of service of process within or without the State shall be as follows:

(1) Natural Person. – Except as provided in subsection (2) below, upon a natural ~~person:~~person by one of the following:

a. By delivering a copy of the summons and of the complaint to him or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing ~~therein; or~~therein.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the party to be served, and delivering to the addressee.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the party to be served, delivering to the addressee, and obtaining a delivery receipt.

(2) Natural Person under Disability. – Upon a natural person under disability by serving process in any manner prescribed in this section (j) for service upon a natural person and, in addition, where required by paragraph a or b below, upon a person therein designated.

a. Where the person under disability is a minor, process shall be served separately in any manner prescribed for service upon a natural person upon a parent or guardian having custody of the child, or if there be none, upon any other person having the care and control of the child. If there is no parent, guardian, or other person having care and control of the child when service is made upon the child, then service of process must also be made

upon a guardian ad litem who has been appointed pursuant to Rule 17.

b. If the plaintiff actually knows that a person under disability is under guardianship of any kind, process shall be served separately upon his guardian in any manner applicable and appropriate under this section (j). If the plaintiff does not actually know that a guardian has been appointed when service is made upon a person known to him to be incompetent to have charge of his affairs, then service of process must be made upon a guardian ad litem who has been appointed pursuant to Rule 17.

(3) The State. – Upon the State by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney ~~general or~~ general; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General or to a deputy or assistant attorney ~~general.~~general; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or to a deputy or assistant attorney general, delivering to the addressee, and obtaining a delivery receipt.

(4) An Agency of the State. –

a. Upon an agency of the State by personally delivering a copy of the summons and of the complaint to the process agent appointed by the agency in the manner hereinafter ~~provided~~ provided; ~~or~~ by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to said process ~~agent.~~agent; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the process agent, delivering to the addressee, and obtaining a delivery receipt.

b. Every agency of the State shall appoint a process agent by filing with the Attorney General the name and address of an agent upon whom process may be served.

c. If any agency of the State fails to comply with paragraph b above, then service upon such agency may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney ~~general or~~ general; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General, or to a deputy or assistant attorney ~~general.~~ general; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. §

7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or to a deputy or assistant attorney general, delivering to the addressee, and obtaining a delivery receipt.

d. For purposes of this rule, the term "agency of the State" includes every agency, institution, board, commission, bureau, department, division, council, member of Council of State, or officer of the State government of the State of North Carolina, but does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State, county or city boards of education, other local public districts, units, or bodies of any kind, or private corporations created by act of the General Assembly.

(5) Counties, Cities, Towns, Villages and Other Local Public Bodies. –

a. Upon a city, town, or village by personally delivering a copy of the summons and of the complaint to its mayor, city manager or ~~clerk or~~clerk; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its mayor, city manager or ~~clerk.~~clerk; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the mayor, city manager, or clerk, delivering to the addressee, and obtaining a delivery receipt.

b. Upon a county by personally delivering a copy of the summons and of the complaint to its county manager or to the chairman, clerk or any member of the board of commissioners for such ~~county or~~ county; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its county manager or to the chairman, clerk, or any member of this board of commissioners for such ~~county.~~county; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the county manager or to the chairman, clerk, or any member of the board of commissioners of that county, delivering to the addressee, and obtaining a delivery receipt.

c. Upon any other political subdivision of the State, any county or city board of education, or other local public district, unit, or body of any kind (i) by personally delivering a copy of the summons and of the complaint to an officer or director thereof, ~~or~~ (ii) by personally delivering a copy of the summons and of the complaint to an agent or attorney-in-fact authorized by appointment or by statute to be served or to accept service in its behalf, ~~or~~ (iii) by mailing a copy of the summons and of the

complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent, or attorney-in-fact as specified in (i) and ~~(ii).~~(ii); or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, agent, or attorney-in-fact as specified in (i) and (ii), delivering to the addressee, and obtaining a delivery receipt.

d. In any case where none of the officials, officers or directors specified in paragraphs a, b and c can, after due diligence, be found in the State, and that fact appears by affidavit to the satisfaction of the court, or a judge thereof, such court or judge may grant an order that service upon the party sought to be served may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or any deputy or assistant attorney general of the State of North ~~Carolina, or~~ Carolina; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General or any deputy or assistant attorney general of the State of North ~~Carolina.~~Carolina; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or any deputy or assistant attorney general of the State of North Carolina, delivering to the addressee, and obtaining a delivery receipt.

(6) Domestic or Foreign Corporation. – Upon a domestic or foreign corporation:

a. By delivering a copy of the summons and of the complaint to an officer, director, or managing agent of the corporation or by leaving copies thereof in the office of such officer, director, or managing agent with the person who is apparently in charge of the office; or

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service ~~or [of]~~ of process or by serving process upon such agent or the party in a manner specified by any ~~statute.~~statute;

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director or agent to be served as specified in paragraphs ~~a and b.~~a. and b.; or

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, or agent to be

served as specified in paragraphs a. and b., delivering to the addressee, and obtaining a delivery receipt.

(7) Partnerships. – Upon a general or limited partnership:

a. By delivering a copy of the summons and of the complaint to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its ~~behalf, or~~ behalf; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its ~~behalf, or~~ behalf; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to any general partner or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf, delivering to the addressee, and obtaining a delivery receipt; or by leaving copies thereof in the office of such general partner, attorney-in-fact or agent with the person who is apparently in charge of the office.

b. If relief is sought against a partner specifically, a copy of the summons and of the complaint must be served on such partner as provided in this section (j).

(8) Other Unincorporated Associations and Their Officers. – Upon any unincorporated association, organization, or society other than a partnership:

a. By delivering a copy of the summons and of the complaint to an officer, director, managing agent or member of the governing body of the unincorporated association, organization or society, or by leaving copies thereof in the office of such officer, director, managing agent or member of the governing body with the person who is apparently in charge of the office; ~~or~~

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any ~~statute.~~statute;

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent or member of the governing body to be served as specified in paragraphs ~~a and b.~~a. and b.; or

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, agent, or member of the governing body to be served as specified in paragraphs a.

and b., delivering to the addressee, and obtaining a delivery receipt.

(9) Service upon a foreign state or a political subdivision, agency, or instrumentality thereof shall be effected pursuant to 28 U.S.C. § 1608."

SECTION 3.1. G.S. 1A-1, Rule 4(j1) reads as rewritten:

"(j1) Service by publication on party that cannot otherwise be served. – A party that cannot with due diligence be served by personal ~~delivery or~~ delivery, registered or certified ~~mail~~ mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) may be served by publication. Except in actions involving jurisdiction in rem or quasi in rem as provided in section (k), service of process by publication shall consist of publishing a notice of service of process by publication once a week for three successive weeks in a newspaper that is qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 and circulated in the area where the party to be served is believed by the serving party to be located, or if there is no reliable information concerning the location of the party then in a newspaper circulated in the county where the action is pending. If the party's post-office address is known or can with reasonable diligence be ascertained, there shall be mailed to the party at or immediately prior to the first publication a copy of the notice of service of process by publication. The mailing may be omitted if the post-office address cannot be ascertained with reasonable diligence. Upon completion of such service there shall be filed with the court an affidavit showing the publication and mailing in accordance with the requirements of G.S. 1-75.10(2), the circumstances warranting the use of service by publication, and information, if any, regarding the location of the party served.

The notice of service of process by publication shall (i) designate the court in which the action has been commenced and the title of the action, which title may be indicated sufficiently by the name of the first plaintiff and the first defendant; (ii) be directed to the defendant sought to be served; (iii) state either that a pleading seeking relief against the person to be served has been filed or has been required to be filed therein not later than a date specified in the notice; (iv) state the nature of the relief being sought; (v) require the defendant being so served to make defense to such pleading within 40 days after a date stated in the notice, exclusive of such date, which date so stated shall be the date of the first publication of notice, or the date when the complaint is required to be filed, whichever is later, and notify the defendant that upon his failure to do so the party seeking service of process by publication will apply to the court for the relief sought; (vi) in cases of attachment, state the information required by G.S. 1-440.14; (vii) be subscribed by the party seeking service or his attorney and give the post-office address of such party or his attorney; and (viii) be substantially in the following form:

NOTICE OF SERVICE OF PROCESS BY PUBLICATION

STATE OF NORTH CAROLINA _____ COUNTY

IN THE _____ COURT

[Title of action or special proceeding] [To Person to be served]:

Take notice that a pleading seeking relief against you (has been filed) (is required to be filed not later than _____, ____) in the above-entitled (action) (special proceeding). The nature of the relief being sought is as follows:
(State nature).

You are required to make defense to such pleading not later than (_____, ____) and upon your failure to do so the party seeking service against you will apply to the court for the relief sought.

This, the _____ day of _____, ____

_____ (Attorney) (Party)

_____ (Address)".

SECTION 3.2. G.S. 1A-1, Rule 4(j2) reads as rewritten:

"(j2) Proof of service. – Proof of service of process shall be as follows:

(1) Personal Service. – Before judgment by default may be had on personal service, proof of service must be provided in accordance with the requirements of G.S. 1-75.10(1).

(2) Registered or Certified ~~Mail.~~ Mail or Designated Delivery Service. – Before judgment by default may be had on service by registered or certified ~~mail,~~ mail or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, the serving party shall file an affidavit with the court showing proof of such service in accordance with the requirements of ~~G.S. 1-75.10(4).~~ G.S. 1-75.10(4) or G.S. 1-75.10(5), as appropriate. This affidavit together with the return or delivery receipt signed by the person who received the mail or delivery if not the addressee raises a presumption that the person who received the mail or delivery and signed the receipt was an agent of the addressee authorized by appointment or by law to be served or to accept service of process or was a person of suitable age and discretion residing in the addressee's dwelling house or usual place of abode. In the event the presumption described in the preceding sentence is rebutted by proof that the person who received the receipt at the addressee's dwelling house or usual place of abode was not a person of suitable age and discretion residing therein, the statute of limitation may not be pleaded as a defense if the action was initially commenced within the period of limitation and service of process is completed within 60 days from the date the service is declared invalid. Service shall be complete on the day the summons and complaint are delivered to the address.

(3) Publication. – Before judgment by default may be had on service by publication, the serving party shall file an affidavit with the court showing the circumstances warranting the use of service by publication, information, if any, regarding the location of the party served which was used in determining the area in which service by publication was printed and proof of service in accordance with G.S. 1-75.10(2)."

SECTION 3.3. G.S. 1-75.10 reads as rewritten:

"**§ 1-75.10. Proof of service of summons, defendant appearing in action.**

Where the defendant appears in the action and challenges the service of the summons upon him, proof of the service of process shall be as follows:

(1) Personal Service or Substituted Personal Service. –

a. If served by the sheriff of the county or the lawful process officer in this State where the defendant was found, by the officer's certificate thereof, showing place, time and manner of service; or

b. If served by any other person, his affidavit thereof, showing place, time and manner of service; his qualifications to make service under Rule 4(a) or Rule 4(j3) of the Rules of Civil Procedure; that he knew the person served to be the party mentioned in the summons and delivered to and left with him a copy; and if the defendant was not personally served, he shall state in such affidavit when, where and with whom such copy was left. If such service is made outside this State, the proof thereof may in the alternative be made in accordance with the law of the place where such service is made.

(2) Service of Publication. – In the case of publication, by the affidavit of the publisher or printer, or his foreman or principal clerk, showing the same and specifying the date of the first and last publication, and an affidavit of mailing of a copy of the complaint or notice, as the case may require, made by the person who mailed the same.

(3) Written Admission of Defendant. – The written admission of the defendant, whose signature or the subscription of whose name to such admission shall be presumptive evidence of genuineness.

(4) Service by Registered or Certified Mail. – In the case of service by registered or certified mail, by affidavit of the serving party averring:

a. That a copy of the summons and complaint was deposited in the post office for mailing by registered or certified mail, return receipt requested;

b. That it was in fact received as evidenced by the attached registry receipt or other evidence satisfactory to the court of delivery to the addressee; and

c. That the genuine receipt or other evidence of delivery is attached.

(5) Service by Designated Delivery Service. -- In the case of service by designated delivery service, by affidavit of the serving party averring:

a. That a copy of the summons and complaint was deposited with a designated delivery service as authorized under G.S. 1A-1, Rule 4, delivery receipt requested;

b. That it was in fact received as evidenced by the attached delivery receipt or other evidence satisfactory to the court of delivery to the addressee; and

c. That the genuine receipt or other evidence of delivery is attached."

SERVICE OF PLEADINGS AND PAPERS BY FAX (RULE 5(b))

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

"(b) Service – How made. – A pleading setting forth a counterclaim or cross claim shall be filed with the court and a copy thereof shall be served on the party against whom it is asserted or on ~~his~~ the party's attorney of record. With respect to all pleadings subsequent to the original complaint and other papers required or permitted to be served, service with due return may be made in the manner provided for service and return of process in Rule 4 and may be made upon either the party or, unless service upon the party ~~himself~~ personally is ordered by the court, upon ~~his~~ the party's attorney of record. With respect to such other pleadings and papers, service upon the attorney or upon a party may also be made by delivering a copy to ~~him~~ the party or by mailing it to ~~him~~ the party at ~~his~~ the party's last known address or, if no address is known, by filing it with the clerk of court. Delivery of a copy within this rule means handing it to the attorney or to the ~~party; or~~ party, leaving it at the attorney's office with a partner or ~~employee.~~ employee, or by sending it to the attorney's office by a confirmed telefacsimile transmittal for receipt by 5:00 p.m. Eastern Time on a regular business day, as evidenced by a telefacsimile receipt confirmation. If receipt of delivery by telefacsimile is after 5:00 p.m., service will be deemed to have been completed on the next business day. Service by mail shall be complete upon deposit of the pleading or paper enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service."

ATTORNEY'S EMPLOYEE NOT DISQUALIFIED FOR VIDEOTAPE DEPOSITION (RULE 28(c))

SECTION 5. G.S. 1A-1, Rule 28(c) reads as rewritten:

"(c) Disqualification for interest. – Unless the parties agree otherwise by stipulation as provided in Rule 29, no deposition shall be taken before a person who is any of the following:

(1) A relative, employee, or attorney of any of the parties;

(2) A relative or employee of an attorney of the parties;

(3) Financially interested in the action; or

(4) An independent contractor if the contractor or the contractor's principal is under a blanket contract for the court reporting services with an attorney of the parties, party to the action, or party having a financial interest in the action. Notwithstanding the disqualification under this rule, the party desiring to take the deposition under a stipulation shall disclose the disqualification in writing in a Rule 30(b) notice of deposition and shall inform all parties to the litigation on the

record of the existence of the disqualification under this rule and of the proposed stipulation waiving the disqualification. Any party opposing the proposed stipulation as provided in the notice of deposition shall give timely written notice of his or her opposition to all parties.

For the purposes of this rule, a blanket contract means a contract to perform court reporting services over a fixed period of time or an indefinite period of time, rather than on a case by case basis, or any other contractual arrangement which compels, guarantees, regulates, or controls the use of particular court reporting services in future cases.

Notwithstanding any other provision of law, a person is prohibited from taking a deposition under any contractual agreement that requires transmission of the original transcript without the transcript having been certified as provided in Rule 30(f) by the person before whom the deposition was taken.

Notwithstanding the provisions of this subsection, a person otherwise disqualified from taking a deposition under this subsection may take a deposition provided that the deposition is taken by videotape in compliance with Rule 30(b)(4) and Rule 30(f), and the notice for the taking of the deposition states the name of the person before whom the deposition will be taken and that person's relationship, if any, to a party or a party's attorney, provided that the deposition is also recorded by stenographic means by a nondisqualified person."

MEDIATION OF DISCOVERY DISPUTES (RULE 37)

SECTION 6. G.S. 1A-1, Rule 37(a) reads as rewritten:

"(a) Motion for order compelling discovery. – A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) Appropriate Court. – An application for an order to a party or a deponent who is not a party may be made to a judge of the court in which the action is pending, or, on matters relating to a deposition where the deposition is being taken in this State, to a judge of the court in the county where the deposition is being taken, as defined by Rule 30(h).

(2) Motion. – If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When

taking a deposition on oral examination, the proponent of the question shall complete the examination on all other matters before he adjourns the examination in order to apply for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(c).

(3) Evasive or Incomplete Answer. – For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) Award of Expenses of Motion. – If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner."

PRESERVING EXCEPTIONS TO RULINGS (RULE 46)

SECTION 7. G.S. 1A-1, Rule 46 reads as rewritten:

"Rule 46. Objections and exceptions.

(a) Rulings on admissibility of evidence. –

(1) When there is objection to the admission of evidence on the ground that the witness is for a specified reason incompetent or not qualified or disqualified, it shall be deemed that a like objection has been made to any subsequent admission of evidence from the witness in question. Similarly, when there is objection to the admission of evidence involving a specified line of questioning, it shall be deemed that a like objection has been taken to any subsequent admission of evidence involving the same line of questioning.

(2) If there is proper objection to the admission of evidence and the objection is overruled, the ruling of the court shall be deemed excepted to by the party making the objection. If an objection to the admission of evidence is sustained or if the court for any reason excludes evidence offered by a party, the ruling of the court shall be deemed excepted to by the party offering the evidence.

(3) No objections are necessary with respect to questions propounded to a witness by the court or a juror but it shall be deemed that each such question has been properly objected to and that the objection has been overruled and that an exception has been taken to the ruling of the court by all parties to the action.

(b) ~~Rulings~~ Pretrial rulings, interlocutory orders, trial rulings, and other orders not directed to the admissibility of evidence. – With respect to ~~rulings~~pretrial rulings, interlocutory orders, trial rulings, and other orders of the court not directed to the admissibility of evidence, formal objections and exceptions are unnecessary. In order to preserve an exception to any such ruling or order or to the court's failure to make any such ruling or order, it shall be sufficient if a party, at the time the ruling or order is made or sought, makes known to the court ~~his~~ the party's objection to the action of the court or makes known the action ~~which he~~ that the party desires the court to take and ~~his ground therefor;~~ the party's grounds for its position. ~~and if~~ If a party has no opportunity to object or except to a ruling or order at the time it is made, the absence of an objection or exception does not thereafter prejudice ~~him.~~that party; however, in order to preserve exceptions to these rulings and orders for appellate review, a party shall promptly present to the court a request, objection, or motion that states the specific grounds for the ruling that the party desires the court to make upon having an opportunity to do so.

~~(c) Instruction. If there is error, either in the refusal of the judge to grant a prayer for instructions, or in granting a prayer, or in his instructions generally, the same is deemed excepted to without the filing of any formal objections.~~"

EXPAND CIRCUMSTANCES FOR SUBSTITUTION OF A JUDGE (RULE 63)

SECTION 8. G.S. 1A-1, Rule 63 reads as rewritten:

"Rule 63. Disability of a judge.

If by reason of death, ~~sickness,~~ sickness or other disability, resignation, retirement, expiration of term, removal from office, or other reason, a judge before whom an action has been tried or a hearing has been held is unable to perform the duties to be performed by the court under these rules after a verdict is returned or ~~findings of fact and conclusions of law are filed,~~ a trial or hearing is otherwise concluded, then those ~~duties~~ duties, including entry of judgment, may be performed:

(1) In actions in the superior court by the judge senior in point of continuous service on the superior court regularly holding the courts of the district. If ~~such~~ this judge is ~~himself~~ under a disability, then the resident judge of the district senior in point of service on the superior court may perform those duties. If a resident judge, while holding court in ~~his~~ the judge's own district suffers disability and there is no other resident judge of the district, such duties may be performed by a judge of the superior court designated by the Chief Justice of the Supreme Court.

(2) In actions in the district court, by the chief judge of the district, or if the chief judge is disabled, by any judge of the district court designated by the Director of the Administrative Office of the Courts.

If the substituted judge is satisfied that he or she cannot perform those duties because ~~he~~ the judge did not preside at the trial or hearing or for any other reason, ~~he~~ the judge ~~may in his discretion~~ may, in the judge's discretion, grant a new ~~trial.~~ trial or hearing."

ENHANCED NOTICE FOR TEMPORARY RESTRAINING ORDER (RULE 65)

SECTION 9. G.S. 1A-1, Rule 65(b) reads as rewritten:

"(b) Temporary restraining order; notice; hearing; duration. – A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (i) it clearly appears from specific facts shown by affidavit or by verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before ~~notice can be served and a hearing had thereon.~~ the adverse party or that party's attorney can be heard in opposition, and (ii) the applicant's attorney certifies to the court in writing the efforts, if any, that have been made to give the notice and the reasons supporting the claim that notice should not be required. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the judge fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice and a motion for a preliminary injunction is made, it shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character; and when the motion comes on for hearing, the party who obtained the temporary restraining order shall proceed with a motion for a preliminary injunction, and, if he does not do so, the judge shall dissolve the temporary restraining order. On two days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the judge may prescribe, the adverse party may appear and move its dissolution or modification and in that event the judge shall proceed to hear and determine such motion as expeditiously as the ends of justice require. Damages may be awarded in an order for dissolution as provided in section (e)."

EFFECTIVE DATE

SECTION 10. This act becomes effective October 1, 2001, and applies to actions filed on or after that date.

HOUSE BILL 439:
Civil Procedure Rule Changes

BILL ANALYSIS

Committee: House Judiciary II
Date: March 22, 2001
Version: First Edition

Introduced by: Representatives Haire and Pope
Summary by: Jeff Hudson
Committee Counsel

SUMMARY: House Bill 439 would amend Rules 4, 5(b), 28(c), 37(a), 46, 63, and 65(b) of the Rules of Civil Procedure as recommended by the Civil Litigation Study Commission. This act would become effective October 1, 2001, and would apply to actions filed on or after that date.

RULE	CURRENT LAW	HOUSE BILL 439
Rule 4(a) Summons – Issuance, who may serve.	Current Rule 4(a) requires in-State service of a summons and complaint to be made by a sheriff or some other person duly authorized by law to serve summons.	**Section 1** would amend Rule 4(a) to also allow in-State service of a summons and complaint to be made by a notary public commissioned in North Carolina.
Rule 4(c) Summons – Return.	Current Rule 4(c) requires service of summons to be made within **30 days** after the issuance of the summons.	**Section 2** would amend Rule 4(c) to require service of summons to be made within **60 days** after the date of issuance of the summons.
Rule 4(j) Process – Manner of service to exercise personal jurisdiction.	Current Rule 4(j) provides that natural persons, governmental agencies, and most other entities can be served with a summons and complaint (i) by personal delivery to the person or the person's authorized agent or (ii) by certified or registered mail, return receipt requested.	**Section 3** would amend Rule 4(j) to also allow service by a "designated delivery service." This term is defined in the Internal Revenue Code, which authorizes taxpayers to use delivery services designated by the United States Secretary of the Treasury. The designated delivery services that are currently authorized are: Airborne Express, DHL Worldwide Express, Federal Express, and United Parcel Service. **Sections 3.1, 3.2 and 3.3** would make conforming changes to Rule 4(j1), Rule 4(j2), and G.S. 1-75.10 respectively.

Note: Trina Griffin, Co-Counsel to the Civil Litigation Study Commission, contributed to the preparation of this summary.

RULE	CURRENT LAW	HOUSE BILL 439
Rule 5(b) Service – How made.	Current Rule 5(b) provides that service can be made by delivering a copy of the pleadings or papers to the party or the party's attorney or by mailing it to the party's or attorney's last known address.	**Section 4** would amend Rule 5(b) to also authorize service of pleadings and papers on the attorney by fax. The fax must be sent to the attorney's office for receipt by 5:00 p.m. Eastern Time on a regular business day, as evidenced by a fax receipt confirmation. If the fax is received after 5:00 p.m., service is deemed completed on the next business day.
Rule 28(c) Disqualification for interest.	Current Rule 28(c) provides that unless the parties agree otherwise, deposition may not be taken by employees of the parties' attorneys. Current Rule 28(c) has the effect of preventing the deposing attorney's employee from operating the videotape during a videotaped deposition.	**Section 5** would amend Rule 28(c) to allow a videotaped deposition to be taken by an employee of the attorney if the deposition notice discloses the name of the employee and by whom he or she is employed and the deposition is recorded by stenographic means by a non-disqualified person.
Rule 37(a) Motion for order compelling discovery.	Current Rule 37(a) provides that when an opposing party fails to respond to discovery, the discovering party may apply to the court for an order compelling discovery.	**Section 6** would amend Rule 37(a)(2) to require the moving party to certify that it has in good faith conferred or attempted to confer with the person failing to make discovery in an effort to secure the information or material without court action.
Rule 46. Objections and exceptions.	Current Rule 46(b) provides that a formal objection or exception to a ruling or order that is not directed to the admissibility of evidence is unnecessary. Current Rule 46(c) provides that no formal objection is required to preserve an exception to the judge's instructions or failure to instruct. Current Rule 46(c) is inconsistent with Rule 10(b)(2) of the Rules of Appellate Procedure, which requires a formal objection to jury instructions to preserve the exception on appeal.	**Section 7** would amend Rule 46(b) to clarify that it applies not only to trial rulings, but also to pretrial rulings and interlocutory orders. Section 7 would further amend Rule 46(b) to provide that in order to preserve an exception on appeal, a party must, upon opportunity to do so, present an objection to the ruling or order. Section 7 would also delete Rule 46(c) in order to eliminate the conflict with Rule 10(b)(2) of the Rules of Appellate Procedure.

Note: *Trina Griffin, Co-Counsel to the Civil Litigation Study Commission, contributed to the preparation of this summary.*

RULE	CURRENT LAW	HOUSE BILL 439
Rule 63. Disability of a judge.	Current Rule 63 authorizes certain judges to be substituted for a disabled or deceased judge before whom an action has been tried. The substitute judge may perform the duties remaining after a verdict has been returned or findings of fact and conclusions of law have been filed. Current Rule 63 does not provide for substitution in an event other than death, sickness, or disability.	**Section 8** would amend Rule 63 to expand the situations in which a judge may be substituted to include resignation, retirement, expiration of term, removal from office, or any other reason why the judge is unable to perform his or her duties. Section 8 would also amend Rule 63 to authorize the substitute judge to perform any duties remaining after a verdict is returned or a trial or hearing is otherwise concluded, including entry of judgment.
Rule 65(b) Temporary restraining order; notice; hearing; duration.	Current Rule 65(b) allows a judge to grant a temporary restraining order (TRO) without notice to the adverse party if the party seeking the TRO can show that the party will suffer immediate and irreparable harm before notice could be issued and a hearing conducted.	**Section 9** would amend Rule 65(b) to require the party seeking the TRO to also certify in writing what efforts, if any, it made to give notice to the adverse party and the reasons that it believes notice should not be required.

Note: Trina Griffin, Co-Counsel to the Civil Litigation Study Commission, contributed to the preparation of this summary.

VISITOR REGISTRATION SHEET

Judiciary II — 3/27/2001
Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ralph A. WALKER	Chair - Dispute Resolution Commission
T. Anderson Hill	" " "
Burton Craige	Member, Civil Litigation Study Commission, NCATL
Bill Wilson	NCATL
Michelle Frazier	NC Bar Assoc.
John McMillan	McF&S P.A.
Scott Templeton	Sec State
Scott Bradley	Mediation Network of NC + Dispute Resolution Commission
PE Powell	AOC
Bill Scoggin	Kennedy Cov. Nobles
Hugh Tilson	NCHA
Lucius Fuller	Attorney
Eddie Caldwell	Hafer, Caldwell + Ferrell, P.A.
Tim Munster	NC Home Builders Assn
Mary Burch	Auditory Screening Center
[illegible]	[illegible]
Robert J. Wilson	Sec. of State
Matt Shaw	Goldsboro News-Argus

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

March 29, 2001 – 10:00 a.m.

The House Committee on Judiciary II met on Thursday, March 29, 2001, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairman Phil Haire, Representatives Bowie, Culpepper, Decker, Gulley, Hall, Jeffus, Justus, Miller, Sherrill, and Weiss. Robin Johnson, Esther Manheimer, Jeff Hudson, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order, and then called for consideration of the following bills:

HB 439 Civil Procedure Rule Changes. Rep. Haire moved that the proposed committee substitute be before the committee for purposes of discussion, and without objection, the PCS was before the committee. Rep. Haire noted that the major change in the bill was the deletion of the section that dealt with notary publics. The chair recognized Jeff Hudson to explain the technical changes. Rep. Sherrill moved that the committee substitute bill be given a favorable report, unfavorable as to original bill. Motion passed unanimously.

HB 440 Embalmers and Funeral Directors. Rep. Weiss moved that the proposed committee substitute be before the committee for purposes of discussion, and without objection, the PCS was before the committee. Rep. Baddour recognized Rep. Weiss to explain the bill. Reps. Hall and Sherrill questioned the portion of the bill that dealt with the movement of dead bodies. Andy Ritter, Executive Director of the Board of Mortuary Science, addressed the issue of for hire transport. Rep. Bowie asked who declares that a body is dead. Mr. Ritter noted that responsibility belonged to the medical examiner or the attending physician. The members of the committee raised numerous questions with regard to the bill. Time expired, and no vote was taken.

The meeting adjourned at 10:50 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

HOUSE JUDICIARY II COMMITTEE
AGENDA

March 29, 2001
10:00 A.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Jeff Hudson
Elizabeth Kirkland (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDSERED:

HB 439 Civil Procedure Rule Changes
Sponsor – Rep. Haire

HB 440 Embalmers and Funeral Directors
Sponsor – Rep. Weiss

ADJOURNMENT

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 439 A BILL TO BE ENTITLED AN ACT TO AMEND THE RULES OF CIVIL PROCEDURE AS RECOMMENDED BY THE CIVIL LITIGATION STUDY COMMISSION.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 439
PROPOSED COMMITTEE SUBSTITUTE H439-PCS5138-SB-12

Short Title: Civil Procedure Rule Changes. (Public)

Sponsors:

Referred to:

March 1, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE RULES OF CIVIL PROCEDURE AS RECOMMENDED BY THE CIVIL LITIGATION STUDY COMMISSION.

The General Assembly of North Carolina enacts:

SUMMONS ALIVE FOR 60 DAYS (RULE 4(c))

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

"(c) Summons – Return. – Personal service or substituted personal service of summons as prescribed by Rule 4(j)(1) a and b must be made within ~~30~~60 days after the date of the issuance of ~~summons, except that in tax and assessment foreclosures under G.S. 47-108.25 or G.S. 105-374 the time allowed for service is 60 days.~~ summons. When a summons has been served upon every party named in the summons, it shall be returned immediately to the clerk who issued it, with notation thereon of its service.

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

SERVICE BY DESIGNATED DELIVERY SERVICE (RULE 4(j)) AND CONFORMING CHANGES TO PROOF OF SERVICE

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

"(j) Process – Manner of service to exercise personal jurisdiction. – In any action commenced in a court of this State having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in G.S. 1-75.4, the manner of service of process within or without the State shall be as follows:

(1) Natural Person. – Except as provided in subsection (2) below, upon a natural ~~person:~~person by one of the following:

a. By delivering a copy of the summons and of the complaint to him or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing ~~therein; or~~therein.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the party to be served, and delivering to the addressee.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the party to be served, delivering to the addressee, and obtaining a delivery receipt.

(2) Natural Person under Disability. – Upon a natural person under disability by serving process in any manner prescribed in this section (j) for service upon a natural person and, in addition, where required by paragraph a or b below, upon a person therein designated.

a. Where the person under disability is a minor, process shall be served separately in any manner prescribed for service upon a natural person upon a parent or guardian having custody of the child, or if there be none, upon any other person having the care and control of the child. If there is no parent, guardian, or other person having care and control of the child when service is made upon the child, then service of process must also be made upon a guardian ad litem who has been appointed pursuant to Rule 17.

b. If the plaintiff actually knows that a person under disability is under guardianship of any kind, process shall be served separately upon his guardian in any manner applicable and appropriate under this section (j). If the plaintiff does not actually know that a guardian has been appointed when service is made upon a person known to him to be incompetent to have charge of his affairs, then service of process must be made upon a guardian ad litem who has been appointed pursuant to Rule 17.

(3) The State. – Upon the State by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney ~~general or~~ general; by mailing a copy of the summons and of the complaint, registered or certified mail, return

receipt requested, addressed to the Attorney General or to a deputy or assistant attorney ~~general.~~general; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or to a deputy or assistant attorney general, delivering to the addressee, and obtaining a delivery receipt.

(4) An Agency of the State. –

a. Upon an agency of the State by personally delivering a copy of the summons and of the complaint to the process agent appointed by the agency in the manner hereinafter ~~provided~~ provided; ~~or~~ by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to said process ~~agent.~~agent; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the process agent, delivering to the addressee, and obtaining a delivery receipt.

b. Every agency of the State shall appoint a process agent by filing with the Attorney General the name and address of an agent upon whom process may be served.

c. If any agency of the State fails to comply with paragraph b above, then service upon such agency may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney ~~general or~~ general; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General, or to a deputy or assistant attorney ~~general.~~ general; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or to a deputy or assistant attorney general, delivering to the addressee, and obtaining a delivery receipt.

d. For purposes of this rule, the term "agency of the State" includes every agency, institution, board, commission, bureau, department, division, council, member of Council of State, or officer of the State government of the State of North Carolina, but does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State, county or city boards of education, other local public districts, units, or bodies of any kind, or private corporations created by act of the General Assembly.

(5) Counties, Cities, Towns, Villages and Other Local Public Bodies. –

a. Upon a city, town, or village by personally delivering a copy of the summons and of the complaint to its mayor, city manager or ~~clerk or~~clerk; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its mayor, city manager or ~~clerk.~~clerk; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the mayor, city manager, or clerk, delivering to the addressee, and obtaining a delivery receipt.

b. Upon a county by personally delivering a copy of the summons and of the complaint to its county manager or to the chairman, clerk or any member of the board of commissioners for such ~~county or~~ county; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its county manager or to the chairman, clerk, or any member of this board of commissioners for such ~~county.~~county; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the county manager or to the chairman, clerk, or any member of the board of commissioners of that county, delivering to the addressee, and obtaining a delivery receipt.

c. Upon any other political subdivision of the State, any county or city board of education, or other local public district, unit, or body of any kind (i) by personally delivering a copy of the summons and of the complaint to an officer or director thereof, ~~or~~ (ii) by personally delivering a copy of the summons and of the complaint to an agent or attorney-in-fact authorized by appointment or by statute to be served or to accept service in its behalf, ~~or~~ (iii) by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent, or attorney-in-fact as specified in (i) and ~~(ii).~~(ii), or (iv) by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, agent, or attorney-in-fact as specified in (i) and (ii), delivering to the addressee, and obtaining a delivery receipt.

d. In any case where none of the officials, officers or directors specified in paragraphs a, b and c can, after due diligence, be found in the State, and that fact appears by affidavit to the satisfaction of the court, or a judge thereof, such court or judge may grant an order that service upon the party sought to be

served may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or any deputy or assistant attorney general of the State of North ~~Carolina, or~~ Carolina; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General or any deputy or assistant attorney general of the State of North ~~Carolina.~~Carolina; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or any deputy or assistant attorney general of the State of North Carolina, delivering to the addressee, and obtaining a delivery receipt.

(6) Domestic or Foreign Corporation. – Upon a domestic or foreign ~~corporation:~~corporation by one of the following:

a. By delivering a copy of the summons and of the complaint to an officer, director, or managing agent of the corporation or by leaving copies thereof in the office of such officer, director, or managing agent with the person who is apparently in charge of the ~~office; or~~office.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service ~~or [of]~~ of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director or agent to be served as specified in paragraphs a and b.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, or agent to be served as specified in paragraphs a. and b., delivering to the addressee, and obtaining a delivery receipt.

(7) Partnerships. – Upon a general or limited partnership:

a. By delivering a copy of the summons and of the complaint to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its ~~behalf, or~~ behalf; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its ~~behalf, or~~ behalf; or by depositing with a designated delivery service

authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to any general partner or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf, delivering to the addressee, and obtaining a delivery receipt; or by leaving copies thereof in the office of such general partner, attorney-in-fact or agent with the person who is apparently in charge of the office.

b. If relief is sought against a partner specifically, a copy of the summons and of the complaint must be served on such partner as provided in this section (j).

(8) Other Unincorporated Associations and Their Officers. – Upon any unincorporated association, organization, or society other than a ~~partnership:~~partnership by one of the following:

a. By delivering a copy of the summons and of the complaint to an officer, director, managing agent or member of the governing body of the unincorporated association, organization or society, or by leaving copies thereof in the office of such officer, director, managing agent or member of the governing body with the person who is apparently in charge of the ~~office; or~~office.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent or member of the governing body to be served as specified in paragraphs a and b.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, agent, or member of the governing body to be served as specified in paragraphs a. and b., delivering to the addressee, and obtaining a delivery receipt.

(9) Service upon a foreign state or a political subdivision, agency, or instrumentality thereof shall be effected pursuant to 28 U.S.C. § 1608."

SECTION 2.1. G.S. 1A-1, Rule 4(j1) reads as rewritten:

"(j1) Service by publication on party that cannot otherwise be served. – A party that cannot with due diligence be served by personal ~~delivery or~~ delivery, registered or certified ~~mail~~ mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) may be served by publication. Except in actions involving jurisdiction in rem or quasi in rem as provided in section (k), service of process by publication shall consist of publishing a notice of service of process by publication once a week for three

successive weeks in a newspaper that is qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 and circulated in the area where the party to be served is believed by the serving party to be located, or if there is no reliable information concerning the location of the party then in a newspaper circulated in the county where the action is pending. If the party's post-office address is known or can with reasonable diligence be ascertained, there shall be mailed to the party at or immediately prior to the first publication a copy of the notice of service of process by publication. The mailing may be omitted if the post-office address cannot be ascertained with reasonable diligence. Upon completion of such service there shall be filed with the court an affidavit showing the publication and mailing in accordance with the requirements of G.S. 1-75.10(2), the circumstances warranting the use of service by publication, and information, if any, regarding the location of the party served.

The notice of service of process by publication shall (i) designate the court in which the action has been commenced and the title of the action, which title may be indicated sufficiently by the name of the first plaintiff and the first defendant; (ii) be directed to the defendant sought to be served; (iii) state either that a pleading seeking relief against the person to be served has been filed or has been required to be filed therein not later than a date specified in the notice; (iv) state the nature of the relief being sought; (v) require the defendant being so served to make defense to such pleading within 40 days after a date stated in the notice, exclusive of such date, which date so stated shall be the date of the first publication of notice, or the date when the complaint is required to be filed, whichever is later, and notify the defendant that upon his failure to do so the party seeking service of process by publication will apply to the court for the relief sought; (vi) in cases of attachment, state the information required by G.S. 1-440.14; (vii) be subscribed by the party seeking service or his attorney and give the post-office address of such party or his attorney; and (viii) be substantially in the following form:

NOTICE OF SERVICE OF PROCESS BY PUBLICATION
STATE OF NORTH CAROLINA _____ COUNTY
IN THE _____ COURT

[Title of action or special proceeding] [To Person to be served]:

Take notice that a pleading seeking relief against you (has been filed) (is required to be filed not later than _____, ____) in the above-entitled (action) (special proceeding). The nature of the relief being sought is as follows:
(State nature).

You are required to make defense to such pleading not later than (_____, ____) and upon your failure to do so the party seeking service against you will apply to the court for the relief sought.

This, the _____ day of _____, ____

_____ (Attorney) (Party)
_____ (Address)".

SECTION 2.2. G.S. 1A-1, Rule 4(j2) reads as rewritten:

"(j2) Proof of service. – Proof of service of process shall be as follows:

(1) Personal Service. – Before judgment by default may be had on personal service, proof of service must be provided in accordance with the requirements of G.S. 1-75.10(1).

(2) Registered or Certified ~~Mail.~~ Mail or Designated Delivery Service. – Before judgment by default may be had on service by registered or certified ~~mail,~~ mail or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, the serving party shall file an affidavit with the court showing proof of such service in accordance with the requirements of ~~G.S. 1-75.10(4).~~ G.S. 1-75.10(4) or G.S. 1-75.10(5), as appropriate. This affidavit together with the return or delivery receipt signed by the person who received the mail or delivery if not the addressee raises a presumption that the person who received the mail or delivery and signed the receipt was an agent of the addressee authorized by appointment or by law to be served or to accept service of process or was a person of suitable age and discretion residing in the addressee's dwelling house or usual place of abode. In the event the presumption described in the preceding sentence is rebutted by proof that the person who received the receipt at the addressee's dwelling house or usual place of abode was not a person of suitable age and discretion residing therein, the statute of limitation may not be pleaded as a defense if the action was initially commenced within the period of limitation and service of process is completed within 60 days from the date the service is declared invalid. Service shall be complete on the day the summons and complaint are delivered to the address.

(3) Publication. – Before judgment by default may be had on service by publication, the serving party shall file an affidavit with the court showing the circumstances warranting the use of service by publication, information, if any, regarding the location of the party served which was used in determining the area in which service by publication was printed and proof of service in accordance with G.S. 1-75.10(2)."

SECTION 2.3. G.S. 1-75.10 reads as rewritten:

"**§ 1-75.10. Proof of service of summons, defendant appearing in action.**

Where the defendant appears in the action and challenges the service of the summons upon him, proof of the service of process shall be as follows:

(1) Personal Service or Substituted Personal Service. –

a. If served by the sheriff of the county or the lawful process officer in this State where the defendant was found, by the officer's certificate thereof, showing place, time and manner of service; or

b. If served by any other person, his affidavit thereof, showing place, time and manner of service; his qualifications to make

service under Rule 4(a) or Rule 4(j3) of the Rules of Civil Procedure; that he knew the person served to be the party mentioned in the summons and delivered to and left with him a copy; and if the defendant was not personally served, he shall state in such affidavit when, where and with whom such copy was left. If such service is made outside this State, the proof thereof may in the alternative be made in accordance with the law of the place where such service is made.

(2) Service of Publication. – In the case of publication, by the affidavit of the publisher or printer, or his foreman or principal clerk, showing the same and specifying the date of the first and last publication, and an affidavit of mailing of a copy of the complaint or notice, as the case may require, made by the person who mailed the same.

(3) Written Admission of Defendant. – The written admission of the defendant, whose signature or the subscription of whose name to such admission shall be presumptive evidence of genuineness.

(4) Service by Registered or Certified Mail. – In the case of service by registered or certified mail, by affidavit of the serving party averring:

a. That a copy of the summons and complaint was deposited in the post office for mailing by registered or certified mail, return receipt requested;

b. That it was in fact received as evidenced by the attached registry receipt or other evidence satisfactory to the court of delivery to the addressee; and

c. That the genuine receipt or other evidence of delivery is attached.

(5) Service by Designated Delivery Service. – In the case of service by designated delivery service, by affidavit of the serving party averring:

a. That a copy of the summons and complaint was deposited with a designated delivery service as authorized under G.S. 1A-1, Rule 4, delivery receipt requested;

b. That it was in fact received as evidenced by the attached delivery receipt or other evidence satisfactory to the court of delivery to the addressee; and

c. That the genuine receipt or other evidence of delivery is attached."

SERVICE OF PLEADINGS AND PAPERS BY FAX (RULE 5(b))

SECTION 3. G.S. 1A-1, Rule 5(b) reads as rewritten:

"(b) Service – How made. – A pleading setting forth a counterclaim or cross claim shall be filed with the court and a copy thereof shall be served on the party against whom it is asserted or on ~~his~~ the party's attorney of record. With respect to all pleadings subsequent to the original complaint and other papers required or permitted to be

served, service with due return may be made in the manner provided for service and return of process in Rule 4 and may be made upon either the party or, unless service upon the party ~~himself~~ personally is ordered by the court, upon ~~his~~ the party's attorney of record. With respect to such other pleadings and papers, service upon the attorney or upon a party may also be made by delivering a copy to ~~him~~ the party or by mailing it to ~~him~~ the party at ~~his~~ the party's last known address or, if no address is known, by filing it with the clerk of court. Delivery of a copy within this rule means handing it to the attorney or to the ~~party; or~~ party, leaving it at the attorney's office with a partner or ~~employee.~~ employee, or by sending it to the attorney's office by a confirmed telefacsimile transmittal for receipt by 5:00 P.M. Eastern Time on a regular business day, as evidenced by a telefacsimile receipt confirmation. If receipt of delivery by telefacsimile is after 5:00 P.M., service will be deemed to have been completed on the next business day. Service by mail shall be complete upon deposit of the pleading or paper enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service."

ATTORNEY'S EMPLOYEE NOT DISQUALIFIED FOR VIDEOTAPE DEPOSITION (RULE 28(c))

SECTION 4. G.S. 1A-1, Rule 28(c) reads as rewritten:

"(c) Disqualification for interest. – Unless the parties agree otherwise by stipulation as provided in Rule 29, no deposition shall be taken before a person who is any of the following:

(1) A relative, employee, or attorney of any of the parties;

(2) A relative or employee of an attorney of the parties;

(3) Financially interested in the action; or

(4) An independent contractor if the contractor or the contractor's principal is under a blanket contract for the court reporting services with an attorney of the parties, party to the action, or party having a financial interest in the action. Notwithstanding the disqualification under this rule, the party desiring to take the deposition under a stipulation shall disclose the disqualification in writing in a Rule 30(b) notice of deposition and shall inform all parties to the litigation on the record of the existence of the disqualification under this rule and of the proposed stipulation waiving the disqualification. Any party opposing the proposed stipulation as provided in the notice of deposition shall give timely written notice of his or her opposition to all parties.

For the purposes of this rule, a blanket contract means a contract to perform court reporting services over a fixed period of time or an indefinite period of time, rather than on a case by case basis, or any other contractual arrangement which compels, guarantees, regulates, or controls the use of particular court reporting services in future cases.

Notwithstanding any other provision of law, a person is prohibited from taking a deposition under any contractual agreement that requires transmission of the original

transcript without the transcript having been certified as provided in Rule 30(f) by the person before whom the deposition was taken.

Notwithstanding the provisions of this subsection, a person otherwise disqualified from taking a deposition under this subsection may take a deposition provided that the deposition is taken by videotape in compliance with Rule 30(b)(4) and Rule 30(f), and the notice for the taking of the deposition states the name of the person before whom the deposition will be taken and that person's relationship, if any, to a party or a party's attorney, provided that the deposition is also recorded by stenographic means by a nondisqualified person."

MEDIATION OF DISCOVERY DISPUTES (RULE 37)

SECTION 5. G.S. 1A-1, Rule 37(a) reads as rewritten:

"(a) Motion for order compelling discovery. – A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) Appropriate Court. – An application for an order to a party or a deponent who is not a party may be made to a judge of the court in which the action is pending, or, on matters relating to a deposition where the deposition is being taken in this State, to a judge of the court in the county where the deposition is being taken, as defined by Rule 30(h).

(2) Motion. – If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question shall complete the examination on all other matters before he adjourns the examination in order to apply for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(c).

(3) Evasive or Incomplete Answer. – For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) Award of Expenses of Motion. – If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent

whose conduct necessitated the motion or the party advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner."

PRESERVING EXCEPTIONS TO RULINGS (RULE 46)

SECTION 6. G.S. 1A-1, Rule 46 reads as rewritten:

"**Rule 46. Objections and exceptions.**

(a) Rulings on admissibility of evidence. –

(1) When there is objection to the admission of evidence on the ground that the witness is for a specified reason incompetent or not qualified or disqualified, it shall be deemed that a like objection has been made to any subsequent admission of evidence from the witness in question. Similarly, when there is objection to the admission of evidence involving a specified line of questioning, it shall be deemed that a like objection has been taken to any subsequent admission of evidence involving the same line of questioning.

(2) If there is proper objection to the admission of evidence and the objection is overruled, the ruling of the court shall be deemed excepted to by the party making the objection. If an objection to the admission of evidence is sustained or if the court for any reason excludes evidence offered by a party, the ruling of the court shall be deemed excepted to by the party offering the evidence.

(3) No objections are necessary with respect to questions propounded to a witness by the court or a juror but it shall be deemed that each such question has been properly objected to and that the objection has been overruled and that an exception has been taken to the ruling of the court by all parties to the action.

(b) ~~Rulings~~ Pretrial rulings, interlocutory orders, trial rulings, and other orders not directed to the admissibility of evidence. – With respect to ~~rulings~~pretrial rulings, interlocutory orders, trial rulings, and other orders of the court not directed to the admissibility of evidence, formal objections and exceptions are unnecessary. In order to

preserve an exception to any such ruling or order or to the court's failure to make any such ruling or order, it shall be sufficient if a party, at the time the ruling or order is made or sought, makes known to the court ~~his~~ the party's objection to the action of the court or makes known the action ~~which he~~ that the party desires the court to take and ~~his ground therefor;~~ the party's grounds for its position. ~~and if~~ If a party has no opportunity to object or except to a ruling or order at the time it is made, the absence of an objection or exception does not thereafter prejudice ~~him.~~that party; however, in order to preserve exceptions to these rulings and orders for appellate review, a party shall promptly present to the court a request, objection, or motion that states the specific grounds for the ruling that the party desires the court to make upon having an opportunity to do so.

~~(c) Instruction. If there is error, either in the refusal of the judge to grant a prayer for instructions, or in granting a prayer, or in his instructions generally, the same is deemed excepted to without the filing of any formal objections.~~"

EXPAND CIRCUMSTANCES FOR SUBSTITUTION OF A JUDGE (RULE 63)

SECTION 7. G.S. 1A-1, Rule 63 reads as rewritten:

"**Rule 63. Disability of a judge.**

If by reason of death, ~~sickness,~~ sickness or other disability, resignation, retirement, expiration of term, removal from office, or other reason, a judge before whom an action has been tried or a hearing has been held is unable to perform the duties to be performed by the court under these rules after a verdict is returned or ~~findings of fact and conclusions of law are filed,~~ a trial or hearing is otherwise concluded, then those ~~duties~~ duties, including entry of judgment, may be performed:

(1) In actions in the superior court by the judge senior in point of continuous service on the superior court regularly holding the courts of the district. If ~~such~~ this judge is ~~himself~~ under a disability, then the resident judge of the district senior in point of service on the superior court may perform those duties. If a resident judge, while holding court in ~~his~~ the judge's own district suffers disability and there is no other resident judge of the district, such duties may be performed by a judge of the superior court designated by the Chief Justice of the Supreme Court.

(2) In actions in the district court, by the chief judge of the district, or if the chief judge is disabled, by any judge of the district court designated by the Director of the Administrative Office of the Courts.

If the substituted judge is satisfied that he or she cannot perform those duties because ~~he~~ the judge did not preside at the trial or hearing or for any other reason, ~~he~~ the judge ~~may in his discretion~~ may, in the judge's discretion, grant a new ~~trial.~~ trial or hearing."

ENHANCED NOTICE FOR TEMPORARY RESTRAINING ORDER (RULE 65)

SECTION 8. G.S. 1A-1, Rule 65(b) reads as rewritten:

"(b) Temporary restraining order; notice; hearing; duration. – A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (i) it clearly appears from specific facts shown by affidavit or by verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before ~~notice can be served and a hearing had thereon.~~ the adverse party or that party's attorney can be heard in opposition, and (ii) the applicant's attorney certifies to the court in writing the efforts, if any, that have been made to give the notice and the reasons supporting the claim that notice should not be required. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the judge fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice and a motion for a preliminary injunction is made, it shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character; and when the motion comes on for hearing, the party who obtained the temporary restraining order shall proceed with a motion for a preliminary injunction, and, if he does not do so, the judge shall dissolve the temporary restraining order. On two days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the judge may prescribe, the adverse party may appear and move its dissolution or modification and in that event the judge shall proceed to hear and determine such motion as expeditiously as the ends of justice require. Damages may be awarded in an order for dissolution as provided in section (e)."

EFFECTIVE DATE

SECTION 9. This act becomes effective October 1, 2001, and applies to actions filed on or after that date.

HOUSE BILL 439

Short Title:	Civil Procedure Rule Changes.	(Public)
Sponsors:	Representatives Haire, Pope; and Barefoot.	
Referred to:	Judiciary II.	

March 1, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE RULES OF CIVIL PROCEDURE AS RECOMMENDED BY THE CIVIL LITIGATION STUDY COMMISSION.

The General Assembly of North Carolina enacts:

SERVICE BY NOTARIES (RULE 4(a))

SECTION 1. G.S. 1A-1, Rule 4(a) reads as rewritten:

"(a) Summons – Issuance; who may serve. – Upon the filing of the complaint, summons shall be issued forthwith, and in any event within five days. The complaint and summons shall be delivered to some proper person for service. In this State, such proper person shall be the sheriff of the county where service is to be ~~made~~ made, a notary public commissioned under Chapter 10A of the General Statutes, or some other person duly authorized by law to serve summons. Outside this State, such proper person shall be anyone who is not a party and is not less than 21 years of age or anyone duly authorized to serve summons by the law of the place where service is to be made. Upon request of the plaintiff separate or additional summons shall be issued against any defendants. A summons is issued when, after being filled out and dated, it is signed by the officer having authority to do so. The date the summons bears shall be prima facie evidence of the date of issue."

SUMMONS ALIVE FOR 60 DAYS (RULE 4(c))

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

"(c) Summons – Return. – Personal service or substituted personal service of summons as prescribed by Rule 4(j)(1) a and b must be made within ~~30~~60 days after the date of the issuance of ~~summons, except that in tax and assessment foreclosures under G.S. 47-108.25 or G.S. 105-374 the time allowed for service is 60 days.~~ summons. When a summons has been served upon every party named in the summons, it shall be returned immediately to the clerk who issued it, with notation thereon of its service.

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

SERVICE BY DESIGNATED DELIVERY SERVICE (RULE 4(j)) AND CONFORMING CHANGES TO PROOF OF SERVICE

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

"(j) Process – Manner of service to exercise personal jurisdiction. – In any action commenced in a court of this State having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in G.S. 1-75.4, the manner of service of process within or without the State shall be as follows:

(1) Natural Person. – Except as provided in subsection (2) below, upon a natural ~~person:~~person by one of the following:

a. By delivering a copy of the summons and of the complaint to him or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing ~~therein; or~~therein.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the party to be served, and delivering to the addressee.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the party to be served, delivering to the addressee, and obtaining a delivery receipt.

(2) Natural Person under Disability. – Upon a natural person under disability by serving process in any manner prescribed in this section (j) for service upon a natural person and, in addition, where required by paragraph a or b below, upon a person therein designated.

a. Where the person under disability is a minor, process shall be served separately in any manner prescribed for service upon a natural person upon a parent or guardian having custody of the child, or if there be none, upon any other person having the care and control of the child. If there is no parent, guardian, or other person having care and control of the child when service is made upon the child, then service of process must also be made

upon a guardian ad litem who has been appointed pursuant to Rule 17.

b. If the plaintiff actually knows that a person under disability is under guardianship of any kind, process shall be served separately upon his guardian in any manner applicable and appropriate under this section (j). If the plaintiff does not actually know that a guardian has been appointed when service is made upon a person known to him to be incompetent to have charge of his affairs, then service of process must be made upon a guardian ad litem who has been appointed pursuant to Rule 17.

(3) The State. – Upon the State by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney ~~general or~~ general; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General or to a deputy or assistant attorney ~~general.~~general; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or to a deputy or assistant attorney general, delivering to the addressee, and obtaining a delivery receipt.

(4) An Agency of the State. –

a. Upon an agency of the State by personally delivering a copy of the summons and of the complaint to the process agent appointed by the agency in the manner hereinafter ~~provided~~ provided; ~~or~~ by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to said process ~~agent.~~agent; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the process agent, delivering to the addressee, and obtaining a delivery receipt.

b. Every agency of the State shall appoint a process agent by filing with the Attorney General the name and address of an agent upon whom process may be served.

c. If any agency of the State fails to comply with paragraph b above, then service upon such agency may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney ~~general or~~ general; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General, or to a deputy or assistant attorney ~~general.~~ general; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. §

7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or to a deputy or assistant attorney general, delivering to the addressee, and obtaining a delivery receipt.

d. For purposes of this rule, the term "agency of the State" includes every agency, institution, board, commission, bureau, department, division, council, member of Council of State, or officer of the State government of the State of North Carolina, but does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State, county or city boards of education, other local public districts, units, or bodies of any kind, or private corporations created by act of the General Assembly.

(5) Counties, Cities, Towns, Villages and Other Local Public Bodies. –

a. Upon a city, town, or village by personally delivering a copy of the summons and of the complaint to its mayor, city manager or ~~clerk or~~clerk; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its mayor, city manager or ~~clerk.~~clerk; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the mayor, city manager, or clerk, delivering to the addressee, and obtaining a delivery receipt.

b. Upon a county by personally delivering a copy of the summons and of the complaint to its county manager or to the chairman, clerk or any member of the board of commissioners for such ~~county or~~ county; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its county manager or to the chairman, clerk, or any member of this board of commissioners for such ~~county.~~county; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the county manager or to the chairman, clerk, or any member of the board of commissioners of that county, delivering to the addressee, and obtaining a delivery receipt.

c. Upon any other political subdivision of the State, any county or city board of education, or other local public district, unit, or body of any kind (i) by personally delivering a copy of the summons and of the complaint to an officer or director thereof, ~~or~~ (ii) by personally delivering a copy of the summons and of the complaint to an agent or attorney-in-fact authorized by appointment or by statute to be served or to accept service in its behalf, ~~or~~ (iii) by mailing a copy of the summons and of the

complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent, or attorney-in-fact as specified in (i) and ~~(ii).~~(ii); or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, agent, or attorney-in-fact as specified in (i) and (ii), delivering to the addressee, and obtaining a delivery receipt.

d. In any case where none of the officials, officers or directors specified in paragraphs a, b and c can, after due diligence, be found in the State, and that fact appears by affidavit to the satisfaction of the court, or a judge thereof, such court or judge may grant an order that service upon the party sought to be served may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or any deputy or assistant attorney general of the State of North ~~Carolina, or~~ Carolina: by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General or any deputy or assistant attorney general of the State of North ~~Carolina.~~Carolina; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or any deputy or assistant attorney general of the State of North Carolina, delivering to the addressee, and obtaining a delivery receipt.

(6) Domestic or Foreign Corporation. – Upon a domestic or foreign corporation:

a. By delivering a copy of the summons and of the complaint to an officer, director, or managing agent of the corporation or by leaving copies thereof in the office of such officer, director, or managing agent with the person who is apparently in charge of the office; or

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service ~~or [of]~~ of process or by serving process upon such agent or the party in a manner specified by any ~~statute.~~statute;

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director or agent to be served as specified in paragraphs ~~a and b.~~a. and b.; or

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, or agent to be

served as specified in paragraphs a. and b., delivering to the addressee, and obtaining a delivery receipt.

(7) Partnerships. – Upon a general or limited partnership:

a. By delivering a copy of the summons and of the complaint to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its ~~behalf, or~~ behalf; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its ~~behalf, or~~ behalf; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to any general partner or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf, delivering to the addressee, and obtaining a delivery receipt; or by leaving copies thereof in the office of such general partner, attorney-in-fact or agent with the person who is apparently in charge of the office.

b. If relief is sought against a partner specifically, a copy of the summons and of the complaint must be served on such partner as provided in this section (j).

(8) Other Unincorporated Associations and Their Officers. – Upon any unincorporated association, organization, or society other than a partnership:

a. By delivering a copy of the summons and of the complaint to an officer, director, managing agent or member of the governing body of the unincorporated association, organization or society, or by leaving copies thereof in the office of such officer, director, managing agent or member of the governing body with the person who is apparently in charge of the office; ~~or~~

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be -served or to accept service of process or by serving process upon such agent or the party in a manner specified by any ~~statute.~~statute;

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent or member of the governing body to be served as specified in paragraphs ~~a and b.~~a. and b.; or

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, agent, or member of the governing body to be served as specified in paragraphs a.

and b., delivering to the addressee, and obtaining a delivery receipt.

(9) Service upon a foreign state or a political subdivision, agency, or instrumentality thereof shall be effected pursuant to 28 U.S.C. § 1608."

SECTION 3.1. G.S. 1A-1, Rule 4(j1) reads as rewritten:

"(j1) Service by publication on party that cannot otherwise be served. – A party that cannot with due diligence be served by personal ~~delivery or~~ delivery, registered or certified ~~mail~~ mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) may be served by publication. Except in actions involving jurisdiction in rem or quasi in rem as provided in section (k), service of process by publication shall consist of publishing a notice of service of process by publication once a week for three successive weeks in a newspaper that is qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 and circulated in the area where the party to be served is believed by the serving party to be located, or if there is no reliable information concerning the location of the party then in a newspaper circulated in the county where the action is pending. If the party's post-office address is known or can with reasonable diligence be ascertained, there shall be mailed to the party at or immediately prior to the first publication a copy of the notice of service of process by publication. The mailing may be omitted if the post-office address cannot be ascertained with reasonable diligence. Upon completion of such service there shall be filed with the court an affidavit showing the publication and mailing in accordance with the requirements of G.S. 1-75.10(2), the circumstances warranting the use of service by publication, and information, if any, regarding the location of the party served.

The notice of service of process by publication shall (i) designate the court in which the action has been commenced and the title of the action, which title may be indicated sufficiently by the name of the first plaintiff and the first defendant; (ii) be directed to the defendant sought to be served; (iii) state either that a pleading seeking relief against the person to be served has been filed or has been required to be filed therein not later than a date specified in the notice; (iv) state the nature of the relief being sought; (v) require the defendant being so served to make defense to such pleading within 40 days after a date stated in the notice, exclusive of such date, which date so stated shall be the date of the first publication of notice, or the date when the complaint is required to be filed, whichever is later, and notify the defendant that upon his failure to do so the party seeking service of process by publication will apply to the court for the relief sought; (vi) in cases of attachment, state the information required by G.S. 1-440.14; (vii) be subscribed by the party seeking service or his attorney and give the post-office address of such party or his attorney; and (viii) be substantially in the following form:

NOTICE OF SERVICE OF PROCESS BY PUBLICATION

STATE OF NORTH CAROLINA _____ COUNTY

IN THE _____ COURT

[Title of action or special proceeding] [To Person to be served]:

Take notice that a pleading seeking relief against you (has been filed) (is required to be filed not later than _____, ____) in the above-entitled (action) (special proceeding). The nature of the relief being sought is as follows:
(State nature).

You are required to make defense to such pleading not later than (_____, ____) and upon your failure to do so the party seeking service against you will apply to the court for the relief sought.

This, the _____ day of _____, ____

_____ (Attorney) (Party)

_____ (Address)".

SECTION 3.2. G.S. 1A-1, Rule 4(j2) reads as rewritten:

"(j2) Proof of service. – Proof of service of process shall be as follows:

(1) Personal Service. – Before judgment by default may be had on personal service, proof of service must be provided in accordance with the requirements of G.S. 1-75.10(1).

(2) Registered or Certified ~~Mail.~~ Mail or Designated Delivery Service. – Before judgment by default may be had on service by registered or certified ~~mail,~~ mail or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, the serving party shall file an affidavit with the court showing proof of such service in accordance with the requirements of ~~G.S. 1-75.10(4). G.S.~~ 1-75.10(4) or G.S. 1-75.10(5), as appropriate. This affidavit together with the return or delivery receipt signed by the person who received the mail or delivery if not the addressee raises a presumption that the person who received the mail or delivery and signed the receipt was an agent of the addressee authorized by appointment or by law to be served or to accept service of process or was a person of suitable age and discretion residing in the addressee's dwelling house or usual place of abode. In the event the presumption described in the preceding sentence is rebutted by proof that the person who received the receipt at the addressee's dwelling house or usual place of abode was not a person of suitable age and discretion residing therein, the statute of limitation may not be pleaded as a defense if the action was initially commenced within the period of limitation and service of process is completed within 60 days from the date the service is declared invalid. Service shall be complete on the day the summons and complaint are delivered to the address.

(3) Publication. – Before judgment by default may be had on service by publication, the serving party shall file an affidavit with the court showing the circumstances warranting the use of service by publication, information, if any, regarding the location of the party served which was used in determining the area in which service by publication was printed and proof of service in accordance with G.S. 1-75.10(2)."

SECTION 3.3. G.S. 1-75.10 reads as rewritten:

"**§ 1-75.10. Proof of service of summons, defendant appearing in action.**

Where the defendant appears in the action and challenges the service of the summons upon him, proof of the service of process shall be as follows:

(1) Personal Service or Substituted Personal Service. –

a. If served by the sheriff of the county or the lawful process officer in this State where the defendant was found, by the officer's certificate thereof, showing place, time and manner of service; or

b. If served by any other person, his affidavit thereof, showing place, time and manner of service; his qualifications to make service under Rule 4(a) or Rule 4(j3) of the Rules of Civil Procedure; that he knew the person served to be the party mentioned in the summons and delivered to and left with him a copy; and if the defendant was not personally served, he shall state in such affidavit when, where and with whom such copy was left. If such service is made outside this State, the proof thereof may in the alternative be made in accordance with the law of the place where such service is made.

(2) Service of Publication. – In the case of publication, by the affidavit of the publisher or printer, or his foreman or principal clerk, showing the same and specifying the date of the first and last publication, and an affidavit of mailing of a copy of the complaint or notice, as the case may require, made by the person who mailed the same.

(3) Written Admission of Defendant. – The written admission of the defendant, whose signature or the subscription of whose name to such admission shall be presumptive evidence of genuineness.

(4) Service by Registered or Certified Mail. – In the case of service by registered or certified mail, by affidavit of the serving party averring:

a. That a copy of the summons and complaint was deposited in the post office for mailing by registered or certified mail, return receipt requested;

b. That it was in fact received as evidenced by the attached registry receipt or other evidence satisfactory to the court of delivery to the addressee; and

c. That the genuine receipt or other evidence of delivery is attached.

(5) Service by Designated Delivery Service. -- In the case of service by designated delivery service, by affidavit of the serving party averring:

a. That a copy of the summons and complaint was deposited with a designated delivery service as authorized under G.S. 1A-1, Rule 4, delivery receipt requested;

b. That it was in fact received as evidenced by the attached delivery receipt or other evidence satisfactory to the court of delivery to the addressee; and

c. That the genuine receipt or other evidence of delivery is attached."

SERVICE OF PLEADINGS AND PAPERS BY FAX (RULE 5(b))

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

"(b) Service – How made. – A pleading setting forth a counterclaim or cross claim shall be filed with the court and a copy thereof shall be served on the party against whom it is asserted or on ~~his~~ the party's attorney of record. With respect to all pleadings subsequent to the original complaint and other papers required or permitted to be served, service with due return may be made in the manner provided for service and return of process in Rule 4 and may be made upon either the party or, unless service upon the party ~~himself~~ personally is ordered by the court, upon ~~his~~ the party's attorney of record. With respect to such other pleadings and papers, service upon the attorney or upon a party may also be made by delivering a copy to ~~him~~ the party or by mailing it to ~~him~~ the party at ~~his~~ the party's last known address or, if no address is known, by filing it with the clerk of court. Delivery of a copy within this rule means handing it to the attorney or to the ~~party; or~~ party, leaving it at the attorney's office with a partner or ~~employee.~~ employee, or by sending it to the attorney's office by a confirmed telefacsimile transmittal for receipt by 5:00 p.m. Eastern Time on a regular business day, as evidenced by a telefacsimile receipt confirmation. If receipt of delivery by telefacsimile is after 5:00 p.m., service will be deemed to have been completed on the next business day. Service by mail shall be complete upon deposit of the pleading or paper enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service."

ATTORNEY'S EMPLOYEE NOT DISQUALIFIED FOR VIDEOTAPE DEPOSITION (RULE 28(c))

SECTION 5. G.S. 1A-1, Rule 28(c) reads as rewritten:

"(c) Disqualification for interest. – Unless the parties agree otherwise by stipulation as provided in Rule 29, no deposition shall be taken before a person who is any of the following:

(1) A relative, employee, or attorney of any of the parties;

(2) A relative or employee of an attorney of the parties;

(3) Financially interested in the action; or

(4) An independent contractor if the contractor or the contractor's principal is under a blanket contract for the court reporting services with an attorney of the parties, party to the action, or party having a financial interest in the action. Notwithstanding the disqualification under this rule, the party desiring to take the deposition under a stipulation shall disclose the disqualification in writing in a Rule 30(b) notice of deposition and shall inform all parties to the litigation on the

record of the existence of the disqualification under this rule and of the proposed stipulation waiving the disqualification. Any party opposing the proposed stipulation as provided in the notice of deposition shall give timely written notice of his or her opposition to all parties.

For the purposes of this rule, a blanket contract means a contract to perform court reporting services over a fixed period of time or an indefinite period of time, rather than on a case by case basis, or any other contractual arrangement which compels, guarantees, regulates, or controls the use of particular court reporting services in future cases.

Notwithstanding any other provision of law, a person is prohibited from taking a deposition under any contractual agreement that requires transmission of the original transcript without the transcript having been certified as provided in Rule 30(f) by the person before whom the deposition was taken.

Notwithstanding the provisions of this subsection, a person otherwise disqualified from taking a deposition under this subsection may take a deposition provided that the deposition is taken by videotape in compliance with Rule 30(b)(4) and Rule 30(f), and the notice for the taking of the deposition states the name of the person before whom the deposition will be taken and that person's relationship, if any, to a party or a party's attorney, provided that the deposition is also recorded by stenographic means by a nondisqualified person."

MEDIATION OF DISCOVERY DISPUTES (RULE 37)

SECTION 6. G.S. 1A-1, Rule 37(a) reads as rewritten:

"(a) Motion for order compelling discovery. – A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) Appropriate Court. – An application for an order to a party or a deponent who is not a party may be made to a judge of the court in which the action is pending, or, on matters relating to a deposition where the deposition is being taken in this State, to a judge of the court in the county where the deposition is being taken, as defined by Rule 30(h).

(2) Motion. – If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When

taking a deposition on oral examination, the proponent of the question shall complete the examination on all other matters before he adjourns the examination in order to apply for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(c).

(3) Evasive or Incomplete Answer. – For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) Award of Expenses of Motion. – If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner."

PRESERVING EXCEPTIONS TO RULINGS (RULE 46)

SECTION 7. G.S. 1A-1, Rule 46 reads as rewritten:

"Rule 46. Objections and exceptions.

(a) Rulings on admissibility of evidence. –

(1) When there is objection to the admission of evidence on the ground that the witness is for a specified reason incompetent or not qualified or disqualified, it shall be deemed that a like objection has been made to any subsequent admission of evidence from the witness in question. Similarly, when there is objection to the admission of evidence involving a specified line of questioning, it shall be deemed that a like objection has been taken to any subsequent admission of evidence involving the same line of questioning.

(2) If there is proper objection to the admission of evidence and the objection is overruled, the ruling of the court shall be deemed excepted to by the party making the objection. If an objection to the admission of evidence is sustained or if the court for any reason excludes evidence offered by a party, the ruling of the court shall be deemed excepted to by the party offering the evidence.

(3) No objections are necessary with respect to questions propounded to a witness by the court or a juror but it shall be deemed that each such question has been properly objected to and that the objection has been overruled and that an exception has been taken to the ruling of the court by all parties to the action.

(b) ~~Rulings~~ Pretrial rulings, interlocutory orders, trial rulings, and other orders not directed to the admissibility of evidence. – With respect to ~~rulings~~pretrial rulings, interlocutory orders, trial rulings, and other orders of the court not directed to the admissibility of evidence, formal objections and exceptions are unnecessary. In order to preserve an exception to any such ruling or order or to the court's failure to make any such ruling or order, it shall be sufficient if a party, at the time the ruling or order is made or sought, makes known to the court ~~his~~ the party's objection to the action of the court or makes known the action ~~which he~~ that the party desires the court to take and ~~his ground therefor;~~ the party's grounds for its position. ~~and if~~ If a party has no opportunity to object or except to a ruling or order at the time it is made, the absence of an objection or exception does not thereafter prejudice ~~him.~~ that party; however, in order to preserve exceptions to these rulings and orders for appellate review, a party shall promptly present to the court a request, objection, or motion that states the specific grounds for the ruling that the party desires the court to make upon having an opportunity to do so.

~~(c) Instruction. If there is error, either in the refusal of the judge to grant a prayer for instructions, or in granting a prayer, or in his instructions generally, the same is deemed excepted to without the filing of any formal objections.~~"

EXPAND CIRCUMSTANCES FOR SUBSTITUTION OF A JUDGE (RULE 63)

SECTION 8. G.S. 1A-1, Rule 63 reads as rewritten:

"**Rule 63. Disability of a judge.**

If by reason of death, ~~sickness,~~ sickness or other disability, resignation, retirement, expiration of term, removal from office, or other reason, a judge before whom an action has been tried or a hearing has been held is unable to perform the duties to be performed by the court under these rules after a verdict is returned or ~~findings of fact and conclusions of law are filed,~~ a trial or hearing is otherwise concluded, then those ~~duties~~ duties, including entry of judgment, may be performed:

(1) In actions in the superior court by the judge senior in point of continuous service on the superior court regularly holding the courts of the district. If ~~such~~ this judge is ~~himself~~ under a disability, then the resident judge of the district senior in point of service on the superior court may perform those duties. If a resident judge, while holding court in ~~his~~ the judge's own district suffers disability and there is no other resident judge of the district, such duties may be performed by a judge of the superior court designated by the Chief Justice of the Supreme Court.

(2) In actions in the district court, by the chief judge of the district, or if the chief judge is disabled, by any judge of the district court designated by the Director of the Administrative Office of the Courts.

If the substituted judge is satisfied that he or she cannot perform those duties because ~~he~~ the judge did not preside at the trial or hearing or for any other reason, ~~he~~ the judge ~~may in his discretion~~ may, in the judge's discretion, grant a new ~~trial.~~ trial or hearing."

ENHANCED NOTICE FOR TEMPORARY RESTRAINING ORDER (RULE 65)

SECTION 9. G.S. 1A-1, Rule 65(b) reads as rewritten:

"(b) Temporary restraining order; notice; hearing; duration. – A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (i) it clearly appears from specific facts shown by affidavit or by verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before ~~notice can be served and a hearing had thereon.~~ the adverse party or that party's attorney can be heard in opposition, and (ii) the applicant's attorney certifies to the court in writing the efforts, if any, that have been made to give the notice and the reasons supporting the claim that notice should not be required. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the judge fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice and a motion for a preliminary injunction is made, it shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character; and when the motion comes on for hearing, the party who obtained the temporary restraining order shall proceed with a motion for a preliminary injunction, and, if he does not do so, the judge shall dissolve the temporary restraining order. On two days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the judge may prescribe, the adverse party may appear and move its dissolution or modification and in that event the judge shall proceed to hear and determine such motion as expeditiously as the ends of justice require. Damages may be awarded in an order for dissolution as provided in section (e)."

EFFECTIVE DATE

SECTION 10. This act becomes effective October 1, 2001, and applies to actions filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 440
PROPOSED COMMITTEE SUBSTITUTE H440-CSSK-10 [v.2]

3/28/2001 7:05:16 PM

Short Title: Embalmers and Funeral Directors-AB. (Public)

Sponsors:

Referred to:

March 1, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE EMBALMERS AND FUNERAL DIRECTORS LAW OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-210.18(b) reads as rewritten:

"(b) The North Carolina Board of Mortuary Science is created ~~as a continuation of the North Carolina Board of Embalmers and Funeral Directors. The Board is the agency for regulation of~~ and shall regulate the practice of funeral service in this State. The Board shall have nine members as follows:

(1) Four funeral service licensees or persons holding both funeral director's license and an embalmer's license,

(2) Two persons holding a funeral director's license or a funeral service license, and

(3) Three public members.

(b1) A member's term shall be three years and shall expire on December 31 or when his or her successor has been duly elected or appointed. No member may serve more than two complete consecutive terms.

(b2) The six seats on the Board for licensees shall be filled in an election in which every person licensed to practice embalming, funeral directing, or funeral service in this State may vote. No licensee may be nominated, elected, or serve unless he holds a North Carolina license in the class designated for the seat and unless he is engaged in full-time employment in this State in a practice authorized by his license. Any vacancy occurring in an elective seat on the Board shall be filled for the unexpired term by majority vote of the remaining Board members. The six licensed members of the board shall have full voting authority.

(b3) The public members of the Board shall have full voting authority. They shall be appointed by the Governor and may neither be licensed under this Article nor employed by a person who is. A vacancy occurring in a public member's seat shall be filled for the unexpired term by the Governor."

SECTION 2. G.S. 90-210.20 reads as rewritten:

"**§ 90-210.20. Definitions.**

(a) "Advertisement" means the publication, dissemination, circulation or placing before the public, or causing directly or indirectly to be made, published, disseminated or placed before the public, any announcement or statement in a newspaper, magazine, or other publication, or in the form of a book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card, label or tag, or over any ~~radio or~~ radio, television ~~station.~~ station, or electronic medium.

(b) "Board" means the North Carolina ~~State~~ Board of Mortuary Science.

(c) "Burial" includes interment in any form, cremation and the transportation of the dead human body as necessary therefor.

(c1) "Dead human bodies", as used in this Article includes fetuses beyond the second trimester and the ashes from cremated bodies.

(d) "Embalmer" means any person engaged in the practice of ~~"embalming" as defined below.~~embalming.

(e) "Embalming" means the preservation and disinfection or attempted preservation and disinfection of ~~the~~ dead human bodies by application of chemicals externally or internally or both and the practice of restorative art including the restoration or attempted restoration of the appearance of ~~the~~ a dead human body.

(e1) "Funeral chapel" means a chapel or other facility separate from the funeral establishment premises for the reposing of dead human bodies, visitation or funeral ~~ceremony, which~~ ceremony that is owned, operated, or maintained by a funeral establishment or other licensee under this Article, and ~~which~~ that does not use the word "funeral" in its name, on a sign, in a directory, in advertising or in any other manner; in which or on the premises of which there is not displayed or offered for sale any caskets or other funeral merchandise; in which or on the premises of which there is not located any funeral business office or a preparation room; in which or on the premises of which no funeral sales, financing, or arrangements are made; and which no owner, operator, employee, or agent thereof represents the chapel to be a funeral establishment.

(f) "Funeral directing" means engaging in the practice of funeral service except ~~embalming as hereinbefore defined.~~embalming.

(g) "Funeral director" means any person engaged in the practice of ~~"funeral directing" as defined above.~~funeral directing.

(h) "Funeral establishment" means every place or premises devoted to or used in the care, arrangement and preparation for the funeral and final disposition of dead human bodies and maintained for the convenience of the public in connection with dead human bodies or as the place for carrying on the profession of funeral service.

(i) "Funeral service licensee" means a person who is duly licensed and engaged in the ~~"practice of funeral service" as below defined.~~practice of funeral service.

(j) "Funeral ~~service profession"~~ service" means the aggregate of all funeral service licensees and their duties and responsibilities in connection with the funeral as an organized, purposeful, time-limited, flexible, group-centered response to death.

(k) "Practice of funeral service" means engaging in the care or disposition of dead human bodies or in the practice of disinfecting and preparing by embalming or otherwise dead human bodies for the funeral service, transportation, burial or cremation, or in the practice of funeral directing or embalming as presently known, whether under these titles or designations or otherwise. ~~It~~ "Practice of funeral service" also means engaging in making arrangements for funeral service, selling funeral supplies to the public or making financial arrangements for the rendering of such services or the sale of such supplies.

(l) "Resident trainee" means a person who is engaged in preparing to become licensed for the practice of funeral directing, embalming or funeral service under the personal supervision and instruction of a person duly licensed for the practice of funeral directing, embalming or funeral service in the State of North Carolina under the provisions of this Chapter, and who is duly registered as ~~such~~ a resident trainee with the Board."

SECTION 3. G.S. 90-210.25 reads as rewritten:

"**§ 90-210.25. Licensing.**

(a) Qualifications, Examinations, Resident Traineeship and Licensure. –

(1) To be licensed for the practice of funeral directing under this Article, a person must:

a. Be at least 18 years of age.

b. Be of good moral character.

c. Have completed a minimum of 32 semester hours or 48 quarter hours of ~~instruction in a course of study~~instruction, including the subjects set out in ~~item~~ sub-part e.1. of this ~~subsection in a mortuary science college approved by the Board, or be a graduate of~~ subsection, as prescribed by a mortuary science college approved by the ~~Board.~~ Board or a school of mortuary science accredited by the American Board of Funeral Service Education.

d. Have completed 12 months of resident traineeship as a funeral director, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under ~~item~~ sub-subdivision c. of this ~~subsection.~~subdivision.

e. Have passed an oral or written funeral director examination on the following subjects:

1. Psychology, sociology, funeral directing, business law, funeral law, funeral management, and accounting.

2. Repealed by 1997-399, s. 5.

3. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies.

(2) To be licensed for the practice of embalming under this Article, a person must:
a. Be at least 18 years of age.
b. Be of good moral character.
c. Be a graduate of a mortuary science college approved by the Board.
d. Have completed 12 months of resident traineeship as an embalmer pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under ~~item~~ sub-subdivision c. of this ~~subsection.~~subdivision.
e. Have passed an oral or written embalmer examination on the following subjects:
1. Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.
2. Repealed by 1997-399, s. 6.
3. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies.

(3) To be licensed for the practice of funeral service under this Article, a person must:
a. Be at least 18 years of age.
b. Be of good moral character.
c. Be a graduate of a mortuary science college approved by the ~~Board.~~ Board or a school of mortuary science accredited by the American Board of Funeral Service Education. Have completed a minimum of 32 semester hours or 48 quarter hours of instruction, including the subjects set out in item sub-part e.1. of this subsection, as prescribed by a mortuary science college approved by the Board or a school of mortuary science accredited by the American Board of Funeral Service Education.
d. Have completed 12 months of resident traineeship as a funeral service licensee, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under item c. of this subsection.
e. Have passed an oral or written funeral service examination on the following subjects:
1. Psychology, sociology, funeral directing, business law, funeral law, funeral management, and accounting.
2. Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.

3. Repealed by 1997-399, s. 7.
4. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies.

(4) a. A person desiring to become a resident trainee shall apply to the Board on a form provided by the Board. The application shall state that the applicant is not less than 18 years of age, of good moral character, and is the graduate of a high school or the equivalent thereof, and shall indicate the licensee under whom the applicant expects to train. A person training to become an embalmer may serve under either a licensed embalmer or a funeral service licensee. A person training to become a funeral director may serve under either a licensed funeral director or a funeral service licensee. A person training to become a funeral service licensee shall serve under a funeral service licensee. The application must be sustained by oath of the applicant and be accompanied by the appropriate fee. When the Board is satisfied as to the qualifications of an applicant it shall instruct the secretary to issue a certificate of resident traineeship.

b. When a resident trainee leaves the proctorship of the licensee under whom the trainee has worked, the licensee shall file with the Board an affidavit showing the length of time served with the licensee by the trainee, and the affidavit shall be made a matter of record in the Board's office. The licensee shall deliver a copy of the affidavit to the trainee.

c. A person who has not completed the traineeship and wishes to do so under a licensee other than the one whose name appears on the original certificate may reapply to the Board for approval, without payment of an additional fee.

d. A certificate of resident traineeship shall be signed by the resident trainee and upon payment of the renewal fee shall be renewable one year after the date of original registration; but the certificate may not be renewed more than one time. The Board shall mail to each registered trainee at his last known address a notice that the renewal fee is due and that, if not paid within 30 days of the notice, the certificate will be canceled. A penalty, in addition to the renewal fee, shall be charged for a late renewal, but the renewal of the registration of any resident trainee who is engaged in the active military service of the United States at the time renewal is due may, at the discretion of the Board, be held in abeyance for the duration of that service without penalties. No credit shall be allowed for the

12-month period of resident traineeship that shall have been completed more than three years preceding the examination for a license.

e. All registered resident trainees shall report to the Board at least once every ~~three months~~ month during traineeship upon forms provided by the Board listing the work which has been completed during the preceding ~~three months~~ month of resident traineeship. The data contained in the reports shall be certified as correct by the licensee under whom the trainee has served during the period and by the licensed person who is managing the funeral service establishment. Each report shall list the following:
   1. For funeral director trainees, the conduct of any funerals during the relevant time period,
   2. For embalming trainees, the embalming of any bodies during the relevant time period,
   3. For funeral service trainees, both of the activities named in 1 and 2 of this subsection, engaged in during the relevant time period.

f. To meet the resident traineeship requirements of G.S. 90-210.25(a)(1), G.S. 90-210.25(a)(2) and G.S. 90-210.25(a)(3) the following must be shown by the affidavit(s) of the licensee(s) under whom the trainee worked:
   1. That the funeral director trainee has, under supervision, assisted in directing at least 25 funerals during the resident traineeship,
   2. That the embalmer trainee has, under supervision, assisted in embalming at least 25 bodies during the resident traineeship,
   3. That the funeral service trainee has, under supervision assisted in directing at least 25 funerals and, under supervision, assisted in embalming at least 25 bodies during the resident traineeship.

g. The Board may suspend or revoke a certificate of resident traineeship for violation of any provision of this Article.

h. Each sponsor for a registered resident trainee must during the period of sponsorship be actively employed with a funeral establishment. The traineeship shall be a primary vocation of the trainee.

i. Only one resident trainee may register and serve at any one time under any one person licensed under this Article.

j., k. Repealed by Session Laws 1991, c. 528, s. 4.

l. The Board shall register no more than one resident trainee at a funeral establishment that ~~conducted~~ served 100 or fewer ~~funerals~~ families during the 12 months immediately preceding the date of the application, and shall register no more than one resident trainee for each additional 100 ~~funerals conducted~~ families served at the funeral establishment during the 12 months immediately preceding the date of the application.

(5) The Board by regulation may recognize other examinations that the Board deems equivalent to its own.

a. All licenses shall be signed by the president and secretary of the Board and the seal of the Board affixed thereto. All licenses shall be issued, renewed or duplicated for a period not exceeding one year upon payment of the renewal fee, and all licenses, renewals or duplicates thereof shall expire and terminate the thirty-first day of December following the date of their issue unless sooner revoked and canceled; provided, that the date of expiration may be changed by unanimous consent of the Board and upon 90 days' written notice of such change to all persons licensed for the practice of funeral directing, embalming and funeral service in this State.

b. The holder of any license issued by the Board who shall fail to renew the same on or before January 31 of the calendar year for which the license is to be renewed shall have forfeited and surrendered the license as of that date. No license forfeited or surrendered pursuant to the preceding sentence shall be reinstated by the Board unless it is shown to the Board that the applicant has, throughout the period of forfeiture, engaged full time in another state of the United States or the District of Columbia in the practice to which his North Carolina license applies and has completed for each such year continuing education substantially equivalent in the opinion of the Board to that required of North Carolina licensees; or has completed in North Carolina a total number of hours of accredited continuing education computed by multiplying five times the number of years of forfeiture; or has passed the North Carolina examination for the forfeited license. No additional resident traineeship shall be required. The applicant shall be required to pay all delinquent annual renewal fees and a reinstatement fee. The Board may waive the provisions of this section for an applicant for a forfeiture which occurred during his service in the armed forces of the United States provided he applies within six months following severance therefrom.

c. All licensees now or hereafter licensed in North Carolina shall take courses of study in subjects relating to the practice of the profession for which they are licensed, to the end that new techniques, scientific and clinical advances, the achievements of research and the benefits of learning and reviewing skills will be utilized and applied to assure proper service to the public.

d. As a prerequisite to the annual renewal of a license, the licensee must complete, during the year immediately preceding renewal, at least five hours of continuing education courses, approved by the Board prior to enrollment. A licensee who completes more than five hours in a year may carry over a maximum of five hours as a credit to the following year's requirement. A licensee who is issued an initial license on or after July 1 does not have to satisfy the continuing education requirement for that year.

e. The Board shall not renew a license unless fulfillment of the continuing education requirement has been certified to it on a form provided by the Board, but the Board may waive this requirement for renewal in cases of certified illness or undue hardship or where the licensee lives outside of North Carolina and does not practice in North Carolina, and the Board shall waive the requirement for all licensees who have been licensed in North Carolina for a continuous period of 25 years or more, and for all licensees who are, at the time of renewal, members of the General Assembly. ~~The waiver for 25-year licensees shall apply only to those licensees who, before January 1, 1998, are licensed, begin a course of study in a mortuary science college or a trainee program, or make an application for a license.~~

f. The Board shall cause to be established and offered to the licensees, each calendar year, at least five hours of continuing education courses in subjects encompassing the license categories of embalming, funeral directing and funeral service. The Board may charge licensees attending these courses a reasonable registration fee in order to meet the expenses thereof and may also meet those expenses from other funds received under the provisions of this Article.

g. Any person who having been previously licensed by the Board as a funeral director or embalmer prior to July 1, 1975, shall not be required to satisfy the requirements herein for licensure as a funeral service licensee, but shall be entitled to have such license renewed upon making proper application therefor and upon payment of the renewal fee provided by the provisions of this Article. Persons previously licensed by the Board as a funeral director may engage in funeral directing, and persons

previously licensed by the Board as an embalmer may engage in embalming. Any person having been previously licensed by the Board as both a funeral director and an embalmer may upon application therefor receive a license as a funeral service licensee.

(a1) Inactive Licenses. – Any person holding a license issued by the Board for funeral directing, for embalming, or for the practice of funeral service may apply for an inactive license in the same category as the active license held. The inactive license is renewable annually. Continuing education is not required for the renewal of an inactive license. The only activity that a holder of an inactive license may engage in is to vote pursuant to G.S. 90-210.18(c)(2). The holder of an inactive license may apply for an active license in the same category, and the Board shall issue an active license if the applicant has completed in North Carolina a total number of hours of accredited continuing education equal to five times the number of years the applicant held the inactive license. No application fee is required for the reinstatement of an active license pursuant to this subsection. The holder of an inactive license who returns to active status shall surrender the inactive license to the Board.

(b) Persons Licensed under the Laws of Other Jurisdictions. –

(1) The Board shall grant licenses to funeral directors, embalmers and funeral service licensees, licensed in other states, territories, the District of Columbia, and foreign countries, when it is shown that the applicant holds a valid license as a funeral director, embalmer or funeral service licensee issued by the other jurisdiction, has demonstrated knowledge of the laws and regulations governing the profession in North Carolina and has submitted proof of his good moral character; and either that the applicant has continuously practiced the profession in the other jurisdiction for at least three years immediately preceding his application, or the Board has determined that the licensing requirements for the other jurisdiction are substantially similar to those of North Carolina.

(2) The Board shall periodically review the mortuary science licensing requirements of other jurisdictions and shall determine which licensing requirements are substantially similar to the requirements of North Carolina.

(3) The Board may issue special permits, to be known as courtesy cards, permitting nonresident funeral directors, embalmers and funeral service licensees to remove bodies from and to arrange and direct funerals and embalm bodies in this State, but these privileges shall not include the right to establish a place of business in or engage generally in the business of funeral directing and embalming in this State. Except for special permits issued by the Board for teaching continuing education programs and for work in connection with disasters, no special permits may be issued to nonresident funeral directors,

embalmers, and funeral service licensees from states that do not issue similar courtesy cards to persons licensed in North Carolina pursuant to this Article.

(c) Registration, Filing and Transportation. –

(1) The holder of any license granted by this State for those within the funeral service profession or renewal thereof provided for in this Article shall cause registration to be filed in the office of the board of health of the county or city in which he practices his profession, or if there be no board of health in such county or city, at the office of the clerk of the superior court of such county. All such licenses, certificates, duplicates and renewals thereof shall be displayed in a conspicuous place in the funeral establishment where the holder renders service.

(2) It shall be unlawful for any railway agent, express agency, baggage master, conductor or other person acting as such, to receive the dead body of any person for shipment or transportation by railway or other public conveyance, to a point outside of this State, unless ~~said~~ the body ~~be~~ is accompanied by a ~~removal or shipping~~ burial-transit permit.

(3) The "transportation or removal of a dead human body" shall mean the removal of a dead human body from the location of the place of death or discovery of death or the transportation of the body to or from a medical facility, funeral establishment or facility, crematory or related holding facility, place of final disposition, or place designated by the Medical Examiner for examination or autopsy of the dead human body.

(4) Any individual, not otherwise exempt from this subsection, shall apply for and receive a permit from the Board before engaging in the transportation or removal of a dead human body in this State. Unless otherwise exempt from this subsection, no corporation or other business entity shall engage in the transportation or removal of a dead human body unless it has in its employ at least one individual who holds a permit issued under this section. No individual permit holder shall engage in the transportation or removal of a dead human body for more than one person, firm, or corporation without first providing the Board with written notification of the name and physical address of each such employer.

(5) The following persons shall be exempt from the permit requirements of this section but shall otherwise be subject to subdivision (9) of this subsection and any rules relating to the proper handling, care, removal, or transportation of a dead human body:

a. Licensees under this Article and their employees.

b. Employees of common carriers.

c. Except as provided in sub-subdivision (6)c. of this section, employees of the State and its agencies and employees of local governments and their agencies.

d. Funeral directors licensed in another state and their employees.

(6) The following persons shall be exempt from this section:

a. Emergency medical technicians, rescue squad workers, volunteer and paid firemen, and law enforcement officers.

b. Employees of public or private hospitals, nursing homes, or long-term care facilities, while handling a dead human body within such facility or while acting within the scope of their employment.

c. State and county medical examiners and their investigators.

d. Any individual transporting cremated remains.

e. Any individual transporting or removing a dead human body of their immediate family or next of kin.

(7) To be eligible to receive a permit under this section for the transportation or removal of a dead human body, an individual shall:

a. Be at least 18 years of age.

b. Possess and maintain a valid drivers license issued by this State and provide proof of all liability insurance required for the registration of any vehicle in which the person intends to engage in the business of the removal or transportation of a dead human body.

c. Affirmatively state under oath that the person has read and understands the statutes and rules relating to the removal and transportation of dead human bodies and any guidelines as may be adopted by the Board.

d. Provide three written character references on a form prescribed by the Board, one of which must be from a licensed funeral director.

e. Be of good moral character.

(8) The permit issued under this section shall expire on December 31 of each year. The application fee for the individual permit shall not exceed one hundred twenty-five dollars ($125.00). A fee, not to exceed one hundred dollars ($100.00), in addition to the renewal fee not to exceed seventy-five dollars ($75.00), shall be charged for any application for renewal received by the Board after February 1 of each year.

(9) No person shall transport a dead human body in the open cargo area or passenger area of a vehicle or in any vehicle in which the body may be viewed by the public. Any person removing or transporting a dead human body shall either cover the body, place it upon a stretcher designed for the purpose of transporting humans or dead human bodies

in a vehicle, and secure such stretcher in the vehicle used for transportation, or shall enclose the body in a casket or container designed for common carrier transportation, and secure the casket or container in the vehicle used for transportation. No person shall use profanity, indecent, or obscene language in the presence of a dead human body.

(10) The Board may adopt rules under this section including permit application procedures and the proper procedures for the removal, handling and transportation of dead human bodies. The Board shall consult with the Office of the Chief Medical Examiner before initiating rule-making under this section and before adopting any rules pursuant to this section. Nothing in this section prohibits the Office of the Chief Medical Examiner from adopting policies and procedures regarding the removal, transportation, or handling of a dead human body under the jurisdiction of that office that are more stringent than the laws in this section or any rules adopted under this section. Any violation of this section or rules adopted under this section may be punished by the Board by a suspension or revocation of the permit to transport or remove dead human bodies or by a term of probation. The Board may, in lieu of any disciplinary measure, accept a penalty not to exceed five thousand dollars ($5,000) per violation.

(11) Each applicant for a permit shall provide the Board with the applicant's home address, name and address of any corporation or business entity employing such individual for the removal or transportation of dead human bodies, and the make, year, model, and license plate number of any vehicle in which a dead human body is transported. A permittee shall provide written notification to the Board of any change in the information required to be provided to the Board by this section or by the application for a permit within 30 days after such change takes place.

(12) If any person shall engage in or hold himself out as engaging in the business of transportation or removal or a dead human body without first having received a permit under this section, the person shall be guilty of a Class 2 misdemeanor.

(13) The Board shall have the authority to inspect any place or premises that the business of removing or transporting a dead human body is carried out and shall also have the right of inspection of any vehicle and equipment used by a permittee for the removal or transportation of a dead human body.

(d) Establishment Permit. –

(1) No person, firm or corporation shall conduct, maintain, manage or operate a funeral establishment unless a permit for that establishment has been issued by the Board and is conspicuously displayed in the

establishment. Each funeral establishment at a specific location shall be deemed to be a separate entity and shall require a separate permit and compliance with the requirements of this Article.

(2) A permit shall be issued when:

a. It is shown that the funeral establishment has in charge a person, known as a manager, licensed for the practice of funeral directing or funeral service, who shall not be permitted to manage more than one funeral establishment.

b. The Board receives a list of the names of all part-time and full-time licensees employed by the establishment.

c. It is shown that the funeral establishment satisfies the requirements of G.S. 90-210.27A.

d. The Board receives payment of the permit fee.

(3) Applications for funeral establishment permits shall be made on forms provided by the Board and filed with the Board by the owner, a partner, a member of the limited liability company, or an officer of the corporation by January 1 of each year, and shall be accompanied by the application fee or renewal fee, as the case may be. All permits shall expire on December 31 of each year. A penalty for late renewal, in addition to the regular renewal fee, shall be charged for renewal of registration received after the first day of February.

~~A penalty for late renewal, in addition to the regular renewal fee, shall be charged for renewal of registration coming after the first day of February.~~

(4) The Board may suspend or revoke a permit when an owner, partner, manager, member, operator, or officer of the funeral establishment violates any provision of this Article or any regulations of the Board, or when any agent or employee of the funeral establishment, with the consent of any person, firm or corporation operating the funeral establishment, violates any of those provisions, rules or regulations.

(5) Funeral establishment permits are not transferable. A new application for a permit shall be made to the Board within 30 days of a change of ownership of a funeral establishment.

(d1) Embalming Outside Establishment. – An embalmer who engages in embalming in a facility other than a funeral establishment or in the residence of the deceased person shall, no later than January 1 of each year, register the facility with the Board on forms provided by the Board.

(e) Revocation; Suspension; Compromise; Disclosure. –

(1) Whenever the Board finds that an applicant for a license or a person to whom a license has been issued by the Board is guilty of any of the following acts or omissions and the Board also finds that the person has thereby become unfit to practice, the Board may suspend or revoke

the license or refuse to issue or renew the license, in accordance with the procedures set out in Chapter 150B:

a. Conviction of a felony or a crime involving fraud or moral turpitude.
b. Fraud or misrepresentation in obtaining or renewing a license or in the practice of funeral service.
c. False or misleading advertising as the holder of a license.
d. Solicitation of dead human bodies by the licensee, his agents, assistants, or employees; but this paragraph shall not be construed to prohibit general advertising by the licensee.
e. Employment directly or indirectly of any resident trainee agent, assistant or other person, on a part-time or full-time basis, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular licensee.
f. The direct or indirect giving of certificates of credit or the payment or offer of payment of a commission by the licensee, his agents, assistants or employees for the purpose of securing business.
g. Gross immorality, including being under the influence of alcohol or drugs while practicing funeral service.
h. Aiding or abetting an unlicensed person to perform services under this Article, including the use of a picture or name in connection with advertisements or other written material published or caused to be published by the licensee.
i. Using profane, indecent or obscene language in the presence of a dead human body, and within the immediate hearing of the family or relatives of a deceased, whose body has not yet been interred or otherwise disposed of.
j. Violating or cooperating with others to violate any of the provisions of this Article, the rules and regulations of the Board, or the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.
k. Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of dead human bodies.
l. Refusing to surrender promptly the custody of a dead human body upon the express order of the person lawfully entitled to the custody thereof.
m. Knowingly making any false statement on a certificate of death.
n. Indecent exposure or exhibition of a dead human body while in the custody or control of a licensee.

In any case in which the Board is entitled to suspend, revoke or refuse to renew a license, the Board may accept from the licensee an offer ~~in compromise~~ to pay a penalty of not more than ~~one~~ five thousand dollars ~~($1,000).~~ ($5,000). The Board may either accept a ~~compromise~~ penalty or revoke or refuse to renew a license, but not both.

(2) Where the Board finds that a licensee is guilty of one or more of the acts or omissions listed in ~~subsection (e) (1)~~ subdivision (e)(1) of this section but it is determined by the Board that the licensee has not thereby become unfit to practice, the Board may place the licensee on a term of probation in accordance with the procedures set out in Chapter 150B. In any case in which the Board is entitled to place a licensee on a term of probation, the Board may also impose a penalty of not more than five thousand dollars ($5,000) in conjunction with the probation.

No person licensed under this Article shall remove or cause to be embalmed a dead human body when he or she has information indicating crime or violence of any sort in connection with the cause of death, nor shall a dead human body be cremated, until permission of the State or county medical examiner has first been obtained. However, nothing in this Article shall be construed to alter the duties and authority now vested in the office of the coroner.

No funeral service establishment shall accept a dead human body from any public officer (excluding the State or county medical examiner or his agent), or employee or from the official of any institution, hospital or nursing home, or from a physician or any person having a professional relationship with a decedent, without having first made due inquiry as to the desires of the persons who have the legal authority to direct the disposition of the decedent's body. If any persons are found, their authority and directions shall govern the disposal of the remains of the decedent. Any funeral service establishment receiving the remains in violation of this subsection shall make no charge for any service in connection with the remains prior to delivery of the remains as stipulated by the persons having legal authority to direct the disposition of the body. This section shall not prevent any funeral service establishment from charging and being reimbursed for services rendered in connection with the removal of the remains of any deceased person in case of accidental or violent death, and rendering necessary professional services required until the persons having legal authority to direct the disposition of the body have been notified.

When and where a licensee presents a selection of funeral merchandise to the public to be used in connection with the service to be provided by the licensee or an establishment as licensed under this Article, a card or brochure shall be directly associated with each item of merchandise setting forth the price of the service using said merchandise and listing the services and other merchandise included in the price, if any. When there are separate prices for the merchandise and services, such cards or brochures shall indicate the price of the merchandise and of the items separately priced.

At the time funeral arrangements are made and prior to the time of rendering the service and providing the merchandise, a funeral director or funeral service licensee shall give or cause to be given to the person or persons making such arrangements a written statement duly signed by a licensee of said funeral establishment showing the price of the service as selected and what services are included therein, the price of each of the supplemental items of services or merchandise requested, and the amounts involved for each of the items for which the funeral establishment will advance moneys as an accommodation to the person making arrangements, insofar as any of the above items can be specified at that time. The statement shall have printed, typed or stamped on the face thereof: "This statement of disclosure is provided ~~pursuant to~~ under the requirements of North Carolina G.S. 90-210.25(e)."

(f) Unlawful Practices. – If any person shall practice or hold himself out as practicing the profession or art of embalming, funeral directing or practice of funeral service without having complied with the licensing provisions of this Article, he shall be guilty of a Class 2 misdemeanor.

(g) Whenever it shall appear to the Board that any person, firm or corporation has violated, threatens to violate or is violating any provisions of this Article, the Board may apply to the courts of the State for a restraining order and injunction to restrain these practices. If upon application the court finds that any provision of this Article is being violated, or a violation is threatened, the court shall issue an order restraining and enjoining the violations, and this relief may be granted regardless of whether criminal prosecution is instituted under the provisions of this subsection. The venue for actions brought under this subsection shall be the superior court of any county in which the acts are alleged to have been committed or in the county where the defendant in the action resides. "

SECTION 4. G.S. 90-210.27A reads as rewritten:

"**§ 90-210.27A. Funeral establishments.**

(a) Every funeral establishment shall contain a preparation room which is strictly private, of suitable size for the embalming of dead bodies. Each preparation room shall:

(1) Contain one standard type operating table.
(2) Contain facilities for adequate drainage.
(3) Contain a sanitary waste receptacle.
(4) Contain an instrument sterilizer.
(5) Have wall-to-wall floor covering of tile, concrete, or other material which can be easily cleaned.
(6) Be kept in sanitary condition and subject to inspection by the Board or its agents at all times.
(7) Have a placard or sign on the door indicating that the preparation room is private.
(8) Have a proper ventilation or purification system to maintain a nonhazardous level of airborne contamination.

(b) No one is allowed in the preparation room while a dead human body is being prepared except licensees, resident trainees, public officials in the discharge of their

duties, members of the medical profession, officials of the funeral home, next of kin, or other legally authorized persons.

(c) Every funeral establishment shall contain a reposing room for dead human bodies, of suitable size to accommodate a casket and visitors.

(d) Repealed by Session Laws 1997-399, s. 14.

(e) If a funeral establishment is solely owned by a natural person, that person must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a partnership, at least one partner must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a corporation, the president, vice-president, or the chairman of the board of directors must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a limited liability company, at least one member must be licensed by the Board as a funeral director or a funeral service licensee. The licensee required by this subsection must be actively engaged in the operation of the funeral establishment.

(f) If a funeral establishment uses the name of a living person in the name under which it does business, that person must be licensed by the Board as a funeral director or a funeral service licensee.

(g) No funeral establishment or other licensee under this Article shall own, operate, or maintain a funeral chapel without first having registered the name, location, and ownership thereof with the Board.

(h) All public health laws and rules apply to funeral establishments. In addition, all funeral establishments must comply with all of the standards established by the rules adopted by the Board."

SECTION 5. G.S. 90-210.28 reads as rewritten:

"§ 90-210.28. Fees.

The Board may set and collect fees, not to exceed the following amounts:

Establishment permit	
Application	$250.00
Annual renewal	~~175.00~~150.00
Late renewal ~~penalty~~	100.00
~~Reinspection fee~~	~~100.00~~
Establishment and embalming facility inspection fee	100.00
Courtesy card	
Application	75.00
Annual renewal	50.00
Out-of-state licensee	
Application	200.00
Embalmer, funeral director, funeral service	
Application–North	
Carolina-Resident	150.00
-Non-Resident	200.00
Annual Renewal-embalmer or funeral director	~~50.00~~40.00
Total fee, embalmer and funeral director	

when both are held by the same person 60.00
-funeral service ..... ~~100.00~~60.00
Inactive Status 50.00
Reinstatement fee 50.00
Resident trainee permit
Application 50.00
Change in supervisor 50.00
Annual renewal 35.00
Late renewal ~~penalty~~ 25.00
Duplicate license certificate 25.00
Chapel registration
Application 150.00
Annual renewal 100.00
Late renewal 75.00

The Board shall provide, without charge, one copy of the current statutes and regulations relating to Mortuary Science to every person applying for and paying the appropriate fees for licensing pursuant to this Article. The Board may charge all others requesting copies of the current statutes and regulations, and the licensees or applicants requesting additional copies, a fee equal to the costs of production and distribution of the requested documents."

SECTION 6. G.S. 90-210.29(b) is repealed.

SECTION 7. The title of Article 13D of Chapter 90 of the General Statutes reads as rewritten:

"Preneed Funeral ~~and Burial Trust~~ Funds."

SECTION 8. G.S. 20-210.60(7) reads as rewritten:

"Article 13D.

"Funeral and Burial Trust Funds.

"**§ 90-210.60. Definitions.**

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

(1) "Board" means the North Carolina Board of Mortuary Science as created pursuant to Article 13A of Chapter 90 of the General Statutes;

(2) "Financial institution" means a bank, trust company, savings bank, or savings and loan association authorized by law to do business in this State;

(3) "Insurance company" means any corporation, limited liability company, association, partnership, society, order, individual or aggregation of individuals engaging in or proposing or attempting to engage as principals in any kind of insurance business, including the exchanging of reciprocal or interinsurance contracts between individuals, partnerships, and corporations;

(4) "Prearrangement insurance policy" means a life insurance policy, annuity contract, or other insurance contract, or any series of contracts or agreements in any form or manner, issued by an insurance company

authorized by law to do business in this State, which, whether by assignment or otherwise, has for a purpose the funding of a preneed funeral contract or an insurance-funded funeral or burial prearrangement, the insured or annuitant being the person for whose service the funds were paid;

(5) "Preneed funeral contract" means any contract, agreement, or mutual understanding, or any series or combination of contracts, agreements, or mutual understandings, whether funded by trust deposits or prearrangement insurance policies, or any combination thereof, which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of, but does not mean the furnishing of a cemetery lot, crypt, niche, or mausoleum;

(6) "Preneed funeral contract beneficiary" means the person upon whose death the preneed funeral contract will be performed; this person may also be the purchaser of the preneed funeral contract;

(7) "Preneed funeral funds" means all payments of ~~money~~ cash made to any person, partnership, association, corporation, or other entity upon any preneed funeral contract or any other agreement, contract, or prearrangement insurance policy, or any series or combination of preneed funeral contracts or any other agreements, contracts, or prearrangement insurance policies, but excluding the furnishing of cemetery lots, crypts, niches, and mausoleums, which have for a purpose or which by operation provide for the furnishing or performance of funeral or burial services, or the furnishing or delivery of personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of, or the providing of the proceeds of any insurance policy for such use;

(8) "Preneed funeral planning" means offering to sell or selling preneed funeral contracts, or making other arrangements prior to death for the providing of funeral services or merchandise;

(9) "Preneed licensee" means a funeral establishment which has applied for and has been granted a license to sell preneed funeral contracts under the Article. Such license is also referred to in this Article as a "preneed funeral establishment license.""

SECTION 9. G.S. 90-210.64 reads as rewritten:

"**§ 90-210.64. Death of preneed funeral contract beneficiary; disposition of funds.**

(a) After the death of a preneed funeral contract beneficiary and full performance of the preneed funeral contract by the preneed licensee, the preneed licensee shall

promptly complete a certificate of performance or similar claim form and present it to the financial institution that holds funds in trust under G.S. 90-210.61(a)(1) or to the insurance company that issued a preneed insurance policy pursuant to G.S. 90-210.61(a)(3). Upon receipt of the certificate of performance or similar claim form, the financial institution shall pay the trust funds to the contracting preneed licensee and the insurance company shall pay the insurance proceeds according to the terms of the policy. Within 10 days after receiving payment, the preneed licensee shall mail a copy of the certificate of performance or other claim form to the Board.

(b) Unless otherwise specified in the preneed funeral contract, the preneed licensee shall have no obligation to deliver merchandise or perform any services for which payment in full has not yet been deposited with a financial institution or that will not be provided by the proceeds of a prearrangement insurance policy. Any such amounts received which do not constitute payment in full shall be refunded to the estate of the deceased preneed funeral contract beneficiary or credited against the cost of merchandise or services contracted for by a representative of the deceased. Any balance remaining after payment for the merchandise and services as set forth in the preneed funeral contract shall be paid to the estate of the preneed funeral contract beneficiary or the prearrangement insurance policy beneficiary named to receive any such balance. Provided, however, unless the parties agree to the contrary, there shall be no refund to the estate of the preneed funeral contract beneficiary of an inflation-proof preneed funeral contract.

(c) In the event that any person other than the contracting preneed licensee performs any funeral service or provides any merchandise as a result of the death of the preneed funeral contract beneficiary, the financial institution shall pay the trust funds to the contracting preneed licensee and the insurance company shall pay the insurance proceeds according to the terms of the policy. The preneed licensee shall, subject to the provisions of G.S. 90-210.65(d), immediately pay the monies so received to the other provider.

(d) When the balance of a preneed funeral fund is one hundred dollars ($100.00) or under and is payable to the estate of a deceased preneed funeral contract beneficiary and there has been no representative of the estate appointed, the balance due may be paid directly to the beneficiaries of the estate. If the balance of a preneed funeral fund exceeds one hundred dollars ($100.00) or is not payable to the estate, the balance must be paid into the office of the clerk of superior court in the county where probate proceedings could be filed for the deceased preneed funeral contract beneficiary.

(e) Upon the fulfillment of a preneed contract, all of the following items shall be completed within 30 days:

(1) The contracting preneed licensee must submit a certificate of performance or similar claim form to the financial institution holding the preneed trust funds and close the preneed account.

(2) The proceeds of this trust account shall be distributed according to the terms of the preneed contract.

(3) A completed copy of the certificate of performance or similar claim form evidencing the final disposition of any financial institution preneed trust accounts funds must be filed with the Board by the contracting licensee."

SECTION 10. G.S. 90-210.67(f) is repealed.

SECTION 11. G.S. 90-210.69 reads as rewritten:

"**§ 90-210.69. Rulemaking; enforcement of Article; judicial review.**

(a) The Board is authorized to adopt rules for the carrying out and enforcement of the provisions of this Article. The Board may perform such other acts and exercise such other powers and duties as are authorized by this Article and by Article 13A of this Chapter to carry out its powers and duties.

(b) The Board may administer oaths and issue subpoenas requiring the attendance of persons and the production of papers and records in any investigation conducted by it. Members of the Board's staff or the sheriff or other appropriate official of any county of this State shall serve all notices, subpoenas and other papers given to them by the Board for service in the same manner as process issued by any court of record. Any person who does not obey a subpoena issued by the Board shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined or imprisoned in the discretion of the court.

(c) In accordance with the provisions of Chapter 150B of the General Statutes, if the Board finds that a licensee, an applicant for a license or an applicant for license renewal is guilty of one or more of the following, the Board may refuse to issue or renew a license or may suspend or revoke a license or place the holder thereof on probation upon conditions set by the Board, with revocation upon failure to comply with the conditions:

(1) Offering to engage or engaging in activities for which a license is required under this Article but without having obtained such a license.

(2) Aiding or abetting an unlicensed person, firm, partnership, association, corporation or other entity to offer to engage or engage in such activities.

(3) A crime involving fraud or moral turpitude by conviction thereof.

(4) Fraud or misrepresentation in obtaining or receiving a license or in preneed funeral planning.

(5) False or misleading advertising.

(6) Violating or cooperating with others to violate any provision of this Article, the rules and regulations of the Board, adopted or the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.

In any case in which the Board is authorized to take any of the actions permitted under this subsection, the Board may instead accept an offer in compromise of the charges whereby the accused shall pay to the Board a penalty of not more than ~~one~~ five thousand dollars ~~($1,000).~~ ($5,000). In any case in which the Board is entitled to place a

licensee on a term of probation, the Board may also impose a penalty of not more than five thousand dollars ($5,000) in conjunction with such probation.

(d) Any proceedings pertaining to or actions against a funeral establishment under this Article may be in addition to any proceedings or actions permitted by G.S. 90-210.25(d)(4). Any proceedings pertaining to or actions against a person licensed for funeral directing or funeral service may be in addition to any proceedings or actions permitted by G.S. 90-210.25 (e)(1) and (2).

(e) Judicial review shall be pursuant to Article 4 of Chapter 150B of the General Statutes.

(f) In determining the amount of any penalty imposed or assessed under Article 13 of Chapter 90 of the General Statutes, the Board shall consider:

(1) The degree and extent of harm to the public health, safety and welfare or to property, or the potential for harm.

(2) The duration and gravity of the violation.

(3) Whether the violation was committed willfully or intentionally or reflects a continuing pattern.

(4) Whether the violation involved elements of fraud or deception either to the public or to the Board, or both.

(5) The violator's prior disciplinary record with the Board.

(6) Whether and the extent to which the violator profited by the violation."

SECTION 12. One public member of the North Carolina Board of Mortuary Sciences, appointed under G.S. 90-210.18(b3), with a term expiring December 31, 2001, shall have such term extended until December 31, 2002, in order to stagger the expiration of all three public member terms.

SECTION 13. This act becomes effective July 1, 2001.

H 1

HOUSE BILL 440

Short Title:	Embalmers and Funeral Directors-AB.	(Public)
Sponsors:	Representatives Weiss and Baddour.	
Referred to:	Finance.	

March 1, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE EMBALMERS AND FUNERAL DIRECTORS LAW OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-210.18(b) reads as rewritten:

"(b) The North Carolina Board of Mortuary Science is created as a continuation of the North Carolina Board of Embalmers and Funeral Directors. The Board is the agency for regulation of the practice of funeral service in this State. The Board shall have nine members as follows:

(1) Four funeral service licensees or persons holding both funeral director's license and an embalmer's license,
(2) Two persons holding a funeral director's license or a funeral service license, and
(3) Three public members.

A member's term shall be three years and shall expire on December 31 or when his successor has been duly elected or appointed. No member may serve more than two complete consecutive terms.

The six seats on the Board for licensees shall be filled in an election in which every person licensed to practice embalming, funeral directing, or funeral service in this State may vote. No licensee may be nominated, elected, or serve unless he holds a North Carolina license in the class designated for the seat and unless he is engaged in full-time employment in this State in a practice authorized by his license. Any vacancy occurring in an elective seat on the Board shall be filled for the unexpired term by majority vote of the remaining Board members.

The public members of the Board shall have full voting authority. They shall be appointed by the Governor and may neither be licensed under this Article nor employed by a person who is. A vacancy occurring in a public member's seat shall be filled for the unexpired term by the Governor. One public member with a term expiring December

31, 2001, shall have such term extended until December 31, 2002, in order to stagger the expiration of all three public member terms."

SECTION 2. G.S. 90-210.20 reads as rewritten:

"**§ 90-210.20. Definitions.**

(a) "Advertisement" means the publication, dissemination, circulation or placing before the public, or causing directly or indirectly to be made, published, disseminated or placed before the public, any announcement or statement in a newspaper, magazine, or other publication, or in the form of a book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card, label or tag, or over any ~~radio or~~ radio, television ~~station.~~ station, or electronic medium.

(b) "Board" means the North Carolina ~~State~~ Board of Mortuary Science.

(c) "Burial" includes interment in any form, cremation and the transportation of the dead human body as necessary therefor.

(c1) "Dead human bodies", as used in this Article includes fetuses beyond the second trimester and the ashes from cremated bodies.

(d) "Embalmer" means any person engaged in the practice of "embalming" as defined below.

(e) "Embalming" means the preservation and disinfection or attempted preservation and disinfection of the dead human bodies by application of chemicals externally or internally or both and the practice of restorative art including the restoration or attempted restoration of the appearance of the dead human body.

(e1) "Funeral chapel" means a chapel or other facility separate from the funeral establishment premises for the reposing of dead human bodies, visitation or funeral ceremony, which is owned, operated, or maintained by a funeral establishment or other licensee under this Article, and which does not use the word "funeral" in its name, on a sign, in a directory, in advertising or in any other manner; in which or on the premises of which there is not displayed or offered for sale any caskets or other funeral merchandise; in which or on the premises of which there is not located any funeral business office or a preparation room; in which or on the premises of which no funeral sales, financing, or arrangements are made; and which no owner, operator, employee, or agent thereof represents the chapel to be a funeral establishment.

(f) "Funeral directing" means engaging in the practice of funeral service except embalming as hereinbefore defined.

(g) "Funeral director" means any person engaged in the practice of "funeral directing" as defined above.

(h) "Funeral establishment" means every place or premises devoted to or used in the care, arrangement and preparation for the funeral and final disposition of dead human bodies and maintained for the convenience of the public in connection with dead human bodies or as the place for carrying on the profession of funeral service. A funeral establishment shall comply with any applicable public health laws and rules and shall meet all of the standards established by the rules adopted by the Board.

(i) "Funeral service licensee" means a person who is duly licensed and engaged in the "practice of funeral service" as below defined.

(j) "Funeral ~~service profession"~~ service" means the aggregate of all funeral service licensees and their duties and responsibilities in connection with the funeral as an organized, purposeful, time-limited, flexible, group-centered response to death.

(k) "Practice of funeral service" means engaging in the care or disposition of dead human bodies or in the practice of disinfecting and preparing by embalming or otherwise dead human bodies for the funeral service, transportation, burial or cremation, or in the practice of funeral directing or embalming as presently known, whether under these titles or designations or otherwise. It also means engaging in making arrangements for funeral service, selling funeral supplies to the public or making financial arrangements for the rendering of such services or the sale of such supplies.

(l) "Resident trainee" means a person who is engaged in preparing to become licensed for the practice of funeral directing, embalming or funeral service under the personal supervision and instruction of a person duly licensed for the practice of funeral directing, embalming or funeral service in the State of North Carolina under the provisions of this Chapter, and who is duly registered as such with the Board."

SECTION 3. G.S. 90-210.25 reads as rewritten:

"**§ 90-210.25. Licensing.**

(a) Qualifications, Examinations, Resident Traineeship and Licensure. –

(1) To be licensed for the practice of funeral directing under this Article, a person must:

a. Be at least 18 years of age.

b. Be of good moral character.

c. Have completed a minimum of 32 semester hours or 48 quarter hours of instruction in a course of ~~study~~ study, as prescribed by an accredited school of mortuary science, including the subjects set out in item e.1. of this subsection in a mortuary science college approved by the Board, or be a graduate of a mortuary science college approved by the Board.

d. Have completed 12 months of resident traineeship as funeral director, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under item c. of this subsection.

e. Have passed an oral or written funeral director examination on the following subjects:

1. Psychology, sociology, funeral directing, business law, funeral law, funeral management, and accounting.

2. Repealed by 1997-399, s. 5.

3. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies.

(2) To be licensed for the practice of embalming under this Article, a person must:

a. Be at least 18 years of age.

b. Be of good moral character.
c. Be a graduate of a mortuary science college approved by the Board.
d. Have completed 12 months of resident traineeship as an embalmer pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under item c. of this subsection.
e. Have passed an oral or written embalmer examination on the following subjects:
1. Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.
2. Repealed by 1997-399, s. 6.
3. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies.

(3) To be licensed for the practice of funeral service under this Article, a person must:
a. Be at least 18 years of age.
b. Be of good moral character.
c. Be a graduate of a mortuary science college approved by the Board.
d. Have completed 12 months of resident traineeship as a funeral service licensee, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under item c. of this subsection.
e. Have passed an oral or written funeral service examination on the following subjects:
1. Psychology, sociology, funeral directing, business law, funeral law, funeral management, and accounting.
2. Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.
3. Repealed by 1997-399, s. 7.
4. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies.

(4) a. A person desiring to become a resident trainee shall apply to the Board on a form provided by the Board. The application shall state that the applicant is not less than 18 years of age, of good moral character, and is the graduate of a high school or the equivalent thereof, and shall indicate the licensee under whom the applicant expects to train. A person training to become an embalmer may serve under either a licensed embalmer or a

funeral service licensee. A person training to become a funeral director may serve under either a licensed funeral director or a funeral service licensee. A person training to become a funeral service licensee shall serve under a funeral service licensee. The application must be sustained by oath of the applicant and be accompanied by the appropriate fee. When the Board is satisfied as to the qualifications of an applicant it shall instruct the secretary to issue a certificate of resident traineeship.

b. When a resident trainee leaves the proctorship of the licensee under whom the trainee has worked, the licensee shall file with the Board an affidavit showing the length of time served with the licensee by the trainee, and the affidavit shall be made a matter of record in the Board's office. The licensee shall deliver a copy of the affidavit to the trainee.

c. A person who has not completed the traineeship and wishes to do so under a licensee other than the one whose name appears on the original certificate may reapply to the Board for approval, without payment of an additional fee.

d. A certificate of resident traineeship shall be signed by the resident trainee and upon payment of the renewal fee shall be renewable one year after the date of original registration; but the certificate may not be renewed more than one time. The Board shall mail to each registered trainee at his last known address a notice that the renewal fee is due and that, if not paid within 30 days of the notice, the certificate will be canceled. A penalty, in addition to the renewal fee, shall be charged for a late renewal, but the renewal of the registration of any resident trainee who is engaged in the active military service of the United States at the time renewal is due may, at the discretion of the Board, be held in abeyance for the duration of that service without penalties. No credit shall be allowed for the 12-month period of resident traineeship that shall have been completed more than three years preceding the examination for a license.

e. All registered resident trainees shall report to the Board at least once every ~~three months~~ month during traineeship upon forms provided by the Board listing the work which has been completed during the preceding ~~three months~~ month of resident traineeship. The data contained in the reports shall be certified as correct by the licensee under whom the trainee has served during the period and by the licensed person who is managing the funeral service establishment. Each report shall list the following:

1. For funeral director trainees, the conduct of any funerals during the relevant time period,
2. For embalming trainees, the embalming of any bodies during the relevant time period,
3. For funeral service trainees, both of the activities named in 1 and 2 of this subsection, engaged in during the relevant time period.

f. To meet the resident traineeship requirements of G.S. 90-210.25(a)(1), G.S. 90-210.25(a)(2) and G.S. 90-210.25(a)(3) the following must be shown by the affidavit(s) of the licensee(s) under whom the trainee worked:
1. That the funeral director trainee has, under supervision, assisted in directing at least 25 funerals during the resident traineeship,
2. That the embalmer trainee has, under supervision, assisted in embalming at least 25 bodies during the resident traineeship,
3. That the funeral service trainee has, under supervision assisted in directing at least 25 funerals and, under supervision, assisted in embalming at least 25 bodies during the resident traineeship.

g. The Board may suspend or revoke a certificate of resident traineeship for violation of any provision of this Article.

h. Each sponsor for a registered resident trainee must during the period of sponsorship be actively employed with a funeral establishment. The traineeship shall be a primary vocation of the trainee.

i. Only one resident trainee may register and serve at any one time under any one person licensed under this Article.

j., k. Repealed by Session Laws 1991, c. 528, s. 4.

l. The Board shall register no more than one resident trainee at a funeral establishment that conducted 100 or fewer ~~funerals~~ families served during the 12 months immediately preceding the date of the application, and shall register no more than one resident trainee for each additional 100 ~~funerals conducted~~ families served at the funeral establishment during the 12 months immediately preceding the date of the application.

(5) The Board by regulation may recognize other examinations that the Board deems equivalent to its own.

All licenses shall be signed by the president and secretary of the Board and the seal of the Board affixed thereto. All licenses shall be issued, renewed or duplicated for a period not exceeding one year upon payment of the renewal fee, and all licenses, renewals or duplicates thereof shall expire and terminate the thirty-first day of

December following the date of their issue unless sooner revoked and canceled; provided, that the date of expiration may be changed by unanimous consent of the Board and upon 90 days' written notice of such change to all persons licensed for the practice of funeral directing, embalming and funeral service in this State.

The holder of any license issued by the Board who shall fail to renew the same on or before January 31 of the calendar year for which the license is to be renewed shall have forfeited and surrendered the license as of that date. No license forfeited or surrendered pursuant to the preceding sentence shall be reinstated by the Board unless it is shown to the Board that the applicant has, throughout the period of forfeiture, engaged full time in another state of the United States or the District of Columbia in the practice to which his North Carolina license applies and has completed for each such year continuing education substantially equivalent in the opinion of the Board to that required of North Carolina licensees; or has completed in North Carolina a total number of hours of accredited continuing education computed by multiplying five times the number of years of forfeiture; or has passed the North Carolina examination for the forfeited license. No additional resident traineeship shall be required. The applicant shall be required to pay all delinquent annual renewal fees and a reinstatement fee. The Board may waive the provisions of this section for an applicant for a forfeiture which occurred during his service in the armed forces of the United States provided he applies within six months following severance therefrom.

All licensees now or hereafter licensed in North Carolina shall take courses of study in subjects relating to the practice of the profession for which they are licensed, to the end that new techniques, scientific and clinical advances, the achievements of research and the benefits of learning and reviewing skills will be utilized and applied to assure proper service to the public.

As a prerequisite to the annual renewal of a license, the licensee must complete, during the year immediately preceding renewal, at least five hours of continuing education courses, approved by the Board prior to enrollment. A licensee who completes more than five hours in a year may carry over a maximum of five hours as a credit to the following year's requirement. A licensee who is issued an initial license on or after July 1 does not have to satisfy the continuing education requirement for that year.

The Board shall not renew a license unless fulfillment of the continuing education requirement has been certified to it on a form provided by the Board, but the Board may waive this requirement for renewal in cases of certified illness or undue hardship or where the licensee lives outside of North Carolina and does not practice in North

Carolina, and the Board shall waive the requirement for all licensees who have been licensed in North Carolina for a continuous period of 25 years or more, and for all licensees who are, at the time of renewal, members of the General Assembly. ~~The waiver for 25-year licensees shall apply only to those licensees who, before January 1, 1998, are licensed, begin a course of study in a mortuary science college or a trainee program, or make an application for a license.~~

The Board shall cause to be established and offered to the licensees, each calendar year, at least five hours of continuing education courses in subjects encompassing the license categories of embalming, funeral directing and funeral service. The Board may charge licensees attending these courses a reasonable registration fee in order to meet the expenses thereof and may also meet those expenses from other funds received under the provisions of this Article.

Any person who having been previously licensed by the Board as a funeral director or embalmer prior to July 1, 1975, shall not be required to satisfy the requirements herein for licensure as a funeral service licensee, but shall be entitled to have such license renewed upon making proper application therefor and upon payment of the renewal fee provided by the provisions of this Article. Persons previously licensed by the Board as a funeral director may engage in funeral directing, and persons previously licensed by the Board as an embalmer may engage in embalming. Any person having been previously licensed by the Board as both a funeral director and an embalmer may upon application therefor receive a license as a funeral service licensee.

(a1) Inactive Licenses. – Any person holding a license issued by the Board for funeral directing, for embalming, or for the practice of funeral service may apply for an inactive license in the same category as the active license held. The inactive license is renewable annually. Continuing education is not required for the renewal of an inactive license. The only activity that a holder of an inactive license may engage in is to vote pursuant to G.S. 90-210.18(c)(2). The holder of an inactive license may apply for an active license in the same category, and the Board shall issue an active license if the applicant has completed in North Carolina a total number of hours of accredited continuing education equal to five times the number of years the applicant held the inactive license. No application fee is required for the reinstatement of an active license pursuant to this subsection. The holder of an inactive license who returns to active status shall surrender the inactive license to the Board.

(b) Persons Licensed under the Laws of Other Jurisdictions. –

(1) The Board shall grant licenses to funeral directors, embalmers and funeral service licensees, licensed in other states, territories, the District of Columbia, and foreign countries, when it is shown that the applicant holds a valid license as a funeral director, embalmer or

funeral service licensee issued by the other jurisdiction, has demonstrated knowledge of the laws and regulations governing the profession in North Carolina and has submitted proof of his good moral character; and either that the applicant has continuously practiced the profession in the other jurisdiction for at least three years immediately preceding his application, or the Board has determined that the licensing requirements for the other jurisdiction are substantially similar to those of North Carolina.

(2) The Board shall periodically review the mortuary science licensing requirements of other jurisdictions and shall determine which licensing requirements are substantially similar to the requirements of North Carolina.

(3) The Board may issue special permits, to be known as courtesy cards, permitting nonresident funeral directors, embalmers and funeral service licensees to remove bodies from and to arrange and direct funerals and embalm bodies in this State, but these privileges shall not include the right to establish a place of business in or engage generally in the business of funeral directing and embalming in this State. Except for special permits issued by the Board for teaching continuing education programs and for work in connection with disasters, no special permits may be issued to nonresident funeral directors, embalmers, and funeral service licensees from states that do not issue similar courtesy cards to persons licensed in North Carolina pursuant to this Article.

(c) Registration, Filing and Transportation. –

(1) The holder of any license granted by this State for those within the funeral service profession or renewal thereof provided for in this Article shall cause registration to be filed in the office of the board of health of the county or city in which he practices his profession, or if there be no board of health in such county or city, at the office of the clerk of the superior court of such county. All such licenses, certificates, duplicates and renewals thereof shall be displayed in a conspicuous place in the funeral establishment where the holder renders service.

(2) It shall be unlawful for any railway agent, express agency, baggage master, conductor or other person acting as such, to receive the dead body of any person for shipment or transportation by railway or other public conveyance, to a point outside of this State, unless said body be accompanied by a ~~removal or shipping~~ burial-transit permit.

(3) The "transportation or removal of a dead human body" shall mean the removal of a dead human body from the approximate location of the place of death or discovery of death or the transportation of such body to or from a medical facility, funeral establishment or facility, crematory or related holding facility, place of final disposition, or

place designated by the Medical Examiner for examination or autopsy of the dead human body, for a fee.

(4) Any individual, not otherwise exempt as provided herein, shall apply for and receive a permit from the Board before engaging in the transportation or removal of a dead human body in this State. No corporation or other business entity shall engage in the transportation or removal of a dead human body unless it has in its employ at least one individual who holds a permit issued pursuant to this section. No individual permit holder shall engage in the transportation or removal of a dead human body for more than one person, firm, or corporation without first providing the Board with written notification of the name and physical address of each such employer; nothing herein prevents an individual permit holder from engaging in the transportation or removal of a dead human body for more than one person, firm, or corporation as an independent contractor. A permit issued pursuant to this section shall not authorize the holder thereof to engage in the practice of funeral service, and the holder of such permit shall only engage in the limited services which are necessarily incidental to the transportation or removal of a dead human body.

(5) Licensees under this Article and their employees, employees of common carriers, employees of the State and its agencies, employees of local governments and their agencies, and funeral directors licensed in another state and their employees shall be exempt from the permit requirements of this section but shall otherwise be subject to subdivision (8) of this subsection and any rules promulgated hereunder relating to the proper handling, care, removal, or transportation of a dead human body. Emergency medical technicians, rescue squad workers, volunteer and paid firemen, and law enforcement officers shall not be subject to any provision of this section. Employees of public or private hospitals, nursing homes, or long-term care facilities, while handling a dead human body within such facility or while acting within the scope of their employment, shall not be subject to any provision of this section. The transportation of cremated remains shall not be subject to any provision of this section. Any individual transporting or removing a dead human body of their immediate family or next of kin shall not be subject to any provision of this section.

(6) To be eligible to receive a permit pursuant to this section, an individual shall:

(a) Be at least 18 years of age;

(b) Possess and maintain a valid drivers license issued by this State and provide proof of all liability insurance required for the registration of any vehicle in which such person intends to

engage in the business of the removal or transportation of a dead human body;

(c) Affirmatively state under oath that he has read and understands the statutes and rules relating to the removal and transportation of dead human bodies and any guidelines as may be adopted by the Board;

(d) Provide three written character references on a form prescribed by the Board, one of which must be from a licensed funeral director; and

(e) Be of good moral character.

(7) The permit issued pursuant to this section shall expire on December 31 of each year. The application fee for the individual permit shall not exceed one hundred twenty-five dollars ($125.00). A fine penalty, not to exceed one hundred dollars ($100.00), in addition to the renewal fee not to exceed seventy-five dollars ($75.00), shall be charged for any application for renewal received by the Board after February 1 of each year.

(8) No person shall transport a dead human body in the open cargo area or passenger area of a vehicle or in any vehicle in which the body may be viewed by the public. Any person removing or transporting a dead human body shall either cover the body, place it upon a stretcher designed for the purpose of transporting humans or dead human bodies in a vehicle, and secure such stretcher in the vehicle to be used for transportation, or shall enclose the body in a casket, cremation container, or container designed for common carrier transportation, and secure such container in the vehicle used for transportation. No person shall use profanity, indecent or obscene language in the presence of a dead human body or during the removal or transportation process.

(9) The Board may adopt rules pursuant to this section including application procedures and the proper procedures for the removal, handling and transportation of dead human bodies. The Board shall consult with the Office of the Chief Medical Examiner before initiating rule-making pursuant to this section and before adopting any rules pursuant to this section. Nothing in this section prohibits the Office of the Chief Medical Examiner from adopting policies and procedures regarding the removal, transportation, or handling of a dead human body under the jurisdiction of that office which are more stringent than the laws in this section or any rules promulgated hereunder. Any violation of this section or rules promulgated hereunder may be punished by the Board by a suspension or revocation of the permit or by a term of probation. Hearings of violations shall be conducted pursuant to the procedures set out in Chapter 150B of the General Statutes. The Board may, in lieu of any

disciplinary measure, accept a compromise penalty not to exceed five thousand dollars ($5,000) per violation.

(10) Each applicant for a permit shall provide the Board with the applicant's home address, name and address of any corporation or business entity employing such individual for the removal or transportation of dead human bodies, and the make, year, model, and license plate number of any vehicle in which a dead human body is transported. A permittee shall provide written notification to the Board of any change, for whatever reason, in the information required to be provided to the Board by this section or by the application for a permit within 30 days after such change takes place.

(11) If any person shall engage in or hold himself out as engaging in the business of transportation or removal or a dead human body without first having received a permit pursuant to this section, he shall be guilty of a Class 2 misdemeanor.

(12) The Board shall have the authority to inspect any place or premises in which the business of removing or transporting a dead human body is carried out and shall also have the right of inspection of any vehicle and equipment used by a permittee for the removal or transportation of a dead human body.

(d) Establishment Permit. –

(1) No person, firm or corporation shall conduct, maintain, manage or operate a funeral establishment unless a permit for that establishment has been issued by the Board and is conspicuously displayed in the establishment. Each funeral establishment at a specific location shall be deemed to be a separate entity and shall require a separate permit and compliance with the requirements of this Article.

(2) A permit shall be issued when:

a. It is shown that the funeral establishment has in charge a person, known as a manager, licensed for the practice of funeral directing or funeral service, who shall not be permitted to manage more than one funeral establishment.

b. The Board receives a list of the names of all part-time and full-time licensees employed by the establishment.

c. It is shown that the funeral establishment satisfies the requirements of G.S. 90-210.27A.

d. The Board receives payment of the permit fee.

(3) Applications for funeral establishment permits shall be made on forms provided by the Board and filed with the Board by the owner, a partner, a member of the limited liability company, or an officer of the corporation by January 1 of each year, and shall be accompanied by the application fee or renewal fee, as the case may be. All permits shall expire on December 31 of each year.

A penalty for late renewal, in addition to the regular renewal fee, shall be charged for renewal of registration coming after the first day of February.

(4) The Board may suspend or revoke a permit when an owner, partner, manager, member, operator, or officer of the funeral establishment violates any provision of this Article or any regulations of the Board, or when any agent or employee of the funeral establishment, with the consent of any person, firm or corporation operating the funeral establishment, violates any of those provisions, rules or regulations.

(5) Funeral establishment permits are not transferable. A new application for a permit shall be made to the Board within 30 days of a change of ownership of a funeral establishment.

(d1) Embalming Outside Establishment. – An embalmer who engages in embalming in a facility other than a funeral establishment or in the residence of the deceased person shall, no later than January 1 of each year, register the facility with the Board on forms provided by the Board.

(e) Revocation; Suspension; Compromise; Disclosure. –

(1) Whenever the Board finds that an applicant for a license or a person to whom a license has been issued by the Board is guilty of any of the following acts or omissions and the Board also finds that the person has thereby become unfit to practice, the Board may suspend or revoke the license or refuse to issue or renew the license, in accordance with the procedures set out in Chapter 150B:

a. Conviction of a felony or a crime involving fraud or moral turpitude.

b. Fraud or misrepresentation in obtaining or renewing a license or in the practice of funeral service.

c. False or misleading advertising as the holder of a license.

d. Solicitation of dead human bodies by the licensee, his agents, assistants, or employees; but this paragraph shall not be construed to prohibit general advertising by the licensee.

e. Employment directly or indirectly of any resident trainee agent, assistant or other person, on a part-time or full-time basis, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular licensee.

f. The direct or indirect giving of certificates of credit or the payment or offer of payment of a commission by the licensee, his agents, assistants or employees for the purpose of securing business.

g. Gross immorality, including being under the influence of alcohol or drugs while practicing funeral service.

h. Aiding or abetting an unlicensed person to perform services under this Article, including the use of a picture or name in

connection with advertisements or other written material published or caused to be published by the licensee.

i. Using profane, indecent or obscene language in the presence of a dead human body, and within the immediate hearing of the family or relatives of a deceased, whose body has not yet been interred or otherwise disposed of.

j. Violating or cooperating with others to violate any of the provisions of this Article, the rules and regulations of the Board, or the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.

k. Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of dead human bodies.

l. Refusing to surrender promptly the custody of a dead human body upon the express order of the person lawfully entitled to the custody thereof.

m. Knowingly making any false statement on a certificate of death.

n. Indecent exposure or exhibition of a dead human body while in the custody or control of a licensee.

In any case in which the Board is entitled to suspend, revoke or refuse to renew a license, the Board may accept from the licensee an offer in compromise to pay a penalty of not more than ~~one~~ five thousand dollars ~~($1,000).~~ ($5,000). The Board may either accept a compromise or revoke or refuse to renew a license, but not both.

(2) Where the Board finds that a licensee is guilty of one or more of the acts or omissions listed in subsection (e) (1) of this section but it is determined by the Board that the licensee has not thereby become unfit to practice, the Board may place the licensee on a term of probation in accordance with the procedures set out in Chapter 150B. In any case in which the Board is entitled to place a licensee on a term of probation, the Board may also impose a penalty of not more than five thousand dollars ($5,000) in conjunction with the probation.

No person licensed under this Article shall remove or cause to be embalmed a dead human body when he has information indicating crime or violence of any sort in connection with the cause of death, nor shall a dead human body be cremated, until permission of the State or county medical examiner has first been obtained. However, nothing in this Article shall be construed to alter the duties and authority now vested in the office of the coroner.

No funeral service establishment shall accept a dead human body from any public officer (excluding the State or county medical examiner or his agent), or employee or from the official of any institution, hospital or nursing home, or from a physician or any person having a professional relationship with a decedent, without having first made due inquiry as to the desires of the persons who have the legal authority to direct the disposition of the decedent's body. If any persons are found, their authority and

directions shall govern the disposal of the remains of the decedent. Any funeral service establishment receiving the remains in violation of this subsection shall make no charge for any service in connection with the remains prior to delivery of the remains as stipulated by the persons having legal authority to direct the disposition of the body. This section shall not prevent any funeral service establishment from charging and being reimbursed for services rendered in connection with the removal of the remains of any deceased person in case of accidental or violent death, and rendering necessary professional services required until the persons having legal authority to direct the disposition of the body have been notified.

When and where a licensee presents a selection of funeral merchandise to the public to be used in connection with the service to be provided by the licensee or an establishment as licensed under this Article, a card or brochure shall be directly associated with each item of merchandise setting forth the price of the service using said merchandise and listing the services and other merchandise included in the price, if any. When there are separate prices for the merchandise and services, such cards or brochures shall indicate the price of the merchandise and of the items separately priced.

At the time funeral arrangements are made and prior to the time of rendering the service and providing the merchandise, a funeral director or funeral service licensee shall give or cause to be given to the person or persons making such arrangements a written statement duly signed by a licensee of said funeral establishment showing the price of the service as selected and what services are included therein, the price of each of the supplemental items of services or merchandise requested, and the amounts involved for each of the items for which the funeral establishment will advance moneys as an accommodation to the person making arrangements, insofar as any of the above items can be specified at that time. The statement shall have printed, typed or stamped on the face thereof: "This statement of disclosure is provided pursuant to the requirements of North Carolina G.S. 90-210.25(e)."

(f) Unlawful Practices. – If any person shall practice or hold himself out as practicing the profession or art of embalming, funeral directing or practice of funeral service without having complied with the licensing provisions of this Article, he shall be guilty of a Class 2 misdemeanor.

Whenever it shall appear to the Board that any person, firm or corporation has violated, threatens to violate or is violating any provisions of this Article, the Board may apply to the courts of the State for a restraining order and injunction to restrain these practices. If upon application the court finds that any provision of this Article is being violated, or a violation is threatened, the court shall issue an order restraining and enjoining the violations, and this relief may be granted regardless of whether criminal prosecution is instituted under the provisions of this subsection. The venue for actions brought under this subsection shall be the superior court of any county in which the acts are alleged to have been committed or in the county where the defendant in the action resides. "

SECTION 4. G.S. 90-210.27A reads as rewritten:

"**§ 90-210.27A. Funeral establishments.**

(a) Every funeral establishment shall contain a preparation room which is strictly private, of suitable size for the embalming of dead bodies. Each preparation room shall:

(1) Contain one standard type operating table.
(2) Contain facilities for adequate drainage.
(3) Contain a sanitary waste receptacle.
(4) Contain an instrument sterilizer.
(5) Have wall-to-wall floor covering of tile, concrete, or other material which can be easily cleaned.
(6) Be kept in sanitary condition and subject to inspection by the Board or its agents at all times.
(7) Have a placard or sign on the door indicating that the preparation room is private.
(8) Have a proper ventilation or purification system to maintain a nonhazardous level of airborne contamination.

(b) No one is allowed in the preparation room while a dead human body is being prepared except licensees, resident trainees, public officials in the discharge of their duties, members of the medical profession, officials of the funeral home, next of kin, or other legally authorized persons.

(c) Every funeral establishment shall contain a reposing room for dead human bodies, of suitable size to accommodate a casket and visitors.

(d) Repealed by Session Laws 1997-399, s. 14.

(e) If a funeral establishment is solely owned by a natural person, that person must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a partnership, at least one partner must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a corporation, the president, vice-president, or the chairman of the board of directors must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a limited liability company, at least one member must be licensed by the Board as a funeral director or a funeral service licensee. The licensee required by this subsection must be actively engaged in the operation of the funeral establishment.

(f) If a funeral establishment uses the name of a living person in the name under which it does business, that person must be licensed by the Board as a funeral director or a funeral service licensee.

(g) No funeral establishment or other licensee under this Article shall own, operate, or maintain a funeral chapel without first having registered the name, location, and ownership thereof with the Board.

(h) A funeral establishment must comply with any applicable public health laws and rules and must contain the equipment and meet all of the standards established by the rules adopted by the Board."

SECTION 5. G.S. 90-210.28 reads as rewritten:

"**§ 90-210.28. Fees.**

The Board may set and collect fees, not to exceed the following amounts:

~~Establishment permit~~

~~Application ..... $250.00~~

~~Annual renewal~~	~~175.00~~
~~Late renewal penalty~~	~~100.00~~
~~Reinspection fee~~	~~100.00~~
~~Courtesy card~~	
~~Application~~	~~75.00~~
~~Annual renewal~~	~~50.00~~
~~Out-of-state licensee~~	
~~Application~~	~~200.00~~
~~Embalmer, funeral director, funeral service~~	
~~Application North~~	
~~Carolina Resident~~	~~150.00~~
~~Non-Resident~~	~~200.00~~
~~Annual Renewal embalmer or funeral director~~	~~50.00~~
~~funeral service~~	~~100.00~~
~~Reinstatement fee~~	~~50.00~~
~~Resident trainee permit~~	
~~Application~~	~~50.00~~
~~Annual renewal~~	~~35.00~~
~~Late renewal penalty~~	~~25.00~~
~~Duplicate license certificate~~	~~25.00~~
~~Chapel registration~~	
~~Application~~	~~150.00~~
~~Annual renewal~~	~~100.00~~
Establishment Permit	
Application	$250.00
Annual renewal	$150.00
Late renewal fee	$100.00
Establishment and embalming facility inspection fee	$100.00
Courtesy card	
Application	$75.00
Annual renewal	$50.00
Out-of-State licensee	
Application	$200.00
Embalmer, funeral director, funeral service	
Application, North Carolina resident	$150.00
Application, nonresident	$200.00
Annual Renewal	
Embalmer	$40.00
Funeral Director	$40.00
Total fee, embalmer and funeral director	
when both are held by same person	$60.00
Funeral service	$60.00
Inactive status	$50.00
Reinstatement fee	$50.00

Resident trainee permit	
Application	$50.00
Change in supervisor	$50.00
Annual renewal	$35.00
Late renewal fee	$25.00
Duplicate License certificate	$25.00
Chapel registration	
Application	$150.00
Annual renewal	$100.00
Late renewal fee	$75.00

The Board shall provide, without charge, one copy of the current statutes and regulations relating to Mortuary Science to every person applying for and paying the appropriate fees for licensing pursuant to this Article. The Board may charge all others requesting copies of the current statutes and regulations, and the licensees or applicants requesting additional copies, a fee equal to the costs of production and distribution of the requested documents."

SECTION 6. G.S. 90-210.29(b) is repealed.

SECTION 7. The title of Article 13D of Chapter 90 of the General Statutes reads as rewritten:

"Preneed Funeral ~~and Burial Trust~~ Funds."

SECTION 8. G.S. 20-210.60(7) reads as rewritten:

"Article 13D.

"Funeral and Burial Trust Funds.

"**§ 90-210.60. Definitions.**

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

(1) "Board" means the North Carolina Board of Mortuary Science as created pursuant to Article 13A of Chapter 90 of the General Statutes;

(2) "Financial institution" means a bank, trust company, savings bank, or savings and loan association authorized by law to do business in this State;

(3) "Insurance company" means any corporation, limited liability company, association, partnership, society, order, individual or aggregation of individuals engaging in or proposing or attempting to engage as principals in any kind of insurance business, including the exchanging of reciprocal or interinsurance contracts between individuals, partnerships, and corporations;

(4) "Prearrangement insurance policy" means a life insurance policy, annuity contract, or other insurance contract, or any series of contracts or agreements in any form or manner, issued by an insurance company authorized by law to do business in this State, which, whether by assignment or otherwise, has for a purpose the funding of a preneed funeral contract or an insurance-funded funeral or burial prearrangement, the insured or annuitant being the person for whose service the funds were paid;

(5) "Preneed funeral contract" means any contract, agreement, or mutual understanding, or any series or combination of contracts, agreements, or mutual understandings, whether funded by trust deposits or prearrangement insurance policies, or any combination thereof, which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of, but does not mean the furnishing of a cemetery lot, crypt, niche, or mausoleum;

(6) "Preneed funeral contract beneficiary" means the person upon whose death the preneed funeral contract will be performed; this person may also be the purchaser of the preneed funeral contract;

(7) "Preneed funeral funds" means all payments of ~~money~~ cash made to any person, partnership, association, corporation, or other entity upon any preneed funeral contract or any other agreement, contract, or prearrangement insurance policy, or any series or combination of preneed funeral contracts or any other agreements, contracts, or prearrangement insurance policies, but excluding the furnishing of cemetery lots, crypts, niches, and mausoleums, which have for a purpose or which by operation provide for the furnishing or performance of funeral or burial services, or the furnishing or delivery of personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of, or the providing of the proceeds of any insurance policy for such use;

(8) "Preneed funeral planning" means offering to sell or selling preneed funeral contracts, or making other arrangements prior to death for the providing of funeral services or merchandise;

(9) "Preneed licensee" means a funeral establishment which has applied for and has been granted a license to sell preneed funeral contracts under the Article. Such license is also referred to in this Article as a "preneed funeral establishment license."

SECTION 9. G.S. 90-210.64 reads as rewritten:

"**§ 90-210.64. Death of preneed funeral contract beneficiary; disposition of funds.**

(a) After the death of a preneed funeral contract beneficiary and full performance of the preneed funeral contract by the preneed licensee, the preneed licensee shall promptly complete a certificate of performance or similar claim form and present it to the financial institution that holds funds in trust under G.S. 90-210.61(a)(1) or to the insurance company that issued a preneed insurance policy pursuant to G.S. 90-210.61(a)(3). Upon receipt of the certificate of performance or similar claim form, the financial institution shall pay the trust funds to the contracting preneed licensee and the insurance company shall pay the insurance proceeds according to the terms of the

policy. Within 10 days after receiving payment, the preneed licensee shall mail a copy of the certificate of performance or other claim form to the Board.

(b) Unless otherwise specified in the preneed funeral contract, the preneed licensee shall have no obligation to deliver merchandise or perform any services for which payment in full has not yet been deposited with a financial institution or that will not be provided by the proceeds of a prearrangement insurance policy. Any such amounts received which do not constitute payment in full shall be refunded to the estate of the deceased preneed funeral contract beneficiary or credited against the cost of merchandise or services contracted for by a representative of the deceased. Any balance remaining after payment for the merchandise and services as set forth in the preneed funeral contract shall be paid to the estate of the preneed funeral contract beneficiary or the prearrangement insurance policy beneficiary named to receive any such balance. Provided, however, unless the parties agree to the contrary, there shall be no refund to the estate of the preneed funeral contract beneficiary of an inflation-proof preneed funeral contract.

(c) In the event that any person other than the contracting preneed licensee performs any funeral service or provides any merchandise as a result of the death of the preneed funeral contract beneficiary, the financial institution shall pay the trust funds to the contracting preneed licensee and the insurance company shall pay the insurance proceeds according to the terms of the policy. The preneed licensee shall, subject to the provisions of G.S. 90-210.65(d), immediately pay the monies so received to the other provider.

(d) When the balance of a preneed funeral fund is under one hundred dollars ($100.00) and is payable to the estate of a deceased preneed funeral contract beneficiary and there has been no representative of the estate appointed, the balance due may be paid directly to the beneficiaries of the estate. If the balance of a preneed funeral fund exceeds one hundred dollars ($100.00) or is not payable to the estate, the balance must be paid into the office of the clerk of superior court in the county where probate proceedings could be filed for the deceased preneed funeral contract beneficiary.

(e) Upon the fulfillment of a preneed contract, all of the following items shall be completed within 30 days:

(1) The contracting preneed licensee must submit a certificate of performance or similar claim form to the financial institution holding the preneed trust funds and close the preneed account.

(2) The proceeds of this trust account shall be distributed according to the terms of the preneed contract.

(3) A completed copy of the certificate of performance or similar claim form evidencing the final disposition of any financial institution preneed trust accounts funds must be filed with the Board by the contracting licensee."

SECTION 10. G.S. 90-210.67(f) is repealed.

SECTION 11. G.S. 90-210.69 reads as rewritten:

"**§ 90-210.69. Rulemaking; enforcement of Article; judicial review.**

(a) The Board is authorized to adopt rules for the carrying out and enforcement of the provisions of this Article. The Board may perform such other acts and exercise such other powers and duties as are authorized by this Article and by Article 13A of this Chapter to carry out its powers and duties.

(b) The Board may administer oaths and issue subpoenas requiring the attendance of persons and the production of papers and records in any investigation conducted by it. Members of the Board's staff or the sheriff or other appropriate official of any county of this State shall serve all notices, subpoenas and other papers given to them by the Board for service in the same manner as process issued by any court of record. Any person who does not obey a subpoena issued by the Board shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined or imprisoned in the discretion of the court.

(c) In accordance with the provisions of Chapter 150B of the General Statutes, if the Board finds that a licensee, an applicant for a license or an applicant for license renewal is guilty of one or more of the following, the Board may refuse to issue or renew a license or may suspend or revoke a license or place the holder thereof on probation upon conditions set by the Board, with revocation upon failure to comply with the conditions:

(1) Offering to engage or engaging in activities for which a license is required under this Article but without having obtained such a license.

(2) Aiding or abetting an unlicensed person, firm, partnership, association, corporation or other entity to offer to engage or engage in such activities.

(3) A crime involving fraud or moral turpitude by conviction thereof.

(4) Fraud or misrepresentation in obtaining or receiving a license or in preneed funeral planning.

(5) False or misleading advertising.

(6) Violating or cooperating with others to violate any provision of this Article, the rules and regulations of the Board, adopted or the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.

In any case in which the Board is authorized to take any of the actions permitted under this subsection, the Board may instead accept an offer in compromise of the charges whereby the accused shall pay to the Board a penalty of not more than ~~one~~ five thousand dollars ~~($1,000).~~ ($5,000). In any case in which the Board is entitled to place a licensee on a term of probation, the Board may also impose a penalty of not more than five thousand dollars ($5,000) in conjunction with such probation.

(d) Any proceedings pertaining to or actions against a funeral establishment under this Article may be in addition to any proceedings or actions permitted by G.S. 90-210.25(d)(4). Any proceedings pertaining to or actions against a person licensed for funeral directing or funeral service may be in addition to any proceedings or actions permitted by G.S. 90-210.25 (e)(1) and (2).

(e) Judicial review shall be pursuant to Article 4 of Chapter 150B of the General Statutes.

(f) In determining the amount of any fine, penalty, or offer in compromise imposed or assessed under Article 13 of Chapter 90 of the General Statutes, the Board shall consider:

(1) The degree and extent of harm to the public health, safety and welfare or to property, or the potential for harm.

(2) The duration and gravity of the violation.

(3) Whether the violation was committed willfully or intentionally or reflects a continuing pattern.

(4) Whether the violation involved elements of fraud or deception either to the public or to the Board, or both.

(5) The violator's prior disciplinary record with the Board.

(6) Whether and the extent to which the violator profited by the violation."

SECTION 12. This act becomes effective July 1, 2001.

HB 440:
Embalmers and Funeral Directors - AB

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representatives Weiss and Baddour
Date:	March 29, 2001		
Version:	H440-CSSK-10[v.2]	**Summary by:**	Esther Manheimer Committee Counsel

SUMMARY: This bill is recommended by the North Carolina Board of Mortuary Science. The bill clarifies that applicants seeking to be licensed for the practice of funeral directing or funeral service may attend a college approved by the Board of Mortuary Science or the American Board of Funeral Service Education. The bill sets out regulations regarding the transportation of dead human bodies. The bill increases, decreases, and creates new fees. The bill increases the penalty associated with the removal, suspension, or probationary status of a license to no more than $5000. The bill imposes requirements for the disposition of a preneed funeral fund and the wrapping up of a preneed trust. The bill also staggers the terms of the public members of the Board of Mortuary Science. Finally, the bill makes numerous technical and conforming changes. This act becomes effective July 1, 2001.

BILL ANALYSIS:

Section 1. Section 1 of the bill clarifies that licensed members of the Board of Mortuary Science (the Board) have full voting authority. This is the current practice. In addition, this section makes several technical changes.

Section 2. Section 2 changes the term "funeral service profession" to "funeral service" and makes several technical changes.

Section 3. Section 3 makes several technical changes and the following substantive changes:

- Clarifies that applicants seeking to be licensed for the practice of funeral directing or funeral service may attend a college approved by the Board OR a college approved by the American Board of Funeral Service Education.
- Changes the measurement used to determine how many resident trainees (persons training to become licensed in the practice of funeral directing, embalming, or funeral service) are permitted to be registered at a funeral establishment. The measurement is currently the number of funerals conducted by the funeral establishment and this bill allows the measurement to be the number of families served by the funeral establishment.
- **Regulation of the Transportation of Dead Human Bodies.** Currently, there are no regulations regarding the transportation of a dead human body (except the moving of the body from the funeral home to the burial site). This bill would require individuals not exempt from the statute to obtain a permit to transport and remove dead human bodies. The bill sets out the requirements and fees for obtaining a permit.

  Semi-Exempt Individuals. The following individuals are exempt from all statutory requirements regarding the transportation of human dead bodies except rule-based requirements and the requirements that they must (1) transport the body in a vehicle where the public cannot view the body, (2) cover the body and move the body on a stretcher or in a casket or container designed for common carrier transport, and (3) not use profanity, indecent, or obscene language in the presence of the body:

  Funeral directors, embalmers, and funeral service providers and their employees, common carrier employees, State employees, local government employees, and funeral directors licensed in another state and their employees.

Exempt Individuals. The following individuals are completely exempt from all statutory and rule-based requirements regarding the transportation of human dead bodies:

Emergency medical technicians, rescue squad workers, volunteer and paid firemen, law enforcement officers, employees of public or private hospitals, nursing homes, or long-term care facilities, State and county medical examiners and their investigators, individuals transporting cremated remains or removing a dead human body of their immediate family or next of kin.

Non-Exempt Individuals. All others not listed above (such a private, for-hire persons in the business of moving human dead bodies) must comply with all statutory and rule-based requirements regulating the transportation of dead humans bodies. Anyone who engages in the business of transportation of human dead bodies without a permit is guilty of a Class 2 misdemeanor.

The Board's Authority. This bill gives the Board rule-making authority with regard to the transportation of human dead bodies and allows the Board to take disciplinary action when the statutes or rules regarding the transportation of human dead bodies are violated. The Board can inspect vehicles and places used in the process of transporting dead human bodies.

- Under current law, where the Board is entitled to suspend, revoke, or renew a license for violation of the statutes or rules, the Board may accept a penalty of not more than $1000 in lieu of disciplinary action. This bill would increase the penalty to not more than $5000. The increase also applies to cases where the Board may place a licensee on probation. **Section 11** of the bill also sets out the increase in penalty and provides a list of factors the Board must consider prior to determining the amount of the penalty.

Section 4. Public Health Laws and Rules. Currently, it is unclear whether funeral establishments are subject to the rules, for example, of their local county health departments. Section 4 clarifies that funeral establishments are subject to county health department rules and the Board's rules.

Section 5. Increase/Decrease Fees and Creation of New Fees. Section 5:

- Decreases an "establishment's annual renewal permit fee" from $175 to $150,
- Replaces the "reinspection fee" with the "establishment and embalming facility inspection fee",
- Decreases the "annual renewal fee for embalmers or funeral directors" from $50 to $40 ($60 if licenses for both are held by the same person),
- Decreases the "annual renewal fee for a funeral service license holder" from $100 to $60.
- Creates a new "inactive status" fee (set at $50), a new "change in supervisor" fee (set at $50), and a new "chapel registration late renewal" fee (set at $75).

Section 6. Section 6 repeals G.S. 90-210.29(b), which has become obsolete as it applies to student identification cards that are no longer utilized.

Section 7. Section 7 makes technical change only.

Section 8. Section 8 clarifies that the term "money" means cash only and not any other form of payment.

Section 9. Preneed Funeral Fund. Under current law, when the balance of a preneed funeral is payable to the estate of a deceased preneed funeral contract beneficiary and there is no representative of the estate, the balance due is paid to clerk of superior court. This bill would allow balances payable to

the estate that are $100 or less to be paid directly to the beneficiaries of the estate instead of the clerk of superior court.

Preneed Contract. Section 9 also states the requirements that must be completed within 30 days of fulfilling the provisions of a preneed contract. These requirements include: (1) submitting a certificate of performance to the financial institution holding the trust and closing the account, (2) distributing the proceeds of the trust according to the provisions of the preneed contract, and (3) filing a certificate of performance with the Board.

Section 10. Section 10 repeals a portion of the statute used to facilitate the transfer of the preneed functions and oversight from the North Carolina Commissioner of Banks to the Board. The transition is complete and the language is no longer necessary.

Section 11. See Section 3 explanation above.

Section 12. Section 12 is uncodified language that creates staggered terms for the three public members of the Board.

VISITOR REGISTRATION SHEET

3-29-01

Name of Committee | Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Emily Fulghum	Smith Anderson
EDDIE CALDWELL	Hafer Caldwell & Ferrell, P.A.
[illegible]	DOT-OP
K.B. Fisher	Asheville Citizen - Times
P.S. Powell	ADC
Michelle Frazier	NC Bar Assoc.
John Phelps	NC League of Municipalities
Andy Ritter	NC Board of Nursing Science
Jon Carr	Jordan Price (NCFDA)
DAVID BARNES	Poyner & Spruill, LLP
MICHAEL WEISEL	Allen & Pinnix
[illegible]	Capitol Group
Susan Vaclavik	Neighborhood
Joy Barbour	Concerned Bikers Assoc. of N.C.
Tom Clendenin	CBA of NC
STEPHEN BROAD	CBA of NC

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

April 3, 2001 – 10:00 a.m.

The House Committee on Judiciary II met on Tuesday, April 3, 2001, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairman Phil Haire, Representatives Bowie, Decker, Gulley, Hall, Jeffus, Justus, Miller, Sherrill, and Weiss. Robin Johnson, Esther Manheimer, Jeff Hudson, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order, and then called for consideration of the following bills:

HB 274 Training School to Youth Academy. Rep. Hall moved that the proposed committee substitute be before the committee for purposes of discussion, and without objection, the PCS was before the committee. Rep. Haire was recognized to explain the committee substitute. Following a brief discussion from the members of the committee, Rep. Sherrill moved that the proposed committee substitute be given a favorable report, unfavorable as to original bill. Motion passed unanimously.

HB 311 Indian Tribe Unemployment Option. Rep. Decker moved that the proposed committee substitute be before the committee for purposes of discussion, and without objection, the PCS was before the committee. The chair recognized Rep. Haire, bill sponsor, to explain the bill. David Clegg with the Employment Security Commission spoke in support of the bill. Rep. Hall moved that the proposed committee substitute be given a favorable report, unfavorable as to original bill, and recommendation that the bill be re-referred to the Committee on Finance. Motion passed unanimously.

HB 440 Embalmers and Funeral Directors. Rep. Weiss moved that the new proposed committee substitute be before the committee for purposes of discussion, and without objection, the PCS was before the committee. Rep. Baddour recognized Rep. Weiss to explain the committee substitute. Rep. Weiss noted that the bill in its current form addressed the concerns raised by members at the previous meeting. Rep. Decker moved that the committee substitute bill be given a favorable report, unfavorable as to original bill, and recommendation that the bill be re-referred to the Committee on Finance. Motion passed.

The meeting adjourned at 10:30 a.m.

Phil Baddour
Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

HOUSE JUDICIARY II COMMITTEE
AGENDA

April 3, 2001
10:00 A.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Jeff Hudson
Elizabeth Kirkland (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDSERED:

HB 440 Embalmers and Funeral Directors
Sponsor – Rep. Weiss

HB 274 Training School to Youth Academy
Sponsor – Rep. Haire

HB 311 Indian Tribe Unemployment Option
Sponsor – Rep. Haire & Rep. Redwine

ADJOURNMENT

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 274 A BILL TO BE ENTITLED AN ACT TO CHANGE THE TERM "TRAINING SCHOOL", AS IT APPLIES TO THE JUVENILE CODE, TO "YOUTH ACADEMY" IN THE GENERAL STATUTES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill, which changes the title, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 274
PROPOSED COMMITTEE SUBSTITUTE H274-CSSB-1 [v.11]

4/2/2001 2:53:20 PM

Short Title: Amend Juvenile Justice Terminology-AB. (Public)

Sponsors:

Referred to:

February 27, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN STATUTORY TERMS AND REFERENCES RELATED TO THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-1501(26) is repealed.

SECTION 2. G.S. 7B-1501 is amended by adding a new subdivision to read:

"(29) Youth development center. – A secure residential facility authorized to provide long-term treatment, education, and rehabilitative services for delinquent juveniles committed by the court to the Department."

SECTION 3. G.S. 143B-515(21) is repealed.

SECTION 4. G.S. 143B-515 is amended by adding a new subdivision to read:

"(23) Youth development center. – A secure residential facility authorized to provide long-term treatment, education, and rehabilitative services for delinquent juveniles committed by the court to the Department."

SECTION 5. The Revisor of Statutes shall substitute the term "youth development center" for the term "training school" everywhere that term appears in Chapter 7B of the General Statutes, G.S. 115D-1, 143B-403.1, 143B-516, and 143B-543.

SECTION 6. 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 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~~ Secretary of ~~the~~ Intervention/Prevention ~~Division~~ of the Department of Juvenile Justice and Delinquency Prevention, the Assistant ~~Director~~ Secretary of ~~the Detention Division~~ Youth Development 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 Secretary of the Department of Juvenile Justice and Delinquency Prevention, the Assistant ~~Director~~ Secretary of ~~the~~ Intervention/Prevention ~~Division~~ of the Department of Juvenile Justice and Delinquency Prevention, the Assistant ~~Director~~ Secretary of ~~the Detention Division~~ Youth

Development 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 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 7. G.S. 143B-264 reads as rewritten:

"§ 143B-264. Department of Correction – organization.

The Department of Correction shall be organized initially to include the Post-Release Supervision and Parole Commission, the Board of Correction, the Division of Prisons, ~~the Division of Youth Development,~~ the Division of Adult Probation and Parole, and such other divisions as may be established under the provisions of the Executive Organization Act of 1973.

The Department shall establish a Substance Abuse Program. All substance abuse programs established or in existence shall be administered by the Department of Correction under the Substance Abuse Program."

SECTION 8. G.S. 148-26(f) reads as rewritten:

"(f) Adult inmates of the State prison system shall be prohibited from working at or being on the premises of any schools or institutions operated or administered by the ~~State Division of Youth Development.~~Youth Development Division of the Department of Juvenile Justice and Delinquency Prevention."

SECTION 9. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 274

Short Title:	Training School to Youth Academy-AB.	(Public)
Sponsors:	Representatives Haire; and Wainwright.	
Referred to:	Judiciary II.	

February 27, 2001

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE TERM "TRAINING SCHOOL", AS IT APPLIES TO THE JUVENILE CODE, TO "YOUTH ACADEMY" IN THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-1501(26) is repealed.

SECTION 2. G.S. 7B-1501 is amended by adding a new subdivision to read:

"(29) Youth academy. – A secure residential facility authorized to provide long-term treatment, education, and rehabilitative services for delinquent juveniles committed by the court to the Department."

SECTION 3. Except for the section of the General Statutes amended in this act, the Revisor of Statutes shall substitute the term "youth academy" for the term "training school" everywhere that term appears in Chapter 7B of the General Statutes, G.S. 115D-1, 143B-515, 143B-516, and 143B-543.

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

HOUSE BILL 274:
Amend Juvenile Justice Terminology.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Haire
Date:	April 3, 2001	**Summary by:**	Jeff Hudson
Version:	H274-CSSB-1 [v.11]		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 274 would amend certain statutory terms and references related to the Department of Juvenile Justice and Delinquency Prevention. House Bill 274 is an agency bill requested by the Department of Juvenile Justice and Delinquency Prevention.***

HOUSE BILL 274, AS INTRODUCED:

As introduced, House Bill 274 would replace the term "training school", as found in the juvenile justice statutes, with the term "youth academy".

PROPOSED COMMITTEE SUBSTITUTE:

Sections 1 through 5 would replace the term "training school", as found in the juvenile justice statutes, with the term "youth development center".

Section 6 would amend references to certain officials in the Department of Juvenile Justice and Delinquency Prevention in the statute that established the Governor's Crime Commission. The reference to the Assistant Director of the Intervention/Prevention Division would be changed to the Assistant Secretary of Intervention/Prevention. The reference to the Assistant Director of the Detention Division would be changed to the Assistant Secretary of Youth Development.

Section 7 would delete an obsolete reference to the Division of Youth Development in the statute that provided for the organization of the Department of Correction.

Section 8 would change a reference to the State Division of Youth Development to the Youth Development Division in the statute that regulates employment of prisoners.

EFFECTIVE DATE: This act is effective when it becomes law.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 311 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE INDIAN TRIBES TO ELECT TO MAKE UNEMPLOYMENT PAYMENTS, IN LIEU OF CONTRIBUTIONS, TO REIMBURSE ACTUAL COMPENSATION PAID WITH RESPECT TO EMPLOYEES, AS REQUIRED BY FEDERAL LAW.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill, unfavorable as to original bill, and recommendation that the committee substitute bill be re-referred to the Committee on Finance.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 311
PROPOSED COMMITTEE SUBSTITUTE H311-CSRH-11 [v.1]

4/2/2001 6:03:05 PM

Short Title: Indian Tribe Unemployment Option-AB. (Public)

Sponsors:

Referred to:

February 28, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE INDIAN TRIBES TO ELECT TO MAKE UNEMPLOYMENT PAYMENTS, IN LIEU OF CONTRIBUTIONS, TO REIMBURSE ACTUAL COMPENSATION PAID WITH RESPECT TO EMPLOYEES, AS REQUIRED BY FEDERAL LAW. .

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-8(5) is amended by adding a new sub-subdivision to read:

"**§ 96-8. Definitions.**

As used in this Chapter, unless the context clearly requires otherwise:

. . .

(5) "Employer" means:

. . .

s. Any Indian tribe as defined in the Federal Unemployment Tax Act, 26 U.S.C. § 3301 et seq."

SECTION 2. G.S. 96-8(6)i. reads as rewritten:

"i. ~~On and after January 1, 1978, the~~ The term "employment" includes service performed for any State and local governmental employing ~~unit. Provided, however,~~unit or for any Indian tribe, except that employment ~~shall~~ does not include service performed (a) as an elected official; (b) as a member of a legislative body or a member of the judiciary, of a State or political subdivision ~~thereof;~~ thereof or of an Indian tribe; (c) as a member of the State National Guard or Air National Guard; (d) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or (e) in a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week. The services to which clause (d) of the

preceding sentence applies include but are not limited to temporary emergency services compensated solely by a fixed payment for each emergency call answered whether or not provided for by prior agreement and training in preparation for such temporary emergency service whether or not compensated."

SECTION 3. G.S. 96-8(6)k.15. reads as rewritten:

"k. The term "employment" ~~shall~~ does not include:

. . .

15. Services performed (i) in the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled or principally supported by a church or convention or association of churches; or (ii) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or (iii) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or (iv) as a part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal ~~agency or~~ agency, an agency of a state or political subdivision thereof, or an Indian tribe, by an individual receiving ~~such~~ the work relief or work training, unless a federal law, rule or regulation mandates unemployment insurance coverage to individuals in a particular work-relief or work-training program; (v) after December 31, 1971, by an inmate for a hospital in a State prison or other State correctional institution or by a patient in any other State-operated hospital, and services performed by patients in a hospital operated by a nonprofit organization shall be exempt; (vi) after December 31, 1971, in the employ of a hospital, if such service is performed by a patient of such hospital; (vii) after December 31, 1971, by an inmate of a custodial or penal institution."

SECTION 4. G.S. 96-9(a) is amended by adding a new subdivision to read:

"**§ 96-9. Contributions.**

(a) Payment. –

. . .

(4a) Indian tribes may finance benefits paid to employees either by coming under the experience rating program provided in G.S. 96-9(b) or by coming into the program on a reimbursement basis in accordance with the provisions and conditions of G.S. 96-9(i). Any election made is binding on the tribe so electing for a period of three years."

SECTION 5. G.S. 96-9(g) reads as rewritten:

"(g) Nothing contained in subsections ~~(d) and (f)~~ (d), (f), and (i) of this section ~~shall be construed to prevent~~ prevents the Commission from providing any reimbursing employer with informational bills or lists of charges on a basis more frequent than yearly, if in its sole discretion, the Commission ~~deems~~ considers such action to be in the best interest of the Commission and the affected employer(s)."

SECTION 6. G.S. 96-9 is amended by adding a new subsection to read:

"(i) Indian Tribes. – Benefits paid to employees of Indian tribe employing units shall be financed in accordance with the provisions of this subsection. For the purposes of this subsection, an 'Indian tribe employing unit' is an Indian tribe, a subdivision or subsidiary of an Indian tribe, or a business enterprise wholly owned by an Indian tribe.

(1) Election. –

a. An Indian tribe employing unit shall pay contributions under the provisions of this Chapter, unless it elects in accordance with this subsection to pay the Commission for the Unemployment Insurance Fund an amount equal to the amount of benefits paid that is attributable to service in the employ of the unit, to individuals for weeks of unemployment that begin within a benefit year established during the effective period of the election.

b. An Indian tribe employing unit may elect to become liable for payments in lieu of contributions for a period of not less than three calendar years by filing a written notice of its election with the Commission at least 30 days before the January 1 effective date of the election.

c. An Indian tribe employing unit that makes an election in accordance with this subsection will continue after the end of the three calendar years to be liable for payments in lieu of contributions until it files with the Commission a written notice terminating its election at least 30 days before the January 1 effective date of the termination.

d. The account of an Indian tribe employing unit that has been paying contributions under this Chapter for a period of at least three consecutive calendar years and that elects to change to a

reimbursement basis shall be closed and shall not be used in any future computation of the unit's contribution rate in any manner except that the unit may be relieved of the requirement to pay one percent (1%) of taxable wages as required by subdivision (2) of this subsection to the following extent and upon the following conditions:

1. An Indian tribe employing unit that has, for the year the election will be effective, an experience rating of 1.7 or less, will have transferred from its experience rating account an amount equal to one percent (1%) of its payroll as reported for each of the four calendar quarters that constitute the election year.
2. An Indian tribe employing unit that has, for the year the election will be effective, an experience rating of less than 2.7 but more than 1.7, will have transferred from its experience rating account an amount equal to one-half of one percent (.5%) of its payroll as reported for each of the four calendar quarters that constitute the election year. These employing units shall make advance payments to the Commission quarterly, computed at one-half of one percent (.5%) of the taxable wages reported as provided in subdivision (2) of this subsection.
3. An Indian tribe employing unit that has, for the year the election will become effective, an experience rating of 2.7 or more, upon electing to change to a reimbursement basis, will meet all the requirements of subdivision (2) of this subsection, including making advance payments computed at one percent (1%) of taxable wages.

e. The Commission, in accordance with regulations it adopts, shall notify each Indian tribe employing unit of any determination of the effective date of any election it makes and of any termination of the election. These determinations shall be subject to reconsideration, appeal, and review.

(2) Procedure. – Indian tribe employing units' payments by reimbursement in lieu of contributions shall be made and processed as provided in this subdivision.

a. Quarterly contributions and wage reports and advance payments shall be submitted to the Commission quarterly under the same conditions and requirements of G.S. 96-9 and 96-10, except that the amount of advance payments shall be computed as one percent (1%) of taxable wages and entered on the reports, and except that the wage base shall be the same as that provided for

in G.S. 96-9(a)(5). Collection of these advance payments shall be made as provided for the collection of contributions in G.S. 96-10.

Any Indian tribe employing unit paying by reimbursement having been, prior to July 1, under the reimbursement method of payment for the preceding calendar year, shall continue to file quarterly reports but shall make no payments with those reports.

b. The Commission shall establish a separate account for each Indian tribe employing unit paying by reimbursement. The account shall be credited and maintained as provided in G.S. 96-9(c)(1), except that advance payments shall be credited in full, and voluntary contributions are not applicable.

c. Benefits paid shall be allocated to the employer's account in accordance with G.S. 96-9(c)(2)a. but charged to the account without the application of any multiplier, and no benefits shall be noncharged except amounts of benefits paid through error.

d. As of July 31 of each year, and prior to January 1 of the succeeding year, the Commission shall determine the balance of each Indian tribe employing unit's account and shall furnish the unit with a statement of all charges and credits to the account.

As of August 1 of each year, there shall be refunded any credit balance remaining in the Indian tribe employing unit's account (after all applicable postings) in excess of one percent (1%) of taxable wages for the 12 months ending on June 30 preceding the computation date. The refund must be made before February 1 following the computation date.

If the balance in the account does not equal one percent (1%) of taxable wages, the Indian tribe employing unit must, upon notice and demand for payment mailed to its last known address, pay into the account an amount that will bring the balance to one percent (1%) of taxable wages. This amount becomes due on or before the 25th day after the notice and demand for payment is mailed. Any amount unpaid on the due date shall be collected in the same manner, including interest, as prescribed in G.S. 96-10.

Upon a change in election as to the method of payment from reimbursement to contributions, or upon termination of coverage and after all applicable benefits paid based on wages paid before the change in election or termination of coverage have been charged, any credit balance in the account shall be refunded to the Indian tribe employing unit.

If there is a debit balance in the account, the Indian tribe employing unit must, upon notice and demand for payment mailed to its last known address, pay into the account an amount necessary to bring the account to one percent (1%) of taxable wages. This amount becomes due on or before the 25th day after the notice and demand for payment is mailed. Any amount unpaid on the due date shall be collected in the same manner, including interest, as prescribed in G.S. 96-10.

e. Notices to Indian tribe employing units of payment and reporting delinquency must include information that failure to make full payment within the time prescribed will cause the unit to become liable for contributions under subsection (a) of this section, will cause the unit to lose the option of making payment by reimbursement in lieu of contributions, and could cause the unit to lose coverage under this Chapter for services performed for the unit.

(3) Forfeiture of option. – If an Indian tribe employing unit fails to make payments, including interest and penalties, required under this subsection within 90 days after receipt of the bill, the unit loses the option to make payments by reimbursement in lieu of contributions for the following calendar year unless payment in full is made before contribution rates for the following calendar year are computed. An Indian tribe that has lost the option to make payments by reimbursement in lieu of contributions for a calendar year regains that option for the following calendar year if it makes all contributions timely during the year for which the option was lost and no payments, penalties, or interest remain outstanding.

(4) Forfeiture of coverage. – If an Indian tribe employing unit fails to make payments, including interest and penalties, required under this subsection after all collection activities considered necessary by the Commission have been exhausted, services performed for that employing unit are no longer treated as 'employment' for the purpose of coverage under this Chapter. An Indian tribe employing unit that has lost coverage regains coverage under this Chapter for services performed for the employing unit if the Commission determines that all contributions, payments in lieu of contributions, penalties, and interest have been paid.

The Commission shall notify the Internal Revenue Service and the United States Department of Labor of any termination or reinstatement of coverage pursuant to this subdivision.

(5) Extended benefits. – Extended benefits paid that are attributable to service in the employ of an Indian tribe employing unit and not

reimbursed by the federal government shall be financed in their entirety by the Indian tribe employing unit."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

HOUSE BILL 311

Short Title:	Indian Tribe Unemployment Option-AB.	(Public)
Sponsors:	Representatives Redwine and Haire.	
Referred to:	Military, Veterans and Indian Affairs.	

February 28, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE INDIAN TRIBES TO ELECT TO MAKE UNEMPLOYMENT PAYMENTS, IN LIEU OF CONTRIBUTIONS, TO REIMBURSE ACTUAL COMPENSATION PAID WITH RESPECT TO EMPLOYEES, AS REQUIRED BY FEDERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-8(5) is amended by adding a new sub-subdivision to read:

"**§ 96-8. Definitions.**

As used in this Chapter, unless the context clearly requires otherwise:

. . .

(5) "Employer" means:

. . .

s. Any Indian tribe as defined in the Federal Unemployment Tax Act, 26 U.S.C. § 3301 et seq."

SECTION 2. G.S. 96-8(6)i. reads as rewritten:

"i. ~~On and after January 1, 1978, the~~ The term "employment" includes service performed for any State and local governmental employing ~~unit. Provided, however,~~unit or for any Indian tribe, except that employment ~~shall~~ does not include service performed (a) as an elected official; (b) as a member of a legislative body or a member of the judiciary, of a State or political subdivision ~~thereof;~~ thereof or of an Indian tribe; (c) as a member of the State National Guard or Air National Guard; (d) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or (e) in a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight

hours per week. The services to which clause (d) of the preceding sentence applies include but are not limited to temporary emergency services compensated solely by a fixed payment for each emergency call answered whether or not provided for by prior agreement and training in preparation for such temporary emergency service whether or not compensated."

SECTION 3. G.S. 96-8(6)k.15. reads as rewritten:

"k. The term "employment" ~~shall~~ does not include:

. . .

15. Services performed (i) in the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled or principally supported by a church or convention or association of churches; or (ii) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or (iii) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or (iv) as a part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal ~~agency or~~ agency, an agency of a state or political subdivision thereof, or an Indian tribe, by an individual receiving ~~such~~ the work relief or work training, unless a federal law, rule or regulation mandates unemployment insurance coverage to individuals in a particular work-relief or work-training program; (v) after December 31, 1971, by an inmate for a hospital in a State prison or other State correctional institution or by a patient in any other State-operated hospital, and services performed by patients in a hospital operated by a nonprofit organization shall be exempt; (vi) after December 31, 1971, in the employ of a hospital, if such service is performed by a patient of such hospital; (vii) after December 31, 1971, by an inmate of a custodial or penal institution."

SECTION 4. G.S. 96-9(a) is amended by adding a new subdivision to read:

"**§ 96-9. Contributions.**

(a) Payment. –

. . .

(4a) Indian tribes may finance benefits paid to employees either by coming under the experience rating program provided in G.S. 96-9(b) or by coming into the program on a reimbursement basis in accordance with the provisions and conditions of G.S. 96-9(i). Any election made is binding on the tribe so electing for a period of four years."

SECTION 5. G.S. 96-9(g) reads as rewritten:

"(g) Nothing contained in subsections ~~(d) and (f)~~ (d), (f), and (i) of this section ~~shall be construed to prevent~~ prevents the Commission from providing any reimbursing employer with informational bills or lists of charges on a basis more frequent than yearly, if in its sole discretion, the Commission ~~deems~~ considers such action to be in the best interest of the Commission and the affected employer(s)."

SECTION 6. G.S. 96-9 is amended by adding a new subsection to read:

"(i) Indian Tribes. – Benefits paid to employees of Indian tribe employing units shall be financed in accordance with the provisions of this subsection. For the purposes of this subsection, an 'Indian tribe employing unit' is an Indian tribe, a subdivision or subsidiary of an Indian tribe, or a business enterprise wholly owned by an Indian tribe.

(1) Election. –

a. An Indian tribe employing unit shall pay contributions under the provisions of this Chapter, unless it elects in accordance with this subsection to pay the Commission for the Unemployment Insurance Fund an amount equal to the amount of benefits paid that is attributable to service in the employ of the unit, to individuals for weeks of unemployment that begin within a benefit year established during the effective period of the election.

b. An Indian tribe employing unit may elect to become liable for payments in lieu of contributions for a period of not less than four calendar years by filing a written notice of its election with the Commission at least 30 days before the January 1 effective date of the election.

c. An Indian tribe employing unit that makes an election in accordance with this subsection will continue after the end of the four calendar years to be liable for payments in lieu of contributions until it files with the Commission a written notice terminating its election at least 30 days before the January 1 effective date of the termination.

d. The account of an Indian tribe employing unit that has been paying contributions under this Chapter for a period of at least four consecutive calendar years and that elects to change to a reimbursement basis shall be closed and shall not be used in any

future computation of the unit's contribution rate in any manner except that the unit may be relieved of the requirement to pay one percent (1%) of taxable wages as required by subdivision (2) of this subsection to the following extent and upon the following conditions:

1. An Indian tribe employing unit that has, for the year the election will be effective, an experience rating of 1.7 or less, will have transferred from its experience rating account an amount equal to one percent (1%) of its payroll as reported for each of the four calendar quarters that constitute the election year.
2. An Indian tribe employing unit that has, for the year the election will be effective, an experience rating of less than 2.7 but more than 1.7, will have transferred from its experience rating account an amount equal to one-half of one percent (.5%) of its payroll as reported for each of the four calendar quarters that constitute the election year. These employing units shall make advance payments to the Commission quarterly, computed at one-half of one percent (.5%) of the taxable wages reported as provided in subdivision (2) of this subsection.
3. An Indian tribe employing unit that has, for the year the election will become effective, an experience rating of 2.7 or more, upon electing to change to a reimbursement basis, will meet all the requirements of subdivision (2) of this subsection, including making advance payments computed at one percent (1%) of taxable wages.

e. The Commission, in accordance with regulations it adopts, shall notify each Indian tribe employing unit of any determination of the effective date of any election it makes and of any termination of the election. These determinations shall be subject to reconsideration, appeal, and review.

(2) Procedure. – Indian tribe employing units' payments by reimbursement in lieu of contributions shall be made and processed as provided in this subdivision.

a. Quarterly contributions and wage reports and advance payments shall be submitted to the Commission quarterly under the same conditions and requirements of G.S. 96-9 and 96-10, except that the amount of advance payments shall be computed as one percent (1%) of taxable wages and entered on the reports, and except that the wage base shall be the same as that provided for in G.S. 96-9(a)(5). Collection of these advance payments shall

be made as provided for the collection of contributions in G.S. 96-10.

Any Indian tribe employing unit paying by reimbursement having been, prior to July 1, under the reimbursement method of payment for the preceding calendar year, shall continue to file quarterly reports but shall make no payments with those reports.

b. The Commission shall establish a separate account for each Indian tribe employing unit paying by reimbursement. The account shall be credited and maintained as provided in G.S. 96-9(c)(1), except that advance payments shall be credited in full, and voluntary contributions are not applicable.

c. Benefits paid shall be allocated to the employer's account in accordance with G.S. 96-9(c)(2)a. but charged to the account without the application of any multiplier, and no benefits shall be noncharged except amounts of benefits paid through error.

d. As of July 31 of each year, and prior to January 1 of the succeeding year, the Commission shall determine the balance of each Indian tribe employing unit's account and shall furnish the unit with a statement of all charges and credits to the account.

As of August 1 of each year, there shall be refunded any credit balance remaining in the Indian tribe employing unit's account (after all applicable postings) in excess of one percent (1%) of taxable wages for the 12 months ending on June 30 preceding the computation date. The refund must be made before February 1 following the computation date.

If the balance in the account does not equal one percent (1%) of taxable wages, the Indian tribe employing unit must, upon notice and demand for payment mailed to its last known address, pay into the account an amount that will bring the balance to one percent (1%) of taxable wages. This amount becomes due on or before the 25th day after the notice and demand for payment is mailed. Any amount unpaid on the due date shall be collected in the same manner, including interest, as prescribed in G.S. 96-10.

Upon a change in election as to the method of payment from reimbursement to contributions, or upon termination of coverage and after all applicable benefits paid based on wages paid before the change in election or termination of coverage have been charged, any credit balance in the account shall be refunded to the Indian tribe employing unit.

If there is a debit balance in the account, the Indian tribe employing unit must, upon notice and demand for payment mailed to its last known address, pay into the account an

amount necessary to bring the account to one percent (1%) of taxable wages. This amount becomes due on or before the 25th day after the notice and demand for payment is mailed. Any amount unpaid on the due date shall be collected in the same manner, including interest, as prescribed in G.S. 96-10.

e. Notices to Indian tribe employing units of payment and reporting delinquency must include information that failure to make full payment within the time prescribed will cause the unit to become liable for contributions under subsection (a) of this section, will cause the unit to lose the option of making payment by reimbursement in lieu of contributions, and could cause the unit to lose coverage under this Chapter for services performed for the unit.

(3) Forfeiture of option. – If an Indian tribe employing unit fails to make payments, including interest and penalties, required under this subsection within 90 days after receipt of the bill, the unit loses the option to make payments by reimbursement in lieu of contributions for the following calendar year unless payment in full is made before contribution rates for the following calendar year are computed. An Indian tribe that has lost the option to make payments by reimbursement in lieu of contributions for a calendar year regains that option for the following calendar year if it makes all contributions timely during the year for which the option was lost and no payments, penalties, or interest remain outstanding.

(4) Forfeiture of coverage. – If an Indian tribe employing unit fails to make payments, including interest and penalties, required under this subsection after all collection activities considered necessary by the Commission have been exhausted, services performed for that employing unit are no longer treated as 'employment' for the purpose of coverage under this Chapter. An Indian tribe employing unit that has lost coverage regains coverage under this Chapter for services performed for the employing unit if the Commission determines that all contributions, payments in lieu of contributions, penalties, and interest have been paid.

The Commission shall notify the Internal Revenue Service and the United States Department of Labor of any termination or reinstatement of coverage pursuant to this subdivision.

(5) Extended benefits. – Extended benefits paid that are attributable to service in the employ of an Indian tribe employing unit and not reimbursed by the federal government shall be financed in their entirety by the Indian tribe employing unit."

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

HOUSE BILL 311:
Indian Tribe Unemployment Option - AB.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Reps. Redwine & Haire
Date:	April 3, 2001	**Summary by:**	Robin Johnson
Version:	H311-CSRH-11[v.1]		Committee Counsel

The PCS changes the period of election from four years to three years.

SUMMARY: House Bill 311 would allow federally recognized Indian tribes in North Carolina to elect whether they will be "reimbursable-based employers" or "experience-rated employers" for the purpose of making payments to the Unemployment Insurance Fund (Fund).

The bill would take effect when it becomes law.

CURRENT LAW: Currently, most employers in North Carolina, including Indian tribes, must pay quarterly taxes to the Employment Security Commission (ESC) for the Fund. These contributions are based on each employer's experience in unemployment. The greater their unemployment history, the greater their contributions. Government and nonprofit employers are reimbursable-based. They may elect to make payments to reimburse the ESC for actual unemployment payments made.

BILL ANALYSIS: The bill would amend various provisions in Article 2 of Chapter 96 of the General Statutes (Unemployment Insurance Division). It would allow a federally recognized Indian tribe to make an election, valid for at least three years, as to whether to be treated as a reimbursable-based employer or experience-rated employer for the purpose of making payments to the Fund.

If a tribe elects the reimbursement method and subsequently fails to make payments, it would lose its option to make payments by reimbursement rather than by contributions for the following year, and could cause the tribe to lose coverage under Chapter 96.unless it makes all payments timely during the year for which the option was lost. Also, if the tribe elects to make payments by reimbursement, it must have, on August 1 of each year, a credit balance equal to one percent of taxable wages for the 12 months ending on the previous June 30. If the tribe fails, within 25 days after notice and demand for payment is mailed, to pay into the account an amount that will bring the balance to one percent of taxable wages, interest will accrue (at a set yearly rate between 5-16%) and the tribe could be subject to a penalty in an amount equal to 10% of the amount due.

BACKGROUND: The bill is requested by the Employment Security Commission and is required to implement a recent federal law. The only federally recognized Indian tribe in North Carolina is the Eastern Band of the Cherokee of North Carolina.

H311-SMRH-001

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MEMORANDUM

TO: Representatives Redwine and Haire

FROM: Adam Levinson, Fiscal Analyst, Fiscal Research Division

DATE: March 16, 2001

RE: Certification for House Bill 311 "Indian Tribe Unemployment Option - AB"

North Carolina General Statute (G.S.) 120-36.8 requires that any bill that proposes a change in law that is thought to be required to implement a federal law, or is needed to bring the State into compliance with federal law, or is needed in order to qualify for receipt of federal funds, must have attached to it a certification prepared by the Fiscal Research Division that identifies the federal law in question. House Bill 311 "Indian Tribe Unemployment Option - AB" is a bill attempting to bring the state in compliance with federal law. The following explanation identifies the federal law in question and explains why the federal law makes House Bill 311 necessary. This memorandum will serve as the certification required in G.S. 120-36.8.

SUMMARY OF FEDERAL LEGISLATION

The Consolidated Appropriations Act of 2001 (CAA) contains amendments to the Federal Unemployment Tax Act of 1970 (FUTA) that render the unemployment tax status of Indian tribes similar to that of state and local governments. The changes include:

- Adding a provision defining "Indian tribe"
- Adding "services performed in the employ of an Indian tribe" to the class of services currently exempted from the definition of "employment"
- Adding "Indian tribe" to the class of governmental entities that "may elect to pay (in lieu of contributions) into the State unemployment fund amounts equal to the amounts of compensation attributable under the State law to such service" (this is commonly known as the "reimbursement option")
- Adding a provision authorizing that "State law may require a tribe to post a payment bond or take other reasonable measures to assure the making of payments in lieu of contributions"

REQUIREMENTS OF FEDERAL LAW

Under the CAA-amended FUTA, American Indian tribes are to be treated similarly to state and local governments. This new status provides for the following:

- Services performed in the employ of tribes generally are no longer subject to the FUTA tax.
- As a condition of a state's participation in the Federal-State Unemployment Compensation (UC) program:
  - ⇒ Services performed in the employ of tribes are, with specified exceptions, required to be covered under State UC laws. Prior to the CAA amendments, coverage was at the option of the State.
  - ⇒ Tribes must be offered the reimbursement option. Prior to the CAA amendments, states were prohibited from offering the reimbursement option to Indian tribes.
- Extended Benefit payments based on services performed in the employ of a tribe no longer qualify for Federal sharing. All extended benefit payments will thus be at the option of and will be the full responsibility of the tribe.

All states with "Indian tribes" within their state boundaries must amend their laws immediately to reflect the above changes. As the Eastern Band of the Cherokee qualifies as an Indian tribe under the federal definition, North Carolina is one such state. Because the U.S. Department of Labor recognizes that states will need time to introduce and enact legislation, the Department will take no enforcement action prior to October 31, 2001.

FISCAL RESEARCH OPINION

It is the opinion of the Fiscal Research Division, after consultation with the Research and Bill Drafting Divisions and ESC, that House Bill 311 will bring the State into compliance with Federal Unemployment Compensation Law.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 440 A BILL TO BE ENTITLED AN ACT TO AMEND THE EMBALMERS AND FUNERAL DIRECTORS LAW OF NORTH CAROLINA.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill, unfavorable as to original bill, and recommendation that the committee substitute bill be re-referred to the Committee on Finance.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 440
PROPOSED COMMITTEE SUBSTITUTE H440-CSSK-10 [v.5]

3/30/2001 4:56:16 PM

Short Title: Embalmers and Funeral Directors-AB. (Public)

Sponsors:

Referred to:

March 1, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE EMBALMERS AND FUNERAL DIRECTORS LAW OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-210.18(b) reads as rewritten:

"(b) The North Carolina Board of Mortuary Science is created ~~as a continuation of the North Carolina Board of Embalmers and Funeral Directors. The Board is the agency for regulation of~~ and shall regulate the practice of funeral service in this State. The Board shall have nine members as follows:

(1) Four funeral service licensees or persons holding both funeral director's license and an embalmer's license,

(2) Two persons holding a funeral director's license or a funeral service license, and

(3) Three public members.

(b1) A member's term shall be three years and shall expire on December 31 or when his or her successor has been duly elected or appointed. No member may serve more than two complete consecutive terms.

(b2) The six seats on the Board for licensees shall be filled in an election in which every person licensed to practice embalming, funeral directing, or funeral service in this State may vote. No licensee may be nominated, elected, or serve unless he holds a North Carolina license in the class designated for the seat and unless he is engaged in full-time employment in this State in a practice authorized by his license. Any vacancy occurring in an elective seat on the Board shall be filled for the unexpired term by majority vote of the remaining Board members. The six licensed members of the board shall have full voting authority.

(b3) The public members of the Board shall have full voting authority. They shall be appointed by the Governor and may neither be licensed under this Article nor employed by a person who is. A vacancy occurring in a public member's seat shall be filled for the unexpired term by the Governor."

SECTION 2. G.S. 90-210.20 reads as rewritten:

"**§ 90-210.20. Definitions.**

(a) "Advertisement" means the publication, dissemination, circulation or placing before the public, or causing directly or indirectly to be made, published, disseminated or placed before the public, any announcement or statement in a newspaper, magazine, or other publication, or in the form of a book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card, label or tag, or over any ~~radio or~~ radio, television ~~station.~~ station, or electronic medium.

(b) "Board" means the North Carolina ~~State~~ Board of Mortuary Science.

(c) "Burial" includes interment in any form, cremation and the transportation of the dead human body as necessary therefor.

(c1) "Dead human bodies", as used in this Article includes fetuses beyond the second trimester and the ashes from cremated bodies.

(d) "Embalmer" means any person engaged in the practice of ~~"embalming" as defined below.~~embalming.

(e) "Embalming" means the preservation and disinfection or attempted preservation and disinfection of ~~the~~ dead human bodies by application of chemicals externally or internally or both and the practice of restorative art including the restoration or attempted restoration of the appearance of ~~the~~ a dead human body.

(e1) "Funeral chapel" means a chapel or other facility separate from the funeral establishment premises for the reposing of dead human bodies, visitation or funeral ~~ceremony, which~~ ceremony that is owned, operated, or maintained by a funeral establishment or other licensee under this Article, and ~~which~~ that does not use the word "funeral" in its name, on a sign, in a directory, in advertising or in any other manner; in which or on the premises of which there is not displayed or offered for sale any caskets or other funeral merchandise; in which or on the premises of which there is not located any funeral business office or a preparation room; in which or on the premises of which no funeral sales, financing, or arrangements are made; and which no owner, operator, employee, or agent thereof represents the chapel to be a funeral establishment.

(f) "Funeral directing" means engaging in the practice of funeral service except ~~embalming as hereinbefore defined.~~embalming.

(g) "Funeral director" means any person engaged in the practice of ~~"funeral directing" as defined above.~~funeral directing.

(h) "Funeral establishment" means every place or premises devoted to or used in the care, arrangement and preparation for the funeral and final disposition of dead human bodies and maintained for the convenience of the public in connection with dead human bodies or as the place for carrying on the profession of funeral service.

(i) "Funeral service licensee" means a person who is duly licensed and engaged in the ~~"practice of funeral service" as below defined.~~practice of funeral service.

(j) "Funeral ~~service profession~~" service" means the aggregate of all funeral service licensees and their duties and responsibilities in connection with the funeral as an organized, purposeful, time-limited, flexible, group-centered response to death.

(k) "Practice of funeral service" means engaging in the care or disposition of dead human bodies or in the practice of disinfecting and preparing by embalming or otherwise dead human bodies for the funeral service, transportation, burial or cremation, or in the practice of funeral directing or embalming as presently known, whether under these titles or designations or otherwise. ~~It~~ "Practice of funeral service" also means engaging in making arrangements for funeral service, selling funeral supplies to the public or making financial arrangements for the rendering of such services or the sale of such supplies.

(l) "Resident trainee" means a person who is engaged in preparing to become licensed for the practice of funeral directing, embalming or funeral service under the personal supervision and instruction of a person duly licensed for the practice of funeral directing, embalming or funeral service in the State of North Carolina under the provisions of this Chapter, and who is duly registered as ~~such~~ a resident trainee with the Board."

SECTION 3. G.S. 90-210.25 reads as rewritten:

"**§ 90-210.25. Licensing.**

(a) Qualifications, Examinations, Resident Traineeship and Licensure. –

(1) To be licensed for the practice of funeral directing under this Article, a person must:

a. Be at least 18 years of age.

b. Be of good moral character.

c. Have completed a minimum of 32 semester hours or 48 quarter hours of ~~instruction in a course of study~~instruction, including the subjects set out in ~~item~~ sub-part e.1. of this ~~subsection in a mortuary science college approved by the Board, or be a graduate of~~ subsection, as prescribed by a mortuary science college approved by the ~~Board.~~ Board or a school of mortuary science accredited by the American Board of Funeral Service Education.

d. Have completed 12 months of resident traineeship as a funeral director, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under ~~item~~ sub-subdivision c. of this ~~subsection.~~subdivision.

e. Have passed an oral or written funeral director examination on the following subjects:

1. Psychology, sociology, funeral directing, business law, funeral law, funeral management, and accounting.

2. Repealed by 1997-399, s. 5.

3. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies.

(2) To be licensed for the practice of embalming under this Article, a person must:

a. Be at least 18 years of age.

b. Be of good moral character.

c. Be a graduate of a mortuary science college approved by the Board.

d. Have completed 12 months of resident traineeship as an embalmer pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under ~~item~~ sub-subdivision c. of this ~~subsection.~~subdivision.

e. Have passed an oral or written embalmer examination on the following subjects:

1. Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.

2. Repealed by 1997-399, s. 6.

3. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies.

(3) To be licensed for the practice of funeral service under this Article, a person must:

a. Be at least 18 years of age.

b. Be of good moral character.

c. Be a graduate of a mortuary science college approved by the ~~Board.~~ Board or a school of mortuary science accredited by the American Board of Funeral Service Education. Have completed a minimum of 32 semester hours or 48 quarter hours of instruction, including the subjects set out in item sub-part e.1. of this subsection, as prescribed by a mortuary science college approved by the Board or a school of mortuary science accredited by the American Board of Funeral Service Education.

d. Have completed 12 months of resident traineeship as a funeral service licensee, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under item c. of this subsection.

e. Have passed an oral or written funeral service examination on the following subjects:

1. Psychology, sociology, funeral directing, business law, funeral law, funeral management, and accounting.

2. Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.

3. Repealed by 1997-399, s. 7.
4. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies.

(4) a. A person desiring to become a resident trainee shall apply to the Board on a form provided by the Board. The application shall state that the applicant is not less than 18 years of age, of good moral character, and is the graduate of a high school or the equivalent thereof, and shall indicate the licensee under whom the applicant expects to train. A person training to become an embalmer may serve under either a licensed embalmer or a funeral service licensee. A person training to become a funeral director may serve under either a licensed funeral director or a funeral service licensee. A person training to become a funeral service licensee shall serve under a funeral service licensee. The application must be sustained by oath of the applicant and be accompanied by the appropriate fee. When the Board is satisfied as to the qualifications of an applicant it shall instruct the secretary to issue a certificate of resident traineeship.

b. When a resident trainee leaves the proctorship of the licensee under whom the trainee has worked, the licensee shall file with the Board an affidavit showing the length of time served with the licensee by the trainee, and the affidavit shall be made a matter of record in the Board's office. The licensee shall deliver a copy of the affidavit to the trainee.

c. A person who has not completed the traineeship and wishes to do so under a licensee other than the one whose name appears on the original certificate may reapply to the Board for approval, without payment of an additional fee.

d. A certificate of resident traineeship shall be signed by the resident trainee and upon payment of the renewal fee shall be renewable one year after the date of original registration; but the certificate may not be renewed more than one time. The Board shall mail to each registered trainee at his last known address a notice that the renewal fee is due and that, if not paid within 30 days of the notice, the certificate will be canceled. A penalty, in addition to the renewal fee, shall be charged for a late renewal, but the renewal of the registration of any resident trainee who is engaged in the active military service of the United States at the time renewal is due may, at the discretion of the Board, be held in abeyance for the duration of that service without penalties. No credit shall be allowed for the

12-month period of resident traineeship that shall have been completed more than three years preceding the examination for a license.

e. All registered resident trainees shall report to the Board at least once every ~~three months~~ month during traineeship upon forms provided by the Board listing the work which has been completed during the preceding ~~three months~~ month of resident traineeship. The data contained in the reports shall be certified as correct by the licensee under whom the trainee has served during the period and by the licensed person who is managing the funeral service establishment. Each report shall list the following:

1. For funeral director trainees, the conduct of any funerals during the relevant time period,
2. For embalming trainees, the embalming of any bodies during the relevant time period,
3. For funeral service trainees, both of the activities named in 1 and 2 of this subsection, engaged in during the relevant time period.

f. To meet the resident traineeship requirements of G.S. 90-210.25(a)(1), G.S. 90-210.25(a)(2) and G.S. 90-210.25(a)(3) the following must be shown by the affidavit(s) of the licensee(s) under whom the trainee worked:

1. That the funeral director trainee has, under supervision, assisted in directing at least 25 funerals during the resident traineeship,
2. That the embalmer trainee has, under supervision, assisted in embalming at least 25 bodies during the resident traineeship,
3. That the funeral service trainee has, under supervision assisted in directing at least 25 funerals and, under supervision, assisted in embalming at least 25 bodies during the resident traineeship.

g. The Board may suspend or revoke a certificate of resident traineeship for violation of any provision of this Article.

h. Each sponsor for a registered resident trainee must during the period of sponsorship be actively employed with a funeral establishment. The traineeship shall be a primary vocation of the trainee.

i. Only one resident trainee may register and serve at any one time under any one person licensed under this Article.

j., k. Repealed by Session Laws 1991, c. 528, s. 4.

l. The Board shall register no more than one resident trainee at a funeral establishment that ~~conducted~~ served 100 or fewer ~~funerals~~ families during the 12 months immediately preceding the date of the application, and shall register no more than one resident trainee for each additional 100 ~~funerals conducted~~ families served at the funeral establishment during the 12 months immediately preceding the date of the application.

(5) The Board by regulation may recognize other examinations that the Board deems equivalent to its own.

a. All licenses shall be signed by the president and secretary of the Board and the seal of the Board affixed thereto. All licenses shall be issued, renewed or duplicated for a period not exceeding one year upon payment of the renewal fee, and all licenses, renewals or duplicates thereof shall expire and terminate the thirty-first day of December following the date of their issue unless sooner revoked and canceled; provided, that the date of expiration may be changed by unanimous consent of the Board and upon 90 days' written notice of such change to all persons licensed for the practice of funeral directing, embalming and funeral service in this State.

b. The holder of any license issued by the Board who shall fail to renew the same on or before January 31 of the calendar year for which the license is to be renewed shall have forfeited and surrendered the license as of that date. No license forfeited or surrendered pursuant to the preceding sentence shall be reinstated by the Board unless it is shown to the Board that the applicant has, throughout the period of forfeiture, engaged full time in another state of the United States or the District of Columbia in the practice to which his North Carolina license applies and has completed for each such year continuing education substantially equivalent in the opinion of the Board to that required of North Carolina licensees; or has completed in North Carolina a total number of hours of accredited continuing education computed by multiplying five times the number of years of forfeiture; or has passed the North Carolina examination for the forfeited license. No additional resident traineeship shall be required. The applicant shall be required to pay all delinquent annual renewal fees and a reinstatement fee. The Board may waive the provisions of this section for an applicant for a forfeiture which occurred during his service in the armed forces of the United States provided he applies within six months following severance therefrom.

c. All licensees now or hereafter licensed in North Carolina shall take courses of study in subjects relating to the practice of the profession for which they are licensed, to the end that new techniques, scientific and clinical advances, the achievements of research and the benefits of learning and reviewing skills will be utilized and applied to assure proper service to the public.

d. As a prerequisite to the annual renewal of a license, the licensee must complete, during the year immediately preceding renewal, at least five hours of continuing education courses, approved by the Board prior to enrollment. A licensee who completes more than five hours in a year may carry over a maximum of five hours as a credit to the following year's requirement. A licensee who is issued an initial license on or after July 1 does not have to satisfy the continuing education requirement for that year.

e. The Board shall not renew a license unless fulfillment of the continuing education requirement has been certified to it on a form provided by the Board, but the Board may waive this requirement for renewal in cases of certified illness or undue hardship or where the licensee lives outside of North Carolina and does not practice in North Carolina, and the Board shall waive the requirement for all licensees who have been licensed in North Carolina for a continuous period of 25 years or more, and for all licensees who are, at the time of renewal, members of the General Assembly. ~~The waiver for 25-year licensees shall apply only to those licensees who, before January 1, 1998, are licensed, begin a course of study in a mortuary science college or a trainee program, or make an application for a license.~~

f. The Board shall cause to be established and offered to the licensees, each calendar year, at least five hours of continuing education courses in subjects encompassing the license categories of embalming, funeral directing and funeral service. The Board may charge licensees attending these courses a reasonable registration fee in order to meet the expenses thereof and may also meet those expenses from other funds received under the provisions of this Article.

g. Any person who having been previously licensed by the Board as a funeral director or embalmer prior to July 1, 1975, shall not be required to satisfy the requirements herein for licensure as a funeral service licensee, but shall be entitled to have such license renewed upon making proper application therefor and upon payment of the renewal fee provided by the provisions of this Article. Persons previously licensed by the Board as a funeral director may engage in funeral directing, and persons

previously licensed by the Board as an embalmer may engage in embalming. Any person having been previously licensed by the Board as both a funeral director and an embalmer may upon application therefor receive a license as a funeral service licensee.

(a1) Inactive Licenses. – Any person holding a license issued by the Board for funeral directing, for embalming, or for the practice of funeral service may apply for an inactive license in the same category as the active license held. The inactive license is renewable annually. Continuing education is not required for the renewal of an inactive license. The only activity that a holder of an inactive license may engage in is to vote pursuant to G.S. 90-210.18(c)(2). The holder of an inactive license may apply for an active license in the same category, and the Board shall issue an active license if the applicant has completed in North Carolina a total number of hours of accredited continuing education equal to five times the number of years the applicant held the inactive license. No application fee is required for the reinstatement of an active license pursuant to this subsection. The holder of an inactive license who returns to active status shall surrender the inactive license to the Board.

(b) Persons Licensed under the Laws of Other Jurisdictions. –

(1) The Board shall grant licenses to funeral directors, embalmers and funeral service licensees, licensed in other states, territories, the District of Columbia, and foreign countries, when it is shown that the applicant holds a valid license as a funeral director, embalmer or funeral service licensee issued by the other jurisdiction, has demonstrated knowledge of the laws and regulations governing the profession in North Carolina and has submitted proof of his good moral character; and either that the applicant has continuously practiced the profession in the other jurisdiction for at least three years immediately preceding his application, or the Board has determined that the licensing requirements for the other jurisdiction are substantially similar to those of North Carolina.

(2) The Board shall periodically review the mortuary science licensing requirements of other jurisdictions and shall determine which licensing requirements are substantially similar to the requirements of North Carolina.

(3) The Board may issue special permits, to be known as courtesy cards, permitting nonresident funeral directors, embalmers and funeral service licensees to remove bodies from and to arrange and direct funerals and embalm bodies in this State, but these privileges shall not include the right to establish a place of business in or engage generally in the business of funeral directing and embalming in this State. Except for special permits issued by the Board for teaching continuing education programs and for work in connection with disasters, no special permits may be issued to nonresident funeral directors,

embalmers, and funeral service licensees from states that do not issue similar courtesy cards to persons licensed in North Carolina pursuant to this Article.

(c) Registration, Filing and Transportation. –

(1) The holder of any license granted by this State for those within the funeral service profession or renewal thereof provided for in this Article shall cause registration to be filed in the office of the board of health of the county or city in which he practices his profession, or if there be no board of health in such county or city, at the office of the clerk of the superior court of such county. All such licenses, certificates, duplicates and renewals thereof shall be displayed in a conspicuous place in the funeral establishment where the holder renders service.

(2) It shall be unlawful for any railway agent, express agency, baggage master, conductor or other person acting as such, to receive the dead body of any person for shipment or transportation by railway or other public conveyance, to a point outside of this State, unless ~~said~~ the body ~~be~~ is accompanied by a ~~removal or shipping~~ burial-transit permit.

(3) The "transportation or removal of a dead human body" shall mean the removal of a dead human body for a fee from the location of the place of death or discovery of death or the transportation of the body to or from a medical facility, funeral establishment or facility, crematory or related holding facility, place of final disposition, or place designated by the Medical Examiner for examination or autopsy of the dead human body.

(4) Any individual, not otherwise exempt from this subsection, shall apply for and receive a permit from the Board before engaging in the transportation or removal of a dead human body in this State. Unless otherwise exempt from this subsection, no corporation or other business entity shall engage in the transportation or removal of a dead human body unless it has in its employ at least one individual who holds a permit issued under this section. No individual permit holder shall engage in the transportation or removal of a dead human body for more than one person, firm, or corporation without first providing the Board with written notification of the name and physical address of each such employer.

(5) The following persons shall be exempt from the permit requirements of this section but shall otherwise be subject to subdivision (9) of this subsection and any rules relating to the proper handling, care, removal, or transportation of a dead human body:

a. Licensees under this Article and their employees.

b. Employees of common carriers.

c. Except as provided in sub-subdivision (6)c. of this section, employees of the State and its agencies and employees of local governments and their agencies.

d. Funeral directors licensed in another state and their employees.

(6) The following persons shall be exempt from this section:

a. Emergency medical technicians, rescue squad workers, volunteer and paid firemen, and law enforcement officers.

b. Employees of public or private hospitals, nursing homes, or long-term care facilities, while handling a dead human body within such facility or while acting within the scope of their employment.

c. State and county medical examiners and their investigators.

d. Any individual transporting cremated remains.

e. Any individual transporting or removing a dead human body of their immediate family or next of kin.

f. Any individual who has exhibited special care and concern for the decedent.

(7) Individuals eligible to receive a permit under this section for the transportation or removal of a dead human body for a fee, shall:

a. Be at least 18 years of age.

b. Possess and maintain a valid drivers license issued by this State and provide proof of all liability insurance required for the registration of any vehicle in which the person intends to engage in the business of the removal or transportation of a dead human body.

c. Affirmatively state under oath that the person has read and understands the statutes and rules relating to the removal and transportation of dead human bodies and any guidelines as may be adopted by the Board.

d. Provide three written character references on a form prescribed by the Board, one of which must be from a licensed funeral director.

e. Be of good moral character.

(8) The permit issued under this section shall expire on December 31 of each year. The application fee for the individual permit shall not exceed one hundred twenty-five dollars ($125.00). A fee, not to exceed one hundred dollars ($100.00), in addition to the renewal fee not to exceed seventy-five dollars ($75.00), shall be charged for any application for renewal received by the Board after February 1 of each year.

(9) No person shall transport a dead human body in the open cargo area or passenger area of a vehicle or in any vehicle in which the body may be viewed by the public. Any person removing or transporting a dead

human body shall either cover the body, place it upon a stretcher designed for the purpose of transporting humans or dead human bodies in a vehicle, and secure such stretcher in the vehicle used for transportation, or shall enclose the body in a casket or container designed for common carrier transportation, and secure the casket or container in the vehicle used for transportation. No person shall use profanity, indecent, or obscene language in the presence of a dead human body. No person shall take a photograph or video recording of a dead human body without the consent of a member of the deceased's immediate family or next of kin.

(10) The Board may adopt rules under this section including permit application procedures and the proper procedures for the removal, handling and transportation of dead human bodies. The Board shall consult with the Office of the Chief Medical Examiner before initiating rule-making under this section and before adopting any rules pursuant to this section. Nothing in this section prohibits the Office of the Chief Medical Examiner from adopting policies and procedures regarding the removal, transportation, or handling of a dead human body under the jurisdiction of that office that are more stringent than the laws in this section or any rules adopted under this section. Any violation of this section or rules adopted under this section may be punished by the Board by a suspension or revocation of the permit to transport or remove dead human bodies or by a term of probation. The Board may, in lieu of any disciplinary measure, accept a penalty not to exceed five thousand dollars ($5,000) per violation.

(11) Each applicant for a permit shall provide the Board with the applicant's home address, name and address of any corporation or business entity employing such individual for the removal or transportation of dead human bodies, and the make, year, model, and license plate number of any vehicle in which a dead human body is transported. A permittee shall provide written notification to the Board of any change in the information required to be provided to the Board by this section or by the application for a permit within 30 days after such change takes place.

(12) If any person shall engage in or hold himself out as engaging in the business of transportation or removal of a dead human body without first having received a permit under this section, the person shall be guilty of a Class 2 misdemeanor.

(13) The Board shall have the authority to inspect any place or premises that the business of removing or transporting a dead human body is carried out and shall also have the right of inspection of any vehicle and equipment used by a permittee for the removal or transportation of a dead human body.

(d) Establishment Permit. –

(1) No person, firm or corporation shall conduct, maintain, manage or operate a funeral establishment unless a permit for that establishment has been issued by the Board and is conspicuously displayed in the establishment. Each funeral establishment at a specific location shall be deemed to be a separate entity and shall require a separate permit and compliance with the requirements of this Article.

(2) A permit shall be issued when:

a. It is shown that the funeral establishment has in charge a person, known as a manager, licensed for the practice of funeral directing or funeral service, who shall not be permitted to manage more than one funeral establishment.

b. The Board receives a list of the names of all part-time and full-time licensees employed by the establishment.

c. It is shown that the funeral establishment satisfies the requirements of G.S. 90-210.27A.

d. The Board receives payment of the permit fee.

(3) Applications for funeral establishment permits shall be made on forms provided by the Board and filed with the Board by the owner, a partner, a member of the limited liability company, or an officer of the corporation by January 1 of each year, and shall be accompanied by the application fee or renewal fee, as the case may be. All permits shall expire on December 31 of each year. A penalty for late renewal, in addition to the regular renewal fee, shall be charged for renewal of registration received after the first day of February.

~~A penalty for late renewal, in addition to the regular renewal fee, shall be charged for renewal of registration coming after the first day of February.~~

(4) The Board may suspend or revoke a permit when an owner, partner, manager, member, operator, or officer of the funeral establishment violates any provision of this Article or any regulations of the Board, or when any agent or employee of the funeral establishment, with the consent of any person, firm or corporation operating the funeral establishment, violates any of those provisions, rules or regulations.

(5) Funeral establishment permits are not transferable. A new application for a permit shall be made to the Board within 30 days of a change of ownership of a funeral establishment.

(d1) Embalming Outside Establishment. – An embalmer who engages in embalming in a facility other than a funeral establishment or in the residence of the deceased person shall, no later than January 1 of each year, register the facility with the Board on forms provided by the Board.

(e) Revocation; Suspension; Compromise; Disclosure. –

(1) Whenever the Board finds that an applicant for a license or a person to whom a license has been issued by the Board is guilty of any of the following acts or omissions and the Board also finds that the person has thereby become unfit to practice, the Board may suspend or revoke the license or refuse to issue or renew the license, in accordance with the procedures set out in Chapter 150B:

a. Conviction of a felony or a crime involving fraud or moral turpitude.

b. Fraud or misrepresentation in obtaining or renewing a license or in the practice of funeral service.

c. False or misleading advertising as the holder of a license.

d. Solicitation of dead human bodies by the licensee, his agents, assistants, or employees; but this paragraph shall not be construed to prohibit general advertising by the licensee.

e. Employment directly or indirectly of any resident trainee agent, assistant or other person, on a part-time or full-time basis, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular licensee.

f. The direct or indirect giving of certificates of credit or the payment or offer of payment of a commission by the licensee, his agents, assistants or employees for the purpose of securing business.

g. Gross immorality, including being under the influence of alcohol or drugs while practicing funeral service.

h. Aiding or abetting an unlicensed person to perform services under this Article, including the use of a picture or name in connection with advertisements or other written material published or caused to be published by the licensee.

i. Using profane, indecent or obscene language in the presence of a dead human body, and within the immediate hearing of the family or relatives of a deceased, whose body has not yet been interred or otherwise disposed of.

j. Violating or cooperating with others to violate any of the provisions of this Article, the rules and regulations of the Board, or the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.

k. Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of dead human bodies.

l. Refusing to surrender promptly the custody of a dead human body upon the express order of the person lawfully entitled to the custody thereof.

m. Knowingly making any false statement on a certificate of death.
n. Indecent exposure or exhibition of a dead human body while in the custody or control of a licensee.

In any case in which the Board is entitled to suspend, revoke or refuse to renew a license, the Board may accept from the licensee an offer ~~in compromise~~ to pay a penalty of not more than ~~one~~ five thousand dollars ~~($1,000).~~ ($5,000). The Board may either accept a ~~compromise~~ penalty or revoke or refuse to renew a license, but not both.

(2) Where the Board finds that a licensee is guilty of one or more of the acts or omissions listed in ~~subsection (e) (1)~~ subdivision (e)(1) of this section but it is determined by the Board that the licensee has not thereby become unfit to practice, the Board may place the licensee on a term of probation in accordance with the procedures set out in Chapter 150B. In any case in which the Board is entitled to place a licensee on a term of probation, the Board may also impose a penalty of not more than five thousand dollars ($5,000) in conjunction with the probation.

No person licensed under this Article shall remove or cause to be embalmed a dead human body when he or she has information indicating crime or violence of any sort in connection with the cause of death, nor shall a dead human body be cremated, until permission of the State or county medical examiner has first been obtained. However, nothing in this Article shall be construed to alter the duties and authority now vested in the office of the coroner.

No funeral service establishment shall accept a dead human body from any public officer (excluding the State or county medical examiner or his agent), or employee or from the official of any institution, hospital or nursing home, or from a physician or any person having a professional relationship with a decedent, without having first made due inquiry as to the desires of the persons who have the legal authority to direct the disposition of the decedent's body. If any persons are found, their authority and directions shall govern the disposal of the remains of the decedent. Any funeral service establishment receiving the remains in violation of this subsection shall make no charge for any service in connection with the remains prior to delivery of the remains as stipulated by the persons having legal authority to direct the disposition of the body. This section shall not prevent any funeral service establishment from charging and being reimbursed for services rendered in connection with the removal of the remains of any deceased person in case of accidental or violent death, and rendering necessary professional services required until the persons having legal authority to direct the disposition of the body have been notified.

When and where a licensee presents a selection of funeral merchandise to the public to be used in connection with the service to be provided by the licensee or an establishment as licensed under this Article, a card or brochure shall be directly associated with each item of merchandise setting forth the price of the service using said

merchandise and listing the services and other merchandise included in the price, if any. When there are separate prices for the merchandise and services, such cards or brochures shall indicate the price of the merchandise and of the items separately priced.

At the time funeral arrangements are made and prior to the time of rendering the service and providing the merchandise, a funeral director or funeral service licensee shall give or cause to be given to the person or persons making such arrangements a written statement duly signed by a licensee of said funeral establishment showing the price of the service as selected and what services are included therein, the price of each of the supplemental items of services or merchandise requested, and the amounts involved for each of the items for which the funeral establishment will advance moneys as an accommodation to the person making arrangements, insofar as any of the above items can be specified at that time. The statement shall have printed, typed or stamped on the face thereof: "This statement of disclosure is provided ~~pursuant to~~ under the requirements of North Carolina G.S. 90-210.25(e)."

(f) Unlawful Practices. – If any person shall practice or hold himself out as practicing the profession or art of embalming, funeral directing or practice of funeral service without having complied with the licensing provisions of this Article, he shall be guilty of a Class 2 misdemeanor.

(g) Whenever it shall appear to the Board that any person, firm or corporation has violated, threatens to violate or is violating any provisions of this Article, the Board may apply to the courts of the State for a restraining order and injunction to restrain these practices. If upon application the court finds that any provision of this Article is being violated, or a violation is threatened, the court shall issue an order restraining and enjoining the violations, and this relief may be granted regardless of whether criminal prosecution is instituted under the provisions of this subsection. The venue for actions brought under this subsection shall be the superior court of any county in which the acts are alleged to have been committed or in the county where the defendant in the action resides. "

SECTION 4. G.S. 90-210.27A reads as rewritten:

"**§ 90-210.27A. Funeral establishments.**

(a) Every funeral establishment shall contain a preparation room which is strictly private, of suitable size for the embalming of dead bodies. Each preparation room shall:

(1) Contain one standard type operating table.
(2) Contain facilities for adequate drainage.
(3) Contain a sanitary waste receptacle.
(4) Contain an instrument sterilizer.
(5) Have wall-to-wall floor covering of tile, concrete, or other material which can be easily cleaned.
(6) Be kept in sanitary condition and subject to inspection by the Board or its agents at all times.
(7) Have a placard or sign on the door indicating that the preparation room is private.

(8) Have a proper ventilation or purification system to maintain a nonhazardous level of airborne contamination.

(b) No one is allowed in the preparation room while a dead human body is being prepared except licensees, resident trainees, public officials in the discharge of their duties, members of the medical profession, officials of the funeral home, next of kin, or other legally authorized persons.

(c) Every funeral establishment shall contain a reposing room for dead human bodies, of suitable size to accommodate a casket and visitors.

(d) Repealed by Session Laws 1997-399, s. 14.

(e) If a funeral establishment is solely owned by a natural person, that person must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a partnership, at least one partner must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a corporation, the president, vice-president, or the chairman of the board of directors must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a limited liability company, at least one member must be licensed by the Board as a funeral director or a funeral service licensee. The licensee required by this subsection must be actively engaged in the operation of the funeral establishment.

(f) If a funeral establishment uses the name of a living person in the name under which it does business, that person must be licensed by the Board as a funeral director or a funeral service licensee.

(g) No funeral establishment or other licensee under this Article shall own, operate, or maintain a funeral chapel without first having registered the name, location, and ownership thereof with the Board.

(h) All public health laws and rules apply to funeral establishments. In addition, all funeral establishments must comply with all of the standards established by the rules adopted by the Board."

SECTION 5. G.S. 90-210.28 reads as rewritten:

"**§ 90-210.28. Fees.**

The Board may set and collect fees, not to exceed the following amounts:

Establishment permit	
Application	$250.00
Annual renewal	~~175.00~~150.00
Late renewal ~~penalty~~	100.00
~~Reinspection fee~~	~~100.00~~
Establishment and embalming facility inspection fee	100.00
Courtesy card	
Application	75.00
Annual renewal	50.00
Out-of-state licensee	
Application	200.00
Embalmer, funeral director, funeral service	
Application–North	

Carolina-Resident 150.00
-Non-Resident 200.00
Annual Renewal-embalmer or funeral director ..... ~~50.00~~40.00
Total fee, embalmer and funeral director
when both are held by the same person 60.00
-funeral service ..... ~~100.00~~60.00
Inactive Status 50.00
Reinstatement fee 50.00
Resident trainee permit
Application 50.00
Change in supervisor 50.00
Annual renewal 35.00
Late renewal ~~penalty~~ 25.00
Duplicate license certificate 25.00
Chapel registration
Application 150.00
Annual renewal 100.00
Late renewal 75.00

The Board shall provide, without charge, one copy of the current statutes and regulations relating to Mortuary Science to every person applying for and paying the appropriate fees for licensing pursuant to this Article. The Board may charge all others requesting copies of the current statutes and regulations, and the licensees or applicants requesting additional copies, a fee equal to the costs of production and distribution of the requested documents."

SECTION 6. G.S. 90-210.29(b) is repealed.

SECTION 7. The title of Article 13D of Chapter 90 of the General Statutes reads as rewritten:

"Preneed Funeral ~~and Burial Trust~~ Funds."

SECTION 8. G.S. 20-210.60(7) reads as rewritten:

"Article 13D.

"Funeral and Burial Trust Funds.

"**§ 90-210.60. Definitions.**

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

(1) "Board" means the North Carolina Board of Mortuary Science as created pursuant to Article 13A of Chapter 90 of the General Statutes;

(2) "Financial institution" means a bank, trust company, savings bank, or savings and loan association authorized by law to do business in this State;

(3) "Insurance company" means any corporation, limited liability company, association, partnership, society, order, individual or aggregation of individuals engaging in or proposing or attempting to engage as principals in any kind of insurance business, including the

exchanging of reciprocal or interinsurance contracts between individuals, partnerships, and corporations;

(4) "Prearrangement insurance policy" means a life insurance policy, annuity contract, or other insurance contract, or any series of contracts or agreements in any form or manner, issued by an insurance company authorized by law to do business in this State, which, whether by assignment or otherwise, has for a purpose the funding of a preneed funeral contract or an insurance-funded funeral or burial prearrangement, the insured or annuitant being the person for whose service the funds were paid;

(5) "Preneed funeral contract" means any contract, agreement, or mutual understanding, or any series or combination of contracts, agreements, or mutual understandings, whether funded by trust deposits or prearrangement insurance policies, or any combination thereof, which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of, but does not mean the furnishing of a cemetery lot, crypt, niche, or mausoleum;

(6) "Preneed funeral contract beneficiary" means the person upon whose death the preneed funeral contract will be performed; this person may also be the purchaser of the preneed funeral contract;

(7) "Preneed funeral funds" means all payments of ~~money~~ cash made to any person, partnership, association, corporation, or other entity upon any preneed funeral contract or any other agreement, contract, or prearrangement insurance policy, or any series or combination of preneed funeral contracts or any other agreements, contracts, or prearrangement insurance policies, but excluding the furnishing of cemetery lots, crypts, niches, and mausoleums, which have for a purpose or which by operation provide for the furnishing or performance of funeral or burial services, or the furnishing or delivery of personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of, or the providing of the proceeds of any insurance policy for such use;

(8) "Preneed funeral planning" means offering to sell or selling preneed funeral contracts, or making other arrangements prior to death for the providing of funeral services or merchandise;

(9) "Preneed licensee" means a funeral establishment which has applied for and has been granted a license to sell preneed funeral contracts

under the Article. Such license is also referred to in this Article as a "preneed funeral establishment license.""

SECTION 9. G.S. 90-210.64 reads as rewritten:

"**§ 90-210.64. Death of preneed funeral contract beneficiary; disposition of funds.**

(a) After the death of a preneed funeral contract beneficiary and full performance of the preneed funeral contract by the preneed licensee, the preneed licensee shall promptly complete a certificate of performance or similar claim form and present it to the financial institution that holds funds in trust under G.S. 90-210.61(a)(1) or to the insurance company that issued a preneed insurance policy pursuant to G.S. 90-210.61(a)(3). Upon receipt of the certificate of performance or similar claim form, the financial institution shall pay the trust funds to the contracting preneed licensee and the insurance company shall pay the insurance proceeds according to the terms of the policy. Within 10 days after receiving payment, the preneed licensee shall mail a copy of the certificate of performance or other claim form to the Board.

(b) Unless otherwise specified in the preneed funeral contract, the preneed licensee shall have no obligation to deliver merchandise or perform any services for which payment in full has not yet been deposited with a financial institution or that will not be provided by the proceeds of a prearrangement insurance policy. Any such amounts received which do not constitute payment in full shall be refunded to the estate of the deceased preneed funeral contract beneficiary or credited against the cost of merchandise or services contracted for by a representative of the deceased. Any balance remaining after payment for the merchandise and services as set forth in the preneed funeral contract shall be paid to the estate of the preneed funeral contract beneficiary or the prearrangement insurance policy beneficiary named to receive any such balance. Provided, however, unless the parties agree to the contrary, there shall be no refund to the estate of the preneed funeral contract beneficiary of an inflation-proof preneed funeral contract.

(c) In the event that any person other than the contracting preneed licensee performs any funeral service or provides any merchandise as a result of the death of the preneed funeral contract beneficiary, the financial institution shall pay the trust funds to the contracting preneed licensee and the insurance company shall pay the insurance proceeds according to the terms of the policy. The preneed licensee shall, subject to the provisions of G.S. 90-210.65(d), immediately pay the monies so received to the other provider.

(d) When the balance of a preneed funeral fund is one hundred dollars ($100.00) or less and is payable to the estate of a deceased preneed funeral contract beneficiary and there has been no representative of the estate appointed, the balance due may be paid directly to a beneficiary or to the beneficiaries of the estate. If the balance of a preneed funeral fund exceeds one hundred dollars ($100.00) or is not payable to the estate, the balance must be paid into the office of the clerk of superior court in the county where probate proceedings could be filed for the deceased preneed funeral contract beneficiary.

(e) Upon the fulfillment of a preneed contract, all of the following items shall be completed within 30 days:

(1) The contracting preneed licensee must submit a certificate of performance or similar claim form to the financial institution holding the preneed trust funds and close the preneed account.

(2) The proceeds of this trust account shall be distributed according to the terms of the preneed contract.

(3) A completed copy of the certificate of performance or similar claim form evidencing the final disposition of any financial institution preneed trust accounts funds must be filed with the Board by the contracting licensee."

SECTION 10. G.S. 90-210.67(f) is repealed.

SECTION 11. G.S. 90-210.69 reads as rewritten:

"**§ 90-210.69. Rulemaking; enforcement of Article; judicial review.**

(a) The Board is authorized to adopt rules for the carrying out and enforcement of the provisions of this Article. The Board may perform such other acts and exercise such other powers and duties as are authorized by this Article and by Article 13A of this Chapter to carry out its powers and duties.

(b) The Board may administer oaths and issue subpoenas requiring the attendance of persons and the production of papers and records in any investigation conducted by it. Members of the Board's staff or the sheriff or other appropriate official of any county of this State shall serve all notices, subpoenas and other papers given to them by the Board for service in the same manner as process issued by any court of record. Any person who does not obey a subpoena issued by the Board shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined or imprisoned in the discretion of the court.

(c) In accordance with the provisions of Chapter 150B of the General Statutes, if the Board finds that a licensee, an applicant for a license or an applicant for license renewal is guilty of one or more of the following, the Board may refuse to issue or renew a license or may suspend or revoke a license or place the holder thereof on probation upon conditions set by the Board, with revocation upon failure to comply with the conditions:

(1) Offering to engage or engaging in activities for which a license is required under this Article but without having obtained such a license.

(2) Aiding or abetting an unlicensed person, firm, partnership, association, corporation or other entity to offer to engage or engage in such activities.

(3) A crime involving fraud or moral turpitude by conviction thereof.

(4) Fraud or misrepresentation in obtaining or receiving a license or in preneed funeral planning.

(5) False or misleading advertising.

(6) Violating or cooperating with others to violate any provision of this Article, the rules and regulations of the Board, adopted or the

standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.

In any case in which the Board is authorized to take any of the actions permitted under this subsection, the Board may instead accept an offer in compromise of the charges whereby the accused shall pay to the Board a penalty of not more than ~~one~~ five thousand dollars ~~($1,000).~~ ($5,000). In any case in which the Board is entitled to place a licensee on a term of probation, the Board may also impose a penalty of not more than five thousand dollars ($5,000) in conjunction with such probation.

(d) Any proceedings pertaining to or actions against a funeral establishment under this Article may be in addition to any proceedings or actions permitted by G.S. 90-210.25(d)(4). Any proceedings pertaining to or actions against a person licensed for funeral directing or funeral service may be in addition to any proceedings or actions permitted by G.S. 90-210.25 (e)(1) and (2).

(e) Judicial review shall be pursuant to Article 4 of Chapter 150B of the General Statutes.

(f) In determining the amount of any penalty imposed or assessed under Article 13 of Chapter 90 of the General Statutes, the Board shall consider:

(1) The degree and extent of harm to the public health, safety and welfare or to property, or the potential for harm.

(2) The duration and gravity of the violation.

(3) Whether the violation was committed willfully or intentionally or reflects a continuing pattern.

(4) Whether the violation involved elements of fraud or deception either to the public or to the Board, or both.

(5) The violator's prior disciplinary record with the Board.

(6) Whether and the extent to which the violator profited by the violation."

SECTION 12. One public member of the North Carolina Board of Mortuary Science, appointed under G.S. 90-210.18(b3), with a second term expiring December 31, 2001, shall have such term extended until December 31, 2002, in order to stagger the expiration of all three public member terms.

SECTION 13. This act becomes effective July 1, 2001.

HB 440:
Embalmers and Funeral Directors - AB

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representatives Weiss and Baddour
Date:	March 29, 2001		
Version:	H440-CSSK-10[v.5]	**Summary by:**	Esther Manheimer Committee Counsel

SUMMARY: This bill is recommended by the North Carolina Board of Mortuary Science. The bill clarifies that applicants seeking to be licensed for the practice of funeral directing or funeral service may attend a college approved by the Board of Mortuary Science or the American Board of Funeral Service Education. The bill sets out regulations regarding the transportation of dead human bodies. The bill increases, decreases, and creates new fees. The bill increases the penalty associated with the removal, suspension, or probationary status of a license to no more than $5000. The bill imposes requirements for the disposition of a preneed funeral fund and the wrapping up of a preneed trust. The bill also staggers the terms of the public members of the Board of Mortuary Science. Finally, the bill makes numerous technical and conforming changes. This act becomes effective July 1, 2001.

BILL ANALYSIS:

Section 1. Section 1 of the bill clarifies that licensed members of the Board of Mortuary Science (the Board) have full voting authority. This is the current practice. In addition, this section makes several technical changes.

Section 2. Section 2 changes the term "funeral service profession" to "funeral service" and makes several technical changes.

Section 3. Section 3 makes several technical changes and the following substantive changes:

- Clarifies that applicants seeking to be licensed for the practice of funeral directing or funeral service may attend a college approved by the Board OR a college approved by the American Board of Funeral Service Education.
- Changes the measurement used to determine how many resident trainees (persons training to become licensed in the practice of funeral directing, embalming, or funeral service) are permitted to be registered at a funeral establishment. The measurement is currently the number of funerals conducted by the funeral establishment and this bill allows the measurement to be the number of families served by the funeral establishment.
- **Regulation of the Transportation of Dead Human Bodies.** Currently, there are no regulations regarding the transportation of a dead human body (except the moving of the body from the funeral home to the burial site). This bill would require for-hire transporters of human dead bodies to obtain a permit to transport and remove dead human bodies. The bill sets out the requirements and fees for obtaining a permit.
  Semi-Exempt Individuals. The following individuals are exempt from all statutory requirements regarding the transportation of human dead bodies except rule-based requirements and the requirements that they must (1) transport the body in a vehicle where the public cannot view the body, (2) cover the body and move the body on a stretcher or in a casket or container designed for common carrier transport, (3) not use profanity, indecent, or obscene language in the presence of the body, and (4) not take photographs or video recordings of the body without the consent of a family member:

Funeral directors, embalmers, and funeral service providers and their employees, common carrier employees, State employees, local government employees, and funeral directors licensed in another state and their employees.

Exempt Individuals. The following individuals are completely exempt from all statutory and rule-based requirements regarding the transportation of human dead bodies:

Emergency medical technicians, rescue squad workers, volunteer and paid firemen, law enforcement officers, employees of public or private hospitals, nursing homes, or long-term care facilities, State and county medical examiners and their investigators, individuals transporting cremated remains or removing a dead human body of their immediate family or next of kin, and any individual who has exhibited special care and concern for the decedent.

Non-Exempt Individuals. All others not listed above (such a private, for-hire persons in the business of moving human dead bodies) must comply with all statutory and rule-based requirements regulating the transportation of dead humans bodies. Anyone who engages in the business of transportation of human dead bodies without a permit is guilty of a Class 2 misdemeanor.

The Board's Authority. This bill gives the Board rule-making authority with regard to the transportation of human dead bodies and allows the Board to take disciplinary action when the statutes or rules regarding the transportation of human dead bodies are violated. The Board can inspect vehicles and places used in the process of transporting dead human bodies.

- Under current law, where the Board is entitled to suspend, revoke, or renew a license for violation of the statutes or rules, the Board may accept a penalty of not more than $1000 in lieu of disciplinary action. This bill would increase the penalty to not more than $5000. The increase also applies to cases where the Board may place a licensee on probation. **Section 11** of the bill also sets out the increase in penalty and provides a list of factors the Board must consider prior to determining the amount of the penalty.

Section 4. Public Health Laws and Rules. Currently, it is unclear whether funeral establishments are subject to the rules, for example, of their local county health departments. Section 4 clarifies that funeral establishments are subject to county health department rules and the Board's rules.

Section 5. Increase/Decrease Fees and Creation of New Fees. Section 5:

- Decreases an "establishment's annual renewal permit fee" from $175 to $150,
- Replaces the "reinspection fee" with the "establishment and embalming facility inspection fee",
- Decreases the "annual renewal fee for embalmers or funeral directors" from $50 to $40 ($60 if licenses for both are held by the same person),
- Decreases the "annual renewal fee for a funeral service license holder" from $100 to $60.
- Creates a new "inactive status" fee (set at $50), a new "change in supervisor" fee (set at $50), and a new "chapel registration late renewal" fee (set at $75).

Section 6. Section 6 repeals G.S. 90-210.29(b), which has become obsolete as it applies to student identification cards that are no longer utilized.

Section 7. Section 7 makes technical change only.

Section 8. Section 8 clarifies that the term "money" means cash only and not any other form of payment.

Section 9. Preneed Funeral Fund. Under current law, when the balance of a preneed funeral is payable to the estate of a deceased preneed funeral contract beneficiary and there is no representative of the estate, the balance due is paid to clerk of superior court. This bill would allow balances payable to the estate that are $100 or less to be paid directly to the beneficiary or beneficiaries of the estate instead of the clerk of superior court.

Preneed Contract. Section 9 also states the requirements that must be completed within 30 days of fulfilling the provisions of a preneed contract. These requirements include: (1) submitting a certificate of performance to the financial institution holding the trust and closing the account, (2) distributing the proceeds of the trust according to the provisions of the preneed contract, and (3) filing a certificate of performance with the Board.

Section 10. Section 10 repeals a portion of the statute used to facilitate the transfer of the preneed functions and oversight from the North Carolina Commissioner of Banks to the Board. The transition is complete and the language is no longer necessary.

Section 11. See Section 3 explanation above.

Section 12. Section 12 is uncodified language that creates staggered terms for the three public members of the Board.

VISITOR REGISTRATION SHEET

JUDICIARY II
Name of Committee

4-3-01
Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jon Curr	Jordan Price
DAVID M BARNES	Poyner + Spruill
Paula A. Holt	Covenant w/ NC's Children
Mike Schaffer	DJJDP
David Clegg	DJJDP
W. Savage	ESC
Andy Ritter	Bailey & Dixon
	NC Board of Mortuary Science

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

April 5, 2001 – 10:00 a.m.

The House Committee on Judiciary II met on Thursday, April 5, 2001, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairman Phil Haire, Representatives Bowie, Culpepper, Decker, Gulley, Hall, Jeffus, Justus, Miller, Pope, and Sherrill. Robin Johnson, Esther Manheimer, Jeff Hudson, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order, and then called for consideration of the following bill:

HB 918 Durham Red Light Cameras. Rep. Bowie moved that all the local red light camera bills be rolled into a committee substitute for HB 918, and without objection, the bills were combined. Rep. Baddour discussed the presence of a statewide bill. He then recognized Rep. Ellis to explain his bills, the operation of red light cameras, and any changes that he would like to make. The chair recognized Rep. Hensley to discuss his opposition to red light cameras. Rep. Hensley displayed a chart that explained the practical application of the cameras, and he offered statistics on the money made by the companies that operate these cameras. Bob Haggman, Assistant City Attorney for the City of Charlotte, commented on the use of cameras in Charlotte. The members of the committee raised several questions and concerns with regard to this issue. Time expired, and no vote was taken.

The meeting adjourned at 10:50 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

HOUSE JUDICIARY II COMMITTEE
AGENDA

April 5, 2001
10:00 A.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Jeff Hudson
Elizabeth Kirkland (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDSERED:

HB 533 Fuquay-Varina Red Light Cameras – Rep. Ellis
HB 534 Knightdale Red Light Cameras – Rep. Ellis
HB 535 Garner Red Light Cameras – Rep. Ellis
HB 536 Statewide Use of Red Light Cameras – Rep. Ellis
HB 567 Cary Red Light Cameras – Rep. Ellis
HB 862 Union County/Albemarle Red Light Cameras – Rep. Shubert
HB 918 Durham Red Light Cameras – Rep. Luebke
SB 243 Red Light Cameras/Certain Cities – Sen. Plyler

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL ~~533~~ 919

PROPOSED COMMITTEE SUBSTITUTE H533-CSSK-15 [v.2]

4/4/2001 5:54:26 PM

Short Title: Red Light Cameras. (Local)

Sponsors:

Referred to:

March 8, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CERTAIN CITIES AND TOWNS TO USE TRAFFIC CONTROL PHOTOGRAPHIC SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-300.1(d) reads as rewritten:

"(d) This ~~act~~ section applies to the Cities of Albemarle, Charlotte, Concord, Durham, Fayetteville, Greensboro, Hickory, High Point, Monroe, Raleigh, Rocky Mount, Wilmington, Greenville, and Lumberton, ~~and~~ the Towns of Cary, Chapel Hill, Cornelius, Fuquay-Varina, Garner, Huntersville, Knightdale, Marshville, Matthews, ~~and Pineville~~ Mineral Springs, Pineville, Stallings, and all of the municipalities in Union County only."

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

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

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

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

(b1) Any traffic control photographic system installed on a street or highway must be identified by appropriate advance warning signs conspicuously posted not more than 300 feet from the location of the traffic control photographic system. All advance warning signs shall be consistent with a statewide standard adopted by the Department of Transportation in conjunction with local governments authorized to install traffic control photographic systems.

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

(1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle, within 21 days after notification of the violation, furnishes the officials or agents of the municipality which issued the citation:
   a. The name and address of the person or company who leased, rented, or otherwise had the care, custody, and control of the vehicle; or
   b. An affidavit stating that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

(2) A violation detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed, and for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the vehicle nor insurance points as authorized by G.S. 58-36-65.

(3) The owner of the vehicle shall be issued a citation which shall clearly state the manner in which the violation may be challenged, and the

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

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

(d) This act applies to the Cities of Charlotte, Fayetteville, Greensboro, High Point, Rocky Mount, Wilmington, Greenville, and Lumberton, and the Towns of Chapel Hill, Cornelius, Huntersville, Matthews, and Pineville only. (1997-216, ss. 1, 2; 1999-17, s. 1; 1999-181, ss. 1, 2; 1999-182, s. 2; 1999-456, s. 48(c); 2000-37, s. 1; 2000-97, s. 2.)

Smile, Red-Light Runners . . . You're on Automated Camera

Randy Jay Harrington

The Insurance Institute for Highway Safety estimates that more than 800 deaths occur annually as a result of red-light running (RLR).[1] Further, the Insurance Institute reports that the number of fatal crashes at intersections with traffic signals (signalized intersections) increased by 24 percent from 1992 to 1997. A 1990–91 study of urban police reports indicated that 22 percent of all urban crashes resulted from the drivers' running traffic controls. Of these, 24 percent involved their running red lights.[2]

With police resources declining in relation to the number of vehicles on the road, local officials around the country have begun exploring the use of cameras to detect traffic signal violators.[3] In 1993, New York City became the first U.S. jurisdiction to place cameras at selected intersections in order to reduce RLR. Now, close to fifty cities in ten states operate 250 cameras in programs enforcing the requirement that drivers stop at red lights (red-light photo enforcement programs, for short). Camera suppliers predict that the number of operating cameras will double annually.[4]

Arizona and California are the only states that regard the camera-caught red-light violation as a criminal moving violation, subject to fines and license and insurance points. For points to be assessed, which could lead to revocation of a person's license and higher insurance rates, cities in Arizona and California must clearly identify the driver. Therefore they must produce a frontal photo of the driver and identify the license plate.



At a SafeLight intersection in Charlotte, a camera mounted atop a 15-foot pole is activated when a vehicle runs a red light.

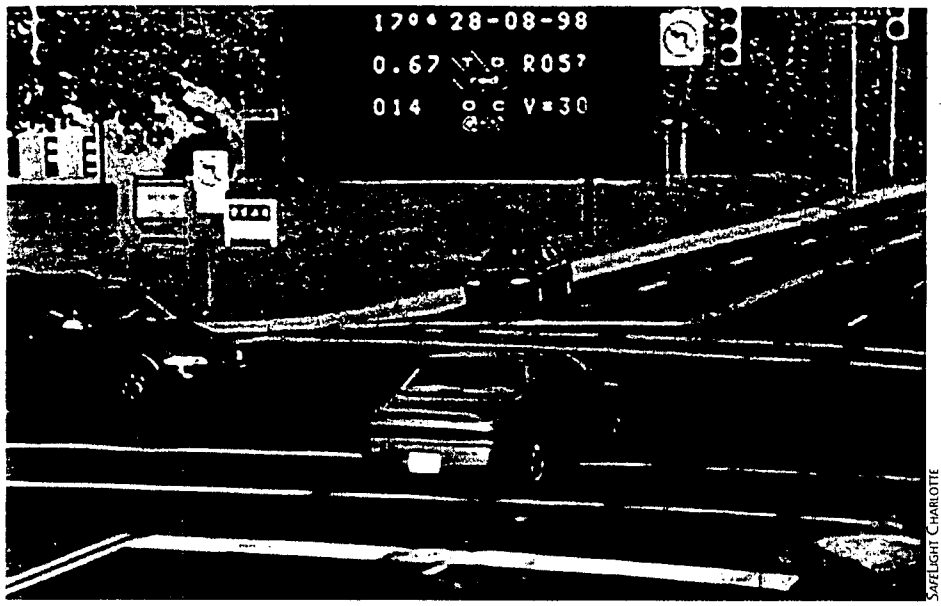
RANDY JAY HARRINGTON

The author, a 2000 graduate of UNC–CH's Master of Public Administration Program, is a Presidential Management Intern with the U.S. Department of Transportation. Contact him at rjharrington@hotmail.com.

Other states, including North Carolina, authorize municipalities to impose a civil penalty only, with no assessment of driver's license points. Therefore they require photographic verification of the license plate only, usually from the rear of the vehicle. In North Carolina a civil penalty citation is issued to the vehicle's registered owner. If it is not paid, the municipality issuing the citation may institute a civil action to collect the penalty.

This article summarizes the experience of Charlotte, North Carolina, in establishing and operating a red-light photo enforcement program, which it calls *Safe*Light Charlotte. The program appears to have reduced the number of RLR violations and associated crashes at *Safe*Light intersections.[5] The city also has gained revenue from increased enforcement of red-light violations.

At each of Charlotte's intersections using red-light photo enforcement, called *Safe*Light intersections, there are at least two electric-wire loops per lane of travel buried in the pavement, a 35-millimeter camera atop a 15-foot pole, and a control box near the sidewalk that coordinates the traffic light with the loops and the camera. When the light turns red and after a .03-second grace period, the system becomes active. Once it does, a vehicle traveling more than 15 miles per hour triggers the loops (located directly in front of the painted, white stop bar).[6] This causes the camera to take a rear photograph of the vehicle showing the light in its red phase and verifying that the light turned red before the vehicle entered the intersection. A second rear photograph then captures the vehicle in the intersection during the red phase.[7]



The automated camera takes two photos of the vehicle and the light, one before the vehicle enters the intersection, and one after. Above, the second photo, with relevant data superimposed: "17 04" is the time of the violation; "28-08-98," the date it occurred; "0.67," the elapsed time between the two photos; "R 0.57," the total elapsed time of the red phase at the time of the second photo (here, .57 seconds); "014," the violation number on the camera film; and "V = 30," the vehicle speed.

What led Charlotte to pursue red-light photo enforcement?

Charlotte's ranking among North Carolina urban jurisdictions for number of vehicle crashes rose from eighteenth in 1996 to first in 1998.[8] In 1996, 34 percent of Charlotte's vehicle crashes were attributed to RLR.[9] Further, 49 percent of the crashes at the 179 signalized intersections on Charlotte's 1998 list of high-accident locations (HAL)[10] resulted from RLR.[11]

Citizen concern matched crash statistics. Seventy-six percent of the city's residents believed RLR to be a major safety hazard,[12] and the media reported alarming incidences of RLR in the city.[13] RLR even became a frequent topic on morning radio.

The statistics and the public concern drew the attention of Charlotte's city council, police department, and department of transportation. Led by the latter, these groups determined that photo enforcement offered the most effective and easiest method for reducing RLR and RLR–associated crashes.

How did Charlotte obtain authorization for its plan?

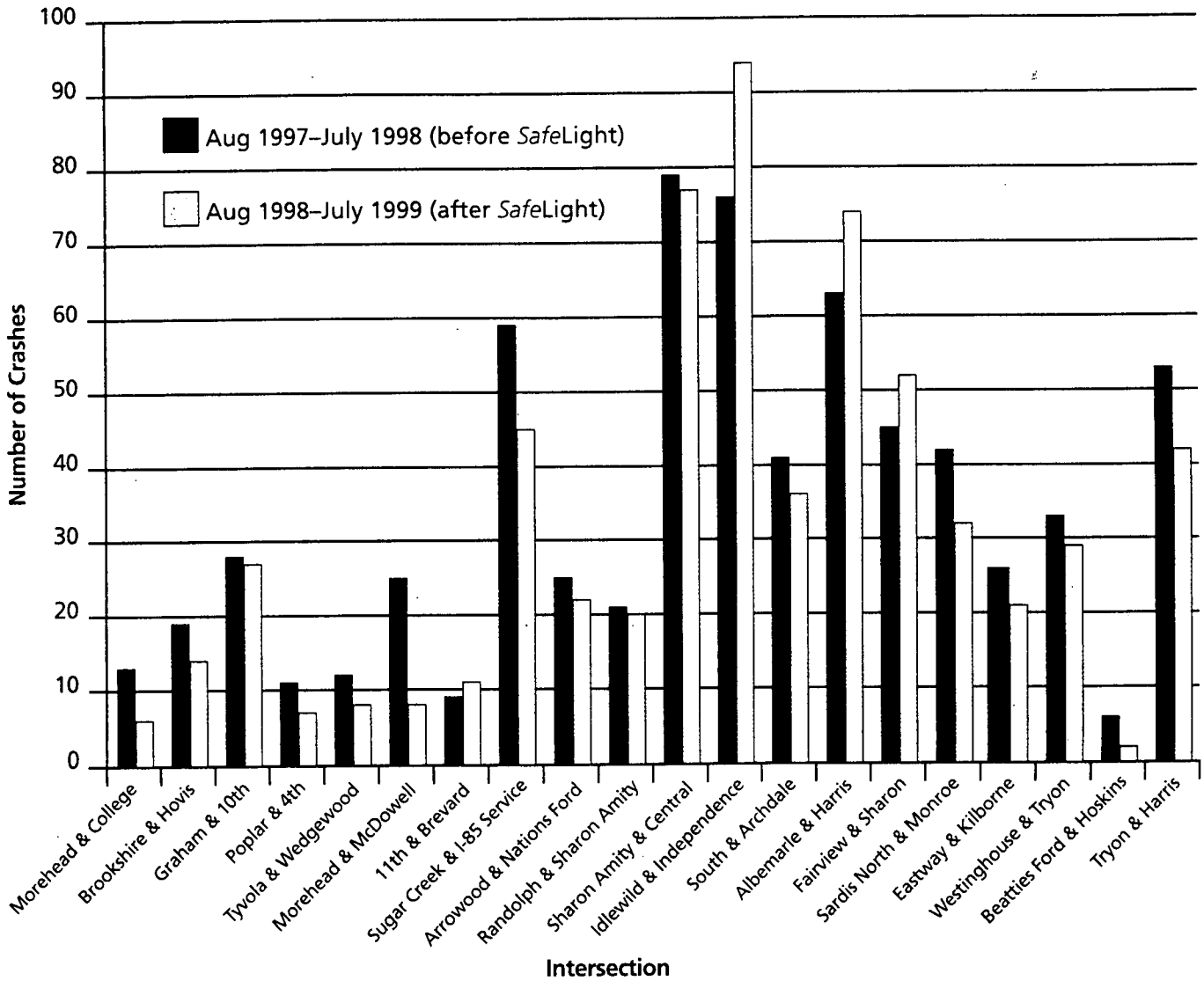
Before engaging in red-light photo enforcement, jurisdictions must obtain enabling legislation from both the General Assembly and their local governing bodies. In 1997 the General Assembly passed Section 160A-300.1 of the North Carolina General Statutes (hereinafter G.S.). The initial version of the statute applied to Charlotte only, authorizing the city to engage in this form of enforcement activity if the activity also was authorized by local ordinance and complied with the requirements set forth in the statute (described later). Since then, the statute has been amended to extend this authority to several more cities and towns, as well as to clarify the requirements for use of the technique.[14]

To obtain state and local authorization, Charlotte took seven steps. First, managers in the Charlotte Department of Transportation (CDOT) obtained the approval of their department head. Second, CDOT secured approval of the city manager. Third, CDOT presented the city council with statistics and information about the need for red-light photo enforcement. The council unanimously supported the idea and authorized CDOT to pursue state approval. Fourth, before approaching the legislature, CDOT worked with AAA Carolinas and local media to educate the public on the reasons for pursuing red-light photo enforcement (as opposed to increasing traditional enforcement). Fifth, CDOT took the proposal to Mecklenburg County's state legislative delegation. Sixth, the delegation presented the proposal to the General Assembly, which approved it through enactment of G.S. 160A-300.1. Finally, the city council enacted an ordinance establishing the *Safe*Light program. Two years elapsed from inception of the idea to operation of the first camera.

What concerns were expressed about red-light photo enforcement?

Several issues framed the debate about red-light photo enforcement. Most nota-

Figure 1. **Crashes at *Safe*Light Intersections**



Source: Data from CHARLOTTE DEP'T OF TRANSP., *SAFE*LIGHT PROGRAM, YEARLY ACCIDENT STATISTICS @ *SAFE*LIGHT INTERSECTIONS (AUG.–JUL.) 1 (Charlotte, N.C.: *Safe*Light Program, CDOT, Dec. 1999).

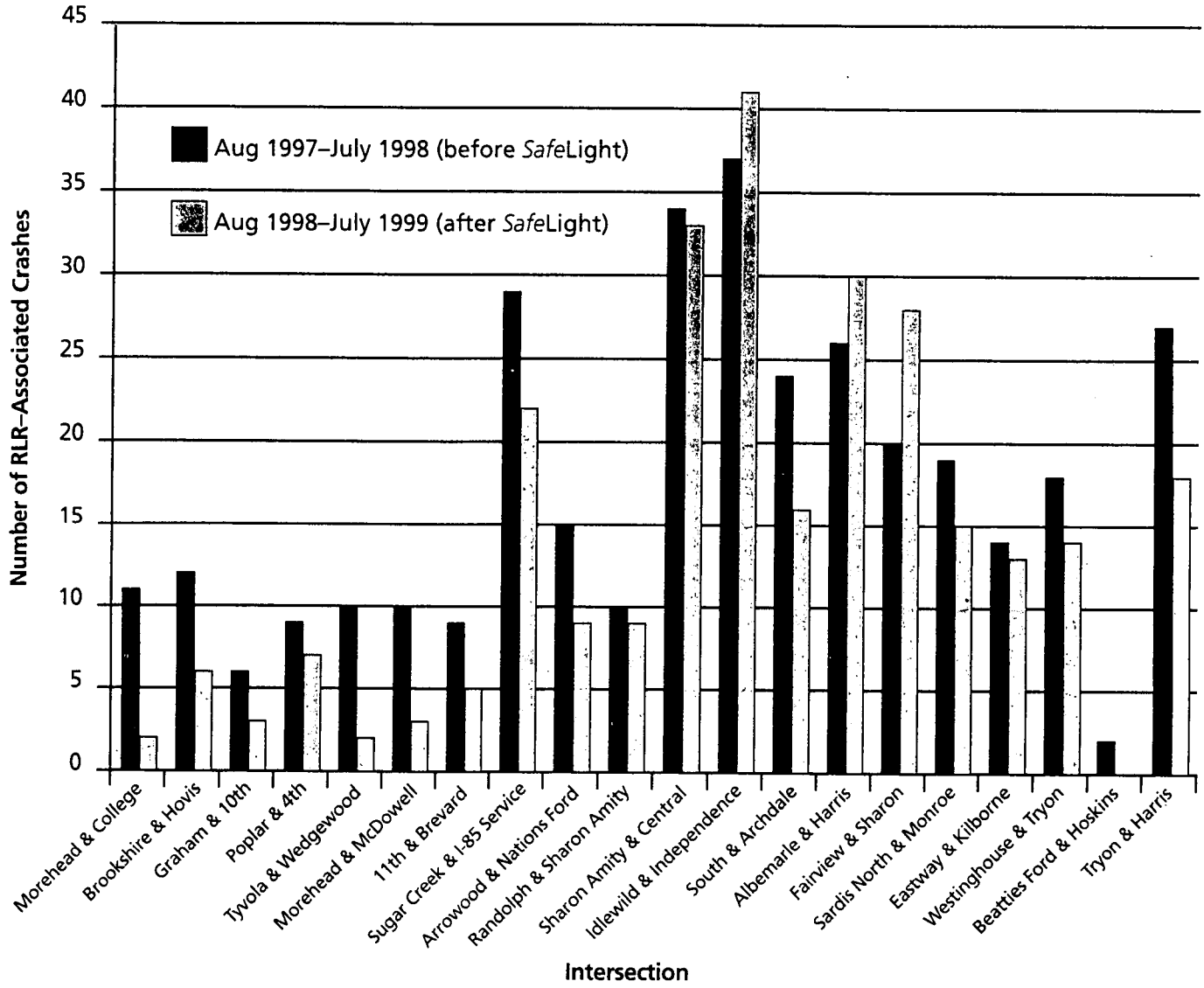
bly, critics argued that the cameras would invade people's privacy. Concerns about rising RLR violations overrode this argument,[15] although the legislature included a requirement that signs be posted at all camera-equipped intersections notifying approaching motorists of the cameras.

Critics also argued that government should not penalize the vehicle's owner and assess insurance points against him or her without proof that the owner was driving the vehicle. In response, the legislature classified an RLR violation detected by photographic means as a civil nonmoving offense, punishable by a $50 penalty only. In contrast, if RLR is detected by a law enforcement officer, it is a moving violation, carrying a $25 fine, $90 in court costs, and an assessment of points against the driver's license. A vehicle's owner may avoid liability for the civil nonmoving violation by signing an affidavit identifying the actual driver at the time of the violation.

In North Carolina, criminal motor vehicle fines go to the schools.[16] However, because camera-caught RLR is characterized as a civil offense, the *Safe*Light program is able to retain all the resulting revenue.[17] In response to the concerns of some citizens that the program was simply a government money-making scheme, Charlotte officials emphasized that the program's goal was to reduce the number of crashes and deaths at intersections, thus making Charlotte a safer community. The monetary penalties were to serve as a mechanism for altering people's driving habits.[18] Charlotte officials also emphasized that the police did not possess the resources to increase traditional enforcement at Charlotte intersections. Cameras, in contrast, could monitor intersections twenty-four hours a day, seven days a week.

Charlotte contracted out the daily operations and management of the *Safe*Light program, and some critics argued that the involvement of a private, for-profit company created a conflict of interest. Camera proponents countered that the public-private partnership had the benefit of imposing no new tax burden while producing additional local government revenue. Proponents also argued that any potential abuses would

Figure 2. **RLR–Associated Crashes at *Safe*Light Intersections**



Source: Data from CHARLOTTE DEP'T OF TRANSP., *SAFE*LIGHT PROGRAM, YEARLY ACCIDENT STATISTICS @ *SAFE*LIGHT INTERSECTIONS (AUG.–JUL.) 2 (Charlotte, N.C.: *Safe*Light Program, CDOT, Dec. 1999).

be held in check by a neutral, third-party appeal process.[19]

How has Charlotte implemented the SafeLight program?

Lockheed Martin IMS (IMS) operates the *Safe*Light program under a contractual arrangement. One city employee oversees the program and conducts its public relations. IMS employs nine people full-time and two people part-time to operate the project.[20] Technicians service the cameras daily and remove the used film. The film is then scanned into a computer and analyzed to verify picture integrity and license plate numbers. A verified license plate number is then checked against North Carolina Division of Motor Vehicle (DMV) records to identify the vehicle's owner.[21] After IMS obtains a positive DMV verification, it mails a citation to the owner. The citation includes an explanation of the violation, a description of the location of the intersection, a photo of the vehicle's license plate, and a photo of the vehicle in the intersection during the light's red phase.

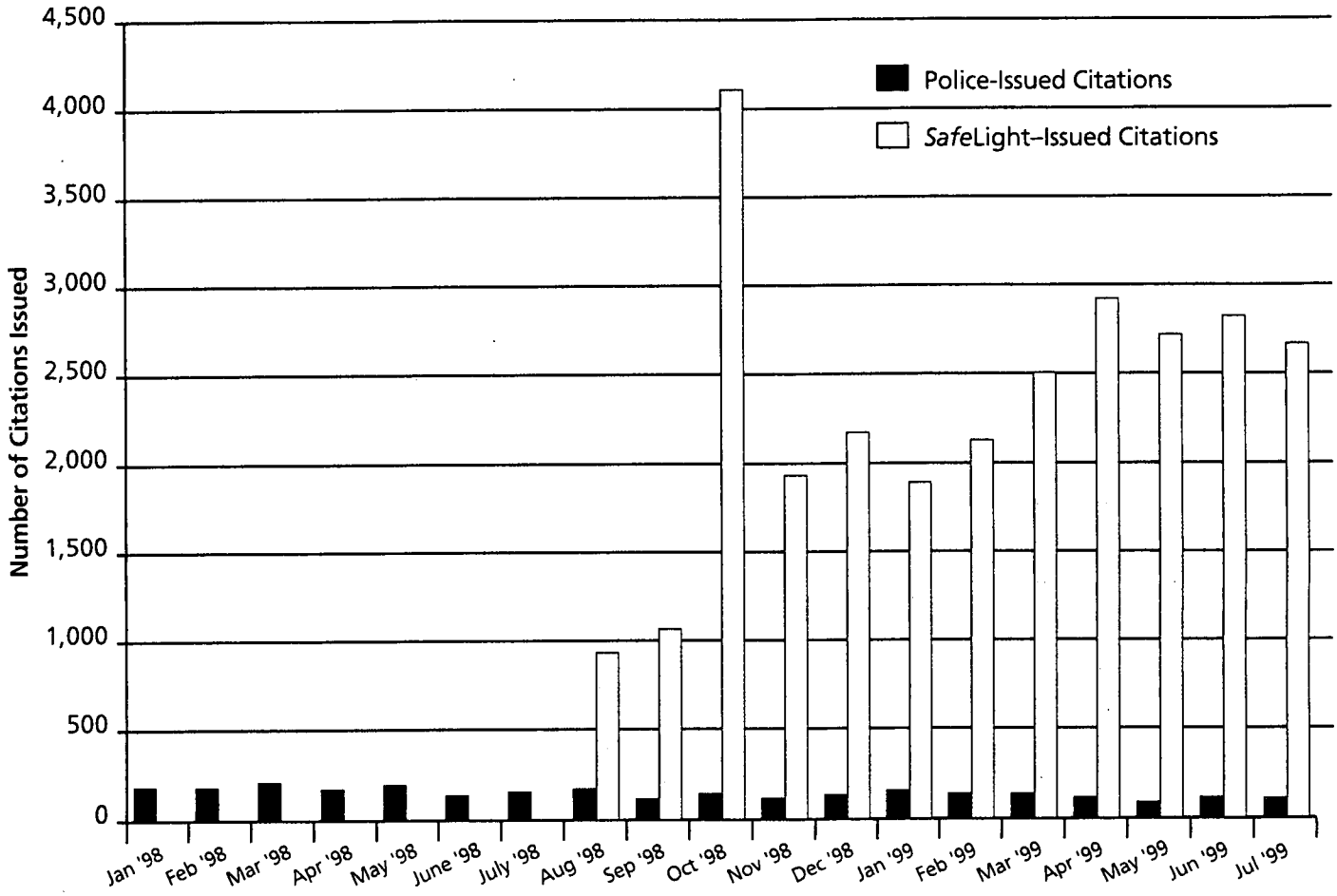
The steps just described occur within forty-eight hours of the violation. If the violator fails to respond, IMS issues a Failure to Comply notice. If the violator still fails to respond, IMS turns the citation over to a collection agency, and an attorney sends a notice to the vehicle's owner.

What have been the results?

*Safe*Light began issuing citations in August 1998. By October 1998 the number of *Safe*Light intersections had grown from 2 to 22. By April 2000, 32—now 30 because of removal of two cameras during road construction—of Charlotte's 572 intersections were equipped to use cameras. Twenty intersections have permanent cameras, while two cameras rotate among the remaining 10 intersections. *Safe*Light reports the following results for August 1997 through July 1999 (except as noted):[22]

- Citywide, the number of crashes increased 5.7 percent.
- *Safe*Light intersections experienced a 9.1 percent decrease in the number of crashes (see Figure 1).
- The number of crashes on approaches toward the camera decreased 27.1 percent.

Figure 3. **RLR Citations Issued by Police vs. *Safe*Light Program**



Source: Data for police-issued citations from Personal Interview with Capt. Larry Blydenburgh, Head of Highway Interdiction and Traffic Safety, Charlotte Police Dep't (Jan. 21, 2000); data for *Safe*Light–issued citations from CHARLOTTE DEP'T OF TRANSP., SAFELIGHT FIRST-YEAR REPORT 5 (Charlotte, N.C.: *Safe*Light Program, CDOT, Fall 1999).

- The number of RLR–associated crashes decreased 19.3 percent at *Safe*Light intersections (see Figure 2, page 43).
- Severity per crash decreased 27.1 percent at *Safe*Light intersections.[23]
- At eight *Safe*Light intersections studied in August 1999, RLR decreased 93.0 percent.[24]

Spillover effects on non–*Safe*Light intersections have not been determined. However, examination of statistics on a random sample of three *Safe*Light and three non–*Safe*Light intersections suggests that Charlotte has yet to experience a reduction in RLR–associated crashes at non–*Safe*Light intersections.

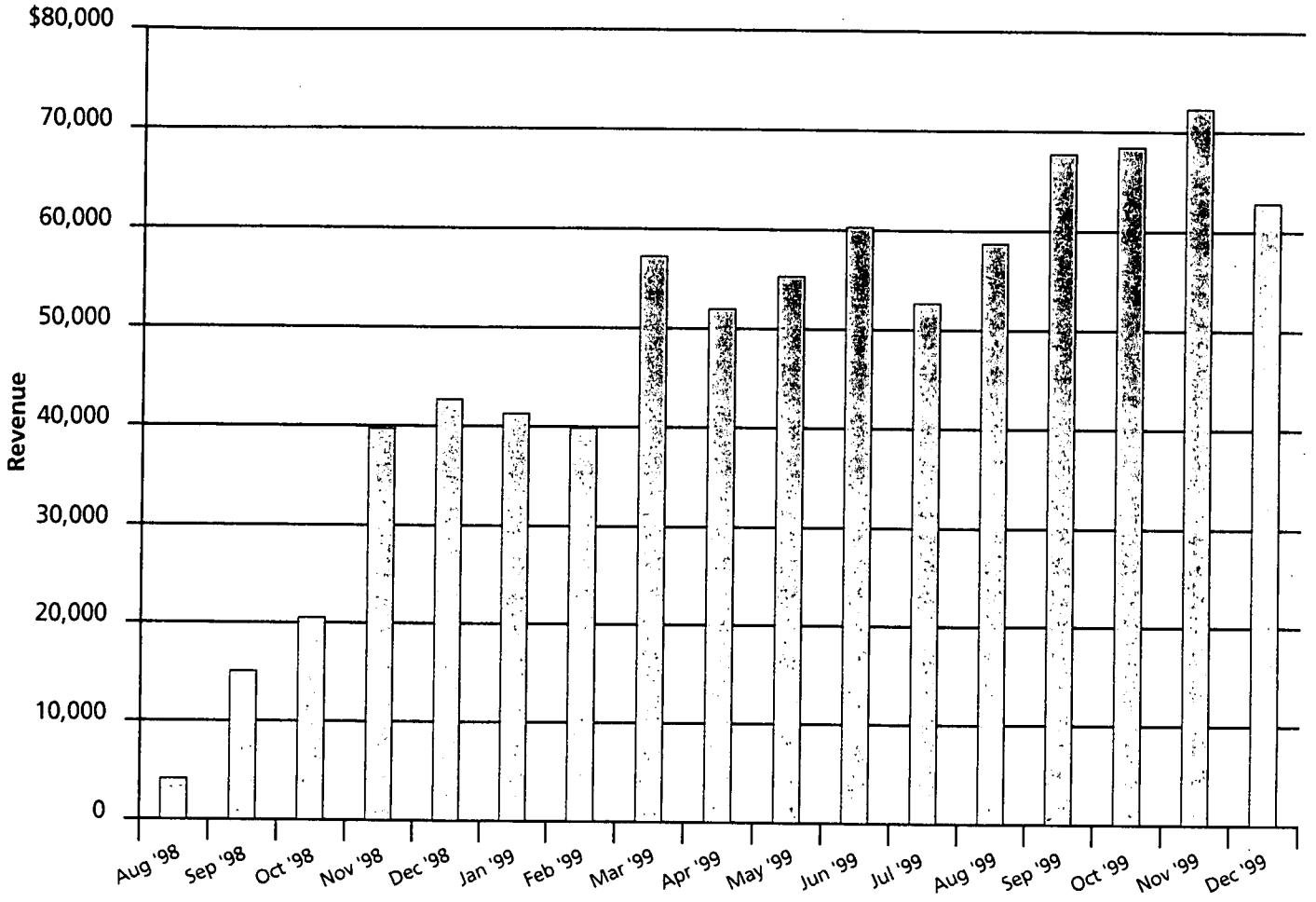
*Safe*Light has produced a far higher number of citations than has traditional enforcement. In 1999 the city processed 1,420 citations issued in the traditional manner. In *Safe*Light's first year of operation (August 1998–July 1999), it issued 27,870 citations (see Figure 3). The recipients of 369 of these citations filed for an administrative hearing, and 62 (17 percent) had their citations dismissed. In the second year of operation, 46,199 citations were issued. Four hundred thirty-four recipients filed for an administrative hearing, and of those, 68 (16 percent) had their citations dismissed.

According to the Charlotte Police Department's traffic unit director, it takes an officer twelve to thirteen minutes to apprehend a red-light violator and issue an RLR citation.[25] At *Safe*Light intersections alone, the decrease in the number of crashes allowed the Charlotte police to save, or reallocate, approximately fifty-nine enforcement hours during the program's first year. A Charlotte police official predicts that, in the long run, fewer intersection crashes will reduce workloads and allow officers to address other police needs.[26]

The *Safe*Light program is financed entirely by citation revenue. Under the contractual arrangement, Charlotte receives $22 (44 percent) of each $50 RLR citation.[27] The rest goes to the contractor, IMS. During *Safe*Light's first year, penalties totaled $1.39 million. IMS collected $1.06 million of that. It received $611,522, Charlotte $447,835. *Safe*Light collected $2.1 million in penalties during the 1999–2000 operating year.[28] Of this amount, $889,108 went to Charlotte, $1.2 million to IMS. After boosting the number of cameras from two to twenty-two in October 1998, Charlotte's first-year monthly revenue averaged $52,787 (see Figure 4).

The capital costs to implement the *Safe*Light program are considerable but are borne by the contractor. (It would be

Figure 4. **Monthly *Safe*Light Revenue Received by Charlotte ($22 of Every $50 Penalty)**



Source: Charlotte Dep't of Transp., *Safe*Light Program, *Safe*Light Monthly Deposit Tracking Sheet (internal document, obtained from Brett Vines, *Safe*Light Director, Jan. 15, 2000).

incorrect, however, to say that there were no costs to Charlotte to implement the *Safe*Light program. Significant staff time was required from CDOT and the City Attorney's Office to get the program established and operating.) According to IMS, the equipment and installation costs per intersection in Charlotte average $72,000, which includes a $50,000 camera. IMS also spent approximately $55,000 in *Safe*Light's first year to mail notices to violators. IMS's mailing costs rose to approximately $86,000 in fiscal year 1999–2000 because of an increase in the volume of citations. Additionally, personnel, data center, and other administrative expenses exceed $1 million annually.[29]

According to IMS's project manager of municipal services in Charlotte, the company has yet to turn a profit. But considering that it received $611,522 in its first year of operation (1998–99) and $1.2 million in its second year, and it estimates receipts of $1.6 million in 2000–2001,[30] the project manager expects *Safe*Light to become profitable within the next couple of years.[31]

Other red-light photo enforcement programs in the United States have experienced similar reductions in RLR and associated crashes.[32] The U.S. Federal Highway Administration predicts that RLR camera programs will result in a reduction in RLR violations of 20 to 60 percent.[33]

However, caution is in order when interpreting violation and crash results. First, the number of violations may or may not be related to the number and the severity of collisions. Second, the results cited may or may not be the result of controlled, scientific studies.[34] Although initial results are promising, concrete findings require additional data and analysis over longer periods of time.

What recommendations do research and experience suggest for other local governments?

The literature on RLR and interviews with CDOT officials, IMS personnel, and the Mecklenburg County legislative delegation suggest that photo enforcement can reduce RLR violations and associated crashes. Following are eight recommendations for optimizing red-light photo enforcement programs:

1. *Impose a civil penalty only.* Imposing driver's license points on drivers who run red lights requires positive driver identification and thus the need for an additional, frontal camera. Sun visors and rear-view mirrors, sun glare, and the wearing of sunglasses and

In the first year of operation, Charlotte's SafeLight intersections experienced a 9.1 percent reduction in the number of crashes overall, a 19.3 percent reduction in the number of RLR–associated crashes, and a 27.1 percent reduction in the number of crashes on the camera approach.



PHOTO BY RANDY JAY HARRINGTON

Electric-wire loops embedded in the pavement, two per lane of travel, trigger camera operation when a vehicle passes over them at a speed greater than 15 miles per hour during the light's red phase.

hats hamper positive driver identification. Research indicates that RLR citation rates (the number of citations issued to violators in relation to the total number of recorded violations on film) vary from 13 to 30 percent in jurisdictions that classify RLR as a moving violation.[35] Such low rates reduce a program's ability to achieve its goals and support itself financially.[36] Therefore, North Carolina's enabling legislation, which authorizes local governments to impose only a civil penalty for RLR violations detected by camera, appears to be the most prudent course.

2. *Conduct a public information and education campaign.* An effective campaign is critical to obtaining support for a red-light photo enforcement program and for the program's continued success. In fact, the U.S. Federal Highway Administration identifies this as the most critical issue.[37] Citizen support can be garnered through early and frequent dissemination of information regarding the need for automated enforcement and the results of automated camera use. Media support also can be pursued as a means of gaining citizen support. As a program's first camera-equipped intersections begin operation, an element of the public information and education campaign might be a period of one or two months during which only warning tickets are issued.

3. *Consider contracting out program operation.* I was not able to determine as part of my study whether contracting out the *Safe*Light program has been wiser financially for Charlotte than operating it in-house. Clearly, though, the public-private partnership has produced revenue for Charlotte. Contractual arrangements have two major benefits. First, contractors specializing in this field enjoy technological advantages over most local government staffs. Second, contracting simplifies abandonment should the program fail to achieve expected results.[38]

4. *Choose appropriate intersections.* Initially, Charlotte placed all its cameras at HAL (high-accident location) intersections. However, Charlotte learned that HAL intersections are not necessarily intersections that experience high numbers of red-light runners. In fact, research only tentatively supports using HAL intersections as camera locations; more definitive research is needed. Other factors to consider when choosing a red-light camera intersection include number of right-angle crashes, police reports, citizen complaints, number of RLR violations, and specific intersection studies. Also, planners should keep in mind that RLR problems may be the result of poorly designed intersections, poor sight lines to the traffic light, or poor timing of traffic-light phases. Interestingly, research warns against relying on traffic volume to determine camera locations. Instead, potential camera locations should be chosen on the basis of the estimated or actual number of RLR violations occurring at particular intersections.[39]

5. *Use more than the legally required number of roadway signs to notify the public of red-light photo enforcement.* Although Charlotte's cameras monitor only one approach to an intersection, all four approaches at a *Safe*Light intersection display warning signs within 300 feet of the intersection. This is mandated by the statute authorizing red-light photo enforcement.[40] Additionally, Charlotte posts warning signs on major roadways at the city limits. Howard County, Maryland, posts warning signs on freeways and other major highways leading into the county but not at specific intersections. New York City posts no warning signs. Charlotte's and Howard County's approach of posting signs at the city and county limits would seem to increase the visibility of the program and to encourage safe driving habits at all intersections, rather than at the camera-equipped intersections alone. North Carolina cities and towns should post warning signs according to the requirements of G.S. 160A-300.1 and consider posting additional signs at major streets leading into the city or the town, to increase the program's visibility and its spin-off value in reducing RLR violations and associated crashes at noncamera intersections.

6. *Prepare for success.* Charlotte administrators recommend performing extra homework, including site visits to other operating programs, to learn about camera technology and its record of success and failure. Elected officials, citizens, and city supervisors are more apt to support a red-light photo enforcement program when time is taken to inform them of the requirements and the potential results of such a tool.[41]

7. *Budget time wisely.* There will be significant time requirements in three areas. First, some time will have to be spent at the state legislature: legislative approval is not pro forma. Second, marketing the idea to the media and the public should be a continuing effort. Third, sufficient time should be allowed for the process of requesting proposals from potential contractors. Charlotte's process took nine months and proved challenging. The process should allow extra time for planners to understand and evaluate the proposals and for prospective contractors to demonstrate their experience in operating a fully functioning system.

8. *Consider using digital cameras.* Digital cameras offer significant benefits over 35-millimeter cameras. They capture higher resolution photos and allow photos to be sent electronically from the intersection's camera directly to the program's main computers. This eliminates the need for film removal and developing, and that in turn reduces time and personnel needs.

Conclusion

Since the introduction of red-light photo enforcement in the United States in 1993, the technology has shown promising results in reducing the number of RLR violations and associated crashes. Additionally, jurisdictions have gained valuable experience operating successful programs. In the first year of operation, Charlotte's *Safe*Light intersections experienced a 9.1 percent reduction in the number of crashes overall, a 19.3 percent reduction in the number of RLR–associated crashes, and a 27.1 percent reduction in the number of crashes on the camera approach. A study of eight *Safe*Light intersections revealed an RLR reduction of 93 percent. Without reliance on additional taxpayer support, Charlotte received $447,835 in new revenue from penalties assessed during the program's first year. Initial results suggest that the *Safe*Light program is achieving its goal of creating a safer Charlotte by improving highway safety at signalized intersections.[42]

Notes

1. Richard Retting, *Automated Enforcement of Traffic Laws*, TR [TRANSPORTATION RESEARCH] NEWS, Mar.–Apr. 1999, at 15, 29.

2. Insurance Inst. for Highway Safety, *Safety Facts* (last modified Dec. 16, 1999), available at http://www.highwaysafety.org/safety_facts/qanda/rlc.htm.

3. M. Freedman & N. Paek, *Enforcement Resources Relative to Need: Changes during 1978–89* (Arlington, Va.: Insurance Inst. for Highway Safety, 1992).

4. *Cameras Working against Light-Runners*, USA TODAY, Jan. 13, 2000, available at http://www.usatoday.com/news/washdc/ncswed03.htm.

5. CHARLOTTE DEP'T OF TRANSP., *SAFE*LIGHT PROGRAM, YEARLY ACCIDENT STATISTICS @ *SAFE*LIGHT INTERSECTIONS (AUG.–JUL.) (Charlotte, N.C.: *Safe*Light Program, CDOT, Dec. 1999) (hereinafter cited as *SAFE*LIGHT STATISTICS).

6. The use of a minimum travel speed helps eliminate potential false-positive violations associated with left-turn-only lanes, right-turn-on-red maneuvers, and emergency vehicles. Some intersections in Charlotte require a higher threshold speed (16 or 18 miles per hour) to activate the cameras.

7. On the first photo, the computer prints the date, the time, the elapsed time since the beginning of the red phase of the light, the duration of the yellow phase, the violation number, the lane number, and the code for the intersection's location. On the second photo, the computer prints the date, the time, the elapsed time between photos, the total elapsed red-light time at the time of the second violation photo, the vehicle's speed, and the violation number.

8. NORTH CAROLINA DEP'T OF TRANSP., TRAFFIC CRASH FACTS 1996, at 106; TRAFFIC CRASH FACTS 1997, at 156; TRAFFIC CRASH FACTS 1998, at 156 (Raleigh, N.C.: NCDOT, 1997, 1998, 1999).

9. Personal Interview with Brett Vines, City of Charlotte Special Programs Manager/*Safe*Light Director (Dec. 16, 1999).

10. The HAL list, produced by the Charlotte Department of Transportation, ranks an intersection on the basis of its dangerousness compared with that of all other intersections in Charlotte. Three factors are considered: (1) the number of crashes occurring in a three-year period at the particular intersection, (2) the total volume of traffic entering the particular intersection in a twenty-four-hour period, and (3) the severity of the injuries sustained for each crash occurring at the particular intersection. The three factors are used to calculate the Estimated Property Damage Only (EPDO) index. The resulting index determines the ranking of the HAL intersections. The HAL list includes the 221 most unsafe intersections.

11. City of Charlotte, N.C., Safe*Light Program* (last modified Dec. 31, 1999), available at http://www.ci.charlotte.nc.us/citransportation/programs/ltfacts.htm.

12. CHARLOTTE DEP'T OF TRANSP., *SAFE*LIGHT FIRST-YEAR REPORT 4 (Charlotte, N.C.: *Safe*Light Program, CDOT, Fall 1999). MarketWise, Inc., conducted a survey of Charlotte residents in fall 1997, before implementation. MarketWise also conducted a post-implementation survey of 404 Mecklenburg County residents in August 1999. This later study indicated that 78 percent supported the *Safe*Light program, while only 8 percent opposed it. Thirty-six percent expressed the opinion that the program had changed driving habits of people in general, at intersections.

13. Dianne Whitacre, *Drivers Flouting the Rules, City Tries to Stem Rise in Accidents* [press release], Charlotte, N.C.: *Safe*Light Program (last modified Nov. 29, 1997), available at http://www.ci.charlotte.nc.us/citransportation/programs/press25.htm.

14. The North Carolina General Assembly has approved camera use for the following cities and towns: Charlotte, Cornelius, Fayetteville, Greensboro, Greenville, High Point, Huntersville, Lumberton, Matthews, Pineville, Rocky Mount, and Wilmington. The General Assembly has denied camera approval to Chapel Hill and Raleigh. *See* S.L. 2000-37 (H 1553).

15. For example, North Carolina State Senator T. LaFontine Odom, Sr. (D–Mecklenburg, Iredell, and Lincoln counties) noted that "it's the responsibility of city government to enforce [the] law[,] . . . and cameras seemed to work best." Sen. T. LaFontine Odom, Sr., Re: Charlotte's *Safe*Light Program, e-mail to the author (Jan. 13, 2000).

16. N.C. CONST. art. IX, § 7; Cauble v. City of Asheville, 314 N.C. 518, 336 S.E.2d 59 (1985).

17. The legality of cities retaining such revenue has yet to be challenged in court. Randy Jones, former manager of public service for CDOT, noted that cities probably could not afford the high costs of camera programs if they could not offset costs with penalty revenue. Personal Interview (Jan. 19, 2000).

18. Vicki Hyman, *Charlotte Program Credited with Reducing Crashes 27 Percent*, RALEIGH NEWS & OBSERVER, Oct. 24, 1999, at

26A. Brett Vines, *Safe*Light director, noted in Hyman's newspaper article that Charlotte spends its *Safe*Light–generated revenue on pedestrian safety, public safety campaigns, and sidewalk construction. According to the 1999–2000 Safe*Light Annual Report*, about $400,000 of *Safe*Light revenue will fund major safety-improvement projects at local schools, including road widening and turn-lane construction. The report is available at http://www.charmeck.nc.us/citransportation/programs/report2.htm#Revenue.

19. The appeals process includes an administrative hearing before an independent hearing officer and an appeal through the Superior Court of Mecklenburg County.

20. Lockheed Martin IMS employs its own project manager to oversee its Charlotte operation and work closely with the city's *Safe*Light Director.

21. The system is able to obtain motor vehicle owner records from virtually all fifty states. For rental cars, IMS contacts the rental car company to obtain the renter's name and mailing address. If it cannot obtain the name, it sends the violation to the rental car company to forward to the driver. According to IMS, most rental car companies are cooperative, helpful, and supportive.

22. CHARLOTTE DEP'T OF TRANSP., *SAFE*-LIGHT PROGRAM, *SAFE*LIGHT STATISTICS.

23. The EPDO index determines estimated crash severity. See note 10.

24. CITY OF CHARLOTTE, *SAFE*LIGHT FIRST-YEAR REPORT 10. A test conducted by CDOT before installation of cameras examined eight intersections for one twelve-hour segment (7:00 A.M. to 7:00 P.M.). The pretest determined that motorists ran red lights 875 times. A test conducted after camera installation revealed that the number of violations at the same eight intersections decreased to 58 over a twenty-four-hour period.

25. Court appearance time and other forms of down time were excluded from the calculation. Traditional enforcement by a single officer also can be difficult and dangerous. The officer must be able to see the vehicle, the stop bar, and the traffic signal clearly at the same time. In apprehending a red-light violator, the officer may have to pursue the violator through the red phase, thus endangering himself or herself, other motorists, and pedestrians. Karl A. Passetti, *Use of Automated Enforcement for Red Light Violations*, in COMPENDIUM: GRADUATE STUDENT PAPERS ON ADVANCED SURFACE TRANSPORTATION SYSTEMS, at J-5 through J-6 (College Station: Texas Transp. Inst., Aug. 1997).

26. Captain Larry Blydenburgh, head of Highway Interdiction and Traffic Safety for the Charlotte Police Department, estimated that an officer spends one hour performing professional duties at a typical RLR crash scene and filing subsequent paperwork. Personal Interview with Capt. Larry Blydenburgh, Head of Highway Interdiction and Traffic Safety, Charlotte Police Dep't (Jan. 21, 2000). This article does not examine the monetary costs associated with traditional red-light enforcement in Charlotte. However, a 1997 report found that in Howard County, Maryland, traditional, team-oriented red-light enforcement cost $25.40 per citation. Passetti, *Use of Automated Enforcement*, at J-30.

27. If it issues fewer than 35,000 citations per year, IMS receives $28 of each $50 citation. If it issues more than 35,000 but fewer than 60,000 citations per year, it receives an extra $4 per citation (applicable only to the number between 35,000 and 60,000). If it issues more than 60,000 citations per year, it earns an extra $1.50 per citation (applicable only to the number over 60,000). If the penalty is not paid or appealed within twenty-one days, a $50 late penalty is charged. IMS collects $23 of each $50 late penalty, CDOT $27. However, if a violator does not pay until a third notice is sent, IMS receives $76 of the total $100 charge, and CDOT $24.

28. CHARLOTTE DEP'T OF TRANSP., *SAFE*-LIGHT PROGRAM, CITY OF CHARLOTTE *SAFE*-LIGHT PROGRAM SUMMARY OF REVENUES AND EXPENDITURES (Charlotte, N.C.: *Safe*Light Program, CDOT, Dec. 1999) (hereinafter cited as REVENUES AND EXPENDITURES).

29. Terence J. Lynam, Director, Customer and Constituent Relations, Lockheed Martin IMS, Re: Charlotte Red Light Program, e-mail to the author (Dec. 21, 1999).

30. CHARLOTTE DEP'T OF TRANSP., *SAFE*-LIGHT PROGRAM, REVENUES AND EXPENDITURES.

31. Personal Interview with Johnnie Fogg, Project Manager of Mun. Serv., Lockheed Martin IMS (Dec. 16, 1999). According to John Veneziano, Director of Public Works for Fairfax, Virginia, the city's three-camera Photo Red Light Program returned a profit after fifteen months. As of December 1999, Fairfax had paid $831,380.00 in total contractual costs, and the city's net revenue totaled $131,819.70. Fairfax contracts out the intersection installation, camera maintenance, and film developing. The police department reviews the photo violations, mails the citations, handles customer service, and supports the appeals process. Personal Interview with Veneziano (Jan. 24, 2000). I did not audit IMS's cost figures. However, the approximate $50,000 purchase price for each of Charlotte's Gatsometer 35-millimeter cameras is consistent with prices charged for such high-speed/high-resolution cameras. Research by Hummer et al. found that in Howard County, Maryland, installation of the pavement loops and the poles for the camera cost between $3,000 and $7,000. Significant price differences can exist among types of cameras (35-millimeter and digital) and types of vehicle detectors (air tubes, inductive loops, earth magnetic loops, piezoelectric strips, video loops, and laser). JOSEPH E. HUMMER ET AL., TRAFFIC SIGNAL ENFORCEMENT INNOVATIONS FOR NORTH CAROLINA 24 (Report submitted to the North Carolina Governor's Highway Safety Program, Raleigh: North Carolina State Univ., Oct. 29, 1999).

32. Fairfax, Virginia's violation rate across camera *and* noncamera intersections had decreased by approximately 40 percent one year after photo enforcement began. Richard A. Retting et al., *Evaluation of Red Light Camera Enforcement in Fairfax, Va., USA*, ITE [INSTITUTE OF TRAFFIC ENGINEERS] JOURNAL, Aug. 1999, at 30. In Oxnard, California, the violation rate across camera *and* noncamera intersections decreased by approximately 42 percent. Richard A. Retting et al., *Evaluation of Red Light Camera Enforcement in Oxnard, California*, 31 ACCIDENT ANALYSIS AND PREVENTION 169 (1999). New York City experienced a 38 percent reduction in RLR violations. UNITED STATES DEP'T OF TRANSP., SYNTHESIS AND EVALUATION OF RED LIGHT RUNNING AUTOMATED ENFORCEMENT PROGRAMS IN THE UNITED STATES, FHWA-IF-00-004 at 17 (Washington, D.C.: Federal Highway Admin., Sept. 1999). San Francisco experienced a 42 percent reduction in violation rates during a six-month pilot program. Preliminary crash data suggested that the cameras in San Francisco reduced citywide crashes and injuries by red-light runners. HUMMER ET AL., TRAFFIC SIGNAL, at 24. Howard County, Maryland, experienced a 23 percent reduction in the number of RLR violations. Passetti, *Use of Automated Enforcement*, at J-30.

33. UNITED STATES DEP'T OF TRANSP., SYNTHESIS AND EVALUATION, at 27.

34. HUMMER ET AL., TRAFFIC SIGNAL, at 25.

35. HUMMER ET AL., TRAFFIC SIGNAL, at 23.

36. Brett Vines (current *Safe*Light director) and Randy Jones (former manager of public service for CDOT) both posit that categorizing an automated enforcement RLR violation as a civil nonmoving violation produces just as good results (in reductions in RLR violations and associated crashes), if not better, than making the offense a (more punishable) moving violation. Interviews with Vines, Jones.

37. UNITED STATES DEP'T OF TRANSP., SYNTHESIS AND EVALUATION, at 25.

38. Interviews with Jones, Vines.

39. HUMMER ET AL., TRAFFIC SIGNAL, at 61, 73.

40. G.S. 160A-300.1(b).

41. Interviews with Jones, Vines.

42. I could not have completed this article without the assistance of many people. In particular, warm thanks go to Capt. Larry Blydenburgh of the Charlotte Police Department; Elizabeth Babson of CDOT; and Randy Jones, formerly of CDOT. Special thanks go to Brett Vines, *Safe*Light director, and David N. Ammons, Institute of Government faculty member, for their help at all stages of this project.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 536

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

H536-ASK-4 [v.1]

Date _____ ,2001

Comm. Sub. [NO]
Amends Title [YES]
First Edition

Representative

moves to amend the bill on page 1 line 2 through page 3 line 1 by rewriting those lines to read:

"AN ACT AUTHORIZING RED LIGHT CAMERAS FOR SAFETY, FOR SCHOOLS, BUT NOT FOR PROFIT

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-300.1 reads as rewritten:

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

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

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

(b1) Any traffic control photographic system installed on a street or highway ~~must~~ shall be identified by appropriate advance warning signs conspicuously posted not more than 300 feet from the location of the traffic control photographic system. All advance warning signs shall be consistent with a statewide standard adopted by the Department of Transportation in conjunction with local governments authorized to install traffic control photographic systems.

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

(1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle, within 21 days after receiving notification of the violation, furnishes the ~~officials or agents~~ office of the mayor of the municipality which issued the citation:
   a. The name and address of the person or company who leased, rented, or otherwise had the care, custody, and control of the vehicle; or
   b. An affidavit stating that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

(2) A violation detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed, and for which no points authorized

by G.S. 20-16(c) shall be assigned to the owner or driver of the vehicle nor insurance points as authorized by G.S. 58-36-65.

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

(4) The municipality shall institute a nonjudicial administrative hearing to review objections to citations or penalties issued or assessed under this ~~section.~~section with the final decision on any objections to be made by the mayor of the municipality.

(d) ~~This act applies to the Cities of Charlotte, Fayetteville, Greensboro, High Point, Rocky Mount, Wilmington, Greenville, and Lumberton, and the Towns of Chapel Hill, Cornelius, Huntersville, Matthews, and Pineville only.~~Municipalities having populations under 50,000 may use traffic control photographic systems at no more than two intersections within the municipality. Municipalities having populations of 50,000 and over may use traffic control photographic systems at no more than two intersections within the municipality, and at one additional intersection for every additional 50,000 persons living in the municipality.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 536

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

H536-ASK-4 [v.1]

(e) The duration of the yellow light change interval at intersections where traffic control photographic systems are in use shall be no less than the yellow light change interval duration specified in the Signals and Geometrics Section of the North Carolina Department of Transportation's Design Manual.

(f) A municipality enacting an ordinance implementing a traffic control photographic system may enter into a single 60-month contract with a contractor for the lease, lease-purchase, or purchase of the system and for the system's operation. After that period, the system shall either be the property of the municipality or the system shall be removed and returned to the contractor.

(g) During the contract period, the clear proceeds from the citations issued pursuant to the ordinance authorized by this section shall be paid to the county school fund in accordance with Section 7 of Article IX of the Constitution of North Carolina. The clear proceeds from the citations shall mean the funds remaining after paying the contractor for operating the system and/or paying for the lease, lease-purchase, or purchase of the system."

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

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

North Carolina Cities Authorized to use "Red-Light Cameras"

Cities	Revenue Use	Fund holding revenue	Ticket Profit Split	Company Contract	Company Contact	City Contact
Chapel Hill (inactive)	Not determined yet	Not determined yet	No contract yet	No contract yet	No contract yet	Sara Loewenthal, 919-968-2742
Charlotte	For transportation safety projects	Separate fund in transportation department	56% company 44% city	Lockheed Martin	Tom Hodgkins 202-414-3506	Doreen Svymanski 704-336-7527
Cornelius (inactive, plan to copy Charlotte)	Support of traffic safety unit	N/A	Not determined yet, but probably 60% company 40% city	Lockheed Martin	Tom Hodgkins 202-414-3506	Chief Ron McKinney, 704-892-1453
Fayetteville	Not designated	General Fund	70% company 30% city	Lockheed Martin	Johnnie Fogg 704-376-1752	Sonya Richardson 704-433-1686, ext.1686
Greensboro	For safety related transportation improvements	Street and Sidewalk revolving fund	70% company 30% city	Safelight Piedmont (parent company is Peak Traffic)	336-883-9402	Mike Mabe, 336-373-4987
Greenville (inactive)	Not determined yet	Not determined yet	No contract yet	No contract yet	No contract yet	Jim Jatko 252-329-4520
High Point	Traffic improvement purposes, public awareness campaign for red light	Separate fund	$35 company $15 city	Peak Traffic	Ian Cardozo 1-800-245-7660, 941-650-6824	336-883-3231
Huntersville (inactive)	Not determined yet	Not determined yet	No contract yet	No contract yet	No contract yet	Chief Wayne Sumter, 704-766-2255
Lumberton (inactive)	Not determined yet	Not determined yet	No contract yet	No contract yet	No contract yet	Albert Benshoff, 910-671-3811
Matthews (inactive)	Not determined yet	Not determined yet	No contract yet	No contract yet	No contract yet	Ralph Messera, 704-847-4411
Pineville (inactive)	Not determined yet	Not determined yet	No contract yet	No contract yet	No contract yet	Chief Jack Thrower, 704-889-7575

Rocky Mount (inactive)	Not determined yet	Not determined yet	Current proposal is $39 company $11 city	No contract yet	N/A	Jonathan Boone, 252-972-1121
Wilmington	Haven not spent any $ except actual costs; Concern over whether the school board has claim.	Separate escrow account	$35 company $15 city	Peak Traffic	Ian Cardozo 1-800-245-7660, 941-650-6824	Jim Flechtner 910-341-7888

April 4, 2001
Kristen Crosson, Research Division, General Assembly
Data obtained from city personnel

VISITOR REGISTRATION SHEET

JH
Name of Committee

April 05, 2001
Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cam Cover	BPINHL
Joe Parker	GHSP
Steve Hoffman	NCSBA
Leanne Winner	NCSBA
Michael Crowell	ATTY, Raleigh
Damico	W-S Journal

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

April 10, 2001 – 10:00 a.m.

The House Committee on Judiciary II met on Tuesday, April 10, 2001, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairman Phil Haire, Representatives Bowie, Decker, Gulley, Hall, Jeffus, Justus, Miller, Pope, Sherrill, and Weiss. Robin Johnson, Esther Manheimer, Jeff Hudson, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order, and then called for consideration of the following bills:

Red Light Cameras. Rep. Baddour asked the members of the committee for input on this issue. He set forth the bills and the options before the committee. The use of funds raised by red light camera ticketing was discussed, as was the benefits of the model that has previously been established in Charlotte. Rep. Ellis discussed his proposal for Wake County that would allow for mayoral review and would use the revenue for education. After much discussion and debate from the committee, Rep. Haire suggested that all those cities that would like to follow the Charlotte model be included in one bill, all of the Wake County cities be included in one bill, and that a bill establishing a statewide model also be created. Rep. Pope suggested that a study committee be established to look into this issue. The committee heard remarks from David Lawrence of the Institute of Government and Andy Romanet of the League of Municipalities. Comments from the committee continued, and no action was taken.

The meeting adjourned at 10:55 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

VISITOR REGISTRATION SHEET

Judiciary II — Name of Committee

4-10-01 — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Barbara Cansler	Allstate/Mortgage Prog.
Tim Crowly	UNCTV
Andy Romanet	NCLM
DAVID LAWRENCE	JUST OF GOV'T
DAMICO	W-S Journal
Boyd Cauble	City of Charlotte
RICHARD MULLINAX	NCDOT - TEB - SIGNALS & GEOMETRICS
MILTON DEAN	NCDOT - TRAFFIC ENGINEERING
Ruth Sappie	NCDOT
Joanne Sinnem	NCSBA
BRUCE THOMPSON	PARKER POE ADAMS & BERNSTEIN
Paul Fogleman	City of HICKORY
Cam Cover	BPM/AC
Tommy Hamelon	NADA, Enterprise Rentalcar
Margaret Westbrook	Kennedy Covington
Joe Parker	GHSA
ROBERT GLOVER	NC Auto Dealers
MICHAEL CROWELL	LAWYER, RALEIGH
JUE McClees	McClees Consulting
Fred Taylor	WRAL

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

April 12, 2001 – 10:00 a.m.

The House Committee on Judiciary II met on Thursday, April 12, 2001, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairman Phil Haire, Representatives Bowie, Culpepper, Decker, Gulley, Hall, Jeffus, Justus, Miller, Miner, and Weiss. Robin Johnson, Esther Manheimer, Jeff Hudson, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order, and recognized the Pages. He then made an announcement with regard to the need for additional meetings doe to the upcoming cross-over deadline, and called for consideration of the following bills:

SB 243 Red Light Cameras/Certain Cities. Rep. Weiss moved that the proposed committee substitute be before the committee for purposes of discussion, and without objection, the PCS was before the committee. Rep. Baddour explained that this bill includes the Town of Cary. Rep. Miner moved to amend the bill to remove the Town of Cary. Rep. Weiss spoke in opposition to that motion. Rep. Ellis noted that there was a conflict between the Mayor of Cary and the Town Council on this issue. Al Adams, representing the Town of Cary, stated that Cary wanted to be included in this bill. Following much discussion and debate, Rep. Miner's motion to remove Cary from the bill was defeated. Rep. Culpepper moved to amend the bill to add the Town of Nags Head, and that motion passed. Rep. Haire moved that the proposed committee substitute be given a favorable report, unfavorable as to the original bill. Motion passed.

HB 536 Statewide Use of Red Light Cameras. Rep. Baddour explained to the committee that this would be the bill to create the study of the issue of red light cameras. Rep. Culpepper moved that the proposed committee substitute be before the committee for purposes of discussion, and without objection, the PCS was before the committee. Rep. Culpepper moved for the adoption of a technical amendment, motion passed. Rep. Culpepper moved that the amendment be rolled into a new committee substitute, and that the committee substitute be given a favorable report, unfavorable as to the original bill, and recommendation that the bill be re-referred to the Committee on Rules, Calendar, and Operations of the House. Motion passed.

HB 567 Cary Red Light Cameras. Rep. Baddour explained that this bill would be the vehicle for the Wake County model. Rep. Haire moved that the proposed committee substitute be before the committee for purposes of discussion, motion passed. Following questions and comments from the committee, Rep. Decker moved for the adoption of a technical amendment. Motion passed. Rep. Justus moved that the amendment be rolled into a new committee substitute, and that the committee substitute be given a favorable report, unfavorable as to the original bill. Motion passed.

The meeting adjourned at 10:55 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

HOUSE JUDICIARY II COMMITTEE
AGENDA

April 12, 2001
10:00 A.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Jeff Hudson
Elizabeth Kirkland (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDERED:

SB 243 Red Light Cameras/Certain Cities – Sen. Plyler
HB 567 Cary Red Light Cameras – Rep. Ellis
HB 536 Statewide Use of Red Light Cameras – Rep. Ellis
HB 902 State Judicial Council Membership – Rep. Baddour
HB 716 Estate Law Changes – Rep. Haire

ADJOURNMENT

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 243 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE CERTAIN CITIES AND TOWNS TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION AND TO PREVENT INSURANCE POINTS FROM BEING ASSESSED.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ With a favorable report as to House committee substitute bill # 2, which changes the title, unfavorable as to House committee substitute bill #1.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 243

State and Local Government Committee Substitute Adopted 3/12/01
Corrected Copy 3/13/01
Fourth Edition Engrossed 3/21/01
House Committee Substitute Reported Without Prejudice 4/2/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S243-PCS6699-RH-22

Short Title: Red Light Cameras/Certain Municipalities. (Local)

Sponsors:

Referred to:

February 26, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CERTAIN MUNICIPALITIES TO USE TRAFFIC CONTROL PHOTOGRAPHIC SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. Subsection (d) of G.S. 160A-300.1 reads as rewritten:

"(d) This ~~act~~ section applies to the Cities of Albemarle, Charlotte, Concord, Durham, Fayetteville, Greensboro, High Point, Rocky Mount, Wilmington, Greenville, and Lumberton, ~~and~~ to the Towns of Cary, Chapel Hill, Cornelius, Huntersville, Matthews, Nags Head, and ~~Pineville~~ Pineville, and to all the municipalities of Union County only."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 5

SENATE BILL 243

State and Local Government Committee Substitute Adopted 3/12/01
Corrected Copy 3/13/01
Fourth Edition Engrossed 3/21/01
House Committee Substitute Reported Without Prejudice 4/2/01

Short Title: Red Light Cameras/Certain Cities. (Local)

Sponsors:

Referred to:

February 26, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CERTAIN CITIES AND TOWNS TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION AND TO PREVENT INSURANCE POINTS FROM BEING ASSESSED.

The General Assembly of North Carolina enacts:

SECTION 1. Subsection (d) of G.S. 160A-300.1 reads as rewritten:

"(d) This ~~act~~ section applies to the Cities of Concord, Charlotte, Durham, Fayetteville, Greensboro, High Point, Monroe, Raleigh, Rocky Mount, Wilmington, Greenville, and Lumberton, and to the Towns of Cary, Chapel Hill, Cornelius, Huntersville, Marshville, Matthews, Mineral Springs, ~~and Pineville~~ Pineville, and Stallings only."

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

SENATE BILL 243:
Red Light Cameras/Certain Municipalities

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Plyler
Date:	April 12, 2001	**Summary by:**	Robin Johnson
Version:	S243-CSRH-22[v.0]		Committee Counsel

SUMMARY: This proposed committee substitute would allow the Cities of Albemarle, Concord, and Durham, the Town of Cary, and all of the municipalities in Union County (which include Monroe, Marshville, Mineral Springs, Stallings, and others) to use traffic control photographic systems under G.S. 160A-300.1

CURRENT LAW:

Under current law (G.S. 160A-300.1), certain municipalities are permitted to adopt a local ordinance to enforce traffic offenses such as running a red light through the use of a "traffic control photographic system". A traffic control photographic system is an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor that works in conjunction with a traffic control device to automatically produce photographs, video, or digital images of vehicles violating these types of statutes or ordinances. In addition, a sign identifying each traffic control photographic system must be placed not more than 300 feet from the intersection where a photographic system is in use.

The owner of a vehicle photographed is responsible for the violation unless they can furnish evidence that, at the time of the offense, the vehicle was under the care, custody, or control of another person. The violation is non-criminal and a $50 civil penalty is assessed against the owner/driver of the vehicle. In addition, no license or insurance points are assigned to the owner or the driver of the vehicle. The citation is mailed to the owner with no personal service required. If the owner fails to respond to the citation or pay the civil penalty the owner waives their right to contest responsibility and is then subject to a civil penalty not to exceed $100. The cities must institute a nonjudicial administrative hearing to review objections to citations or penalties issued.

Currently, there exists a dispute regarding whether the monies collected under G.S. 160A-300.1 belong to the cities or the school boards under the North Carolina Constitution, Article IX, Section 7.

S243-SMRH-001: Esther Manheimer, Committee Counsel, substantially contributed to this summary.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 536 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE ALL MUNICIPALITIES IN THE STATE TO USE TRAFFIC CONTROL PHOTOGRAPHIC SYSTEMS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill, which changes the title, unfavorable as to original bill, and recommendation that the committee substitute bill be re-referred to the Committee on Rules, Calendar and Operations of the House.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 536
PROPOSED COMMITTEE SUBSTITUTE H536-PCS1174-RH-23

Short Title: LRC/Study Use of Red Light Cameras. (Public)

Sponsors:

Referred to:

March 8, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY ISSUES RELATED TO THE USE OF TRAFFIC CONTROL PHOTOGRAPHIC SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. The Legislative Research Commission may study traffic control photographic systems and report its findings, together with any recommended legislation, to the 2002 Regular Session of the 2001 General Assembly. If this study is undertaken, the Commission shall study the following issues:

(1) Whether the use of traffic control photographic systems should be a statewide option available to all municipalities of the State.

(2) Whether the penalties for running a red light should be the same, regardless of whether detected by a traffic control photographic system or identified by a law enforcement officer.

(3) The time and procedure for notifying the owner of a vehicle of a violation detected by a traffic control photographic system, including whether the owner should receive a copy of the photograph.

(4) Whether a person should be exempt from responsibility for a violation detected by a traffic control photographic system when that person is not the owner or the driver of the vehicle in question or when that person was not driving the vehicle at the time and location designated in the citation.

(5) Whether the number of traffic control photographic systems that a municipality may use should be limited.

(6) The procedure for objecting to citations or penalties for violations detected by traffic control photographic systems, and whether there should be a final right of appeal to the mayor.

(7) Whether the municipality or the local school board should receive the clear proceeds of penalties collected for violations detected by a traffic control photographic system.

(8) Whether there should be a standard duration of a yellow light at intersections where traffic control photographic systems are used.

(9) Whether there should be uniform criteria for the lease, lease-purchase, or purchase of a traffic control photographic system and the system's operation and maintenance.

(10) Any other issues related to the use of traffic control photographic systems.

SECTION 2. This act becomes effective July 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 536

Short Title:	Statewide Use of Red Light Cameras.	(Public)
Sponsors:	Representative Ellis.	
Referred to:	Judiciary II.	

March 8, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE ALL MUNICIPALITIES IN THE STATE TO USE TRAFFIC CONTROL PHOTOGRAPHIC SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-300.1 reads as rewritten:

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

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

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

(b1) Any traffic control photographic system installed on a street or highway ~~must~~ shall be identified by appropriate advance warning signs conspicuously posted not more than 300 feet from the location of the traffic control photographic system. All advance warning signs shall be consistent with a statewide standard adopted by the Department of Transportation in conjunction with local governments authorized to install traffic control photographic systems.

(c) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-158 by means of a traffic control photographic system, as described in subsection (a) of this section. Notwithstanding the provisions of G.S. 20-176, in the event that a municipality adopts an ordinance pursuant to this section, a violation of G.S. 20-158 at a location at

which a traffic control photographic system is in operation shall not be an infraction. An ordinance authorized by this subsection shall provide that:

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

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

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

(2) A violation detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed, and for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the vehicle nor insurance points as authorized by G.S. 58-36-65.

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

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

(d) ~~This act applies to the Cities of Charlotte, Fayetteville, Greensboro, High Point, Rocky Mount, Wilmington, Greenville, and Lumberton, and the Towns of Chapel Hill, Cornelius, Huntersville, Matthews, and Pineville only.~~

The number of traffic control photographic systems which a municipality may use shall be limited as follows:

Municipal Population	Number of Systems
Less than 10,000	1
10,000 to 50,000	2
Greater than 50,000	1 plus 1 for every 50,000 or fraction."

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

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** (Chair/Chairs) for the Committee on **Jucidicary II.**

☐ Committee Substitute for
H.B. 567 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE TOWN OF CARY TO USE TRAFFIC CONTROL PHOTOGRAPHIC SYSTEMS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill, which changes the title, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 567
PROPOSED COMMITTEE SUBSTITUTE H567-CSSB-18 [v.1]

4/11/2001 4:33:21 PM

Short Title: Wake County Red Light Cameras. (Local)

Sponsors:

Referred to:

March 12, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE MUNICIPALITIES OF WAKE COUNTY, EXCEPT FOR THE TOWN OF CARY, TO USE RED LIGHT CAMERAS FOR SAFETY, FOR SCHOOLS, BUT NOT FOR PROFIT. .

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 160A of Article 15 of the General Statutes is amended by adding a new section G.S. 160A-300.2 to read:

"**§ 160A-300.2. Use of traffic control photographic systems.**

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

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

(b1) Any traffic control photographic system installed on a street or highway shall be identified by appropriate advance warning signs conspicuously posted not more than 300 feet from the location of the traffic control photographic system. All advance warning signs shall be consistent with a statewide standard adopted by the Department of Transportation in conjunction with local governments authorized to install traffic control photographic systems.

(c) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-158 by means of a traffic control photographic system, as described in subsection (a) of this section. Notwithstanding the provisions of G.S. 20-176, in the event that a municipality adopts an ordinance pursuant to this section, a violation of G.S. 20-158 at a location at

which a traffic control photographic system is in operation shall not be an infraction. An ordinance authorized by this subsection shall provide that:

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

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

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

c. A statement that the person who received the citation is not the owner or driver of the vehicle, or that the person who received the citation was not driving a vehicle at the time and location designated in the citation.

(2) A violation detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed, and for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the vehicle nor insurance points as authorized by G.S. 58-36-65.

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

(4) The municipality shall establish a nonjudicial administrative hearing process to review objections to citations or penalties issued or assessed under this section. The municipality may establish an appeals panel composed of municipal employees to review objections. Decisions of the appeals panel may be appealed to the mayor of the municipality for

a final decision. If the municipality does not establish an appeals panel, the mayor of the municipality shall review and make a final decision on all objections.

(d) Municipalities having populations under 50,000 may use traffic control photographic systems at no more than two intersections within the municipality. Municipalities having populations of 50,000 and over may use traffic control photographic systems at no more than two intersections within the municipality, and at one additional intersection for every additional 50,000 persons living in the municipality.

(e) The duration of the yellow light change interval at intersections where traffic control photographic systems are in use shall be no less than the yellow light change interval duration specified in the Signals and Geometrics Section of the North Carolina Department of Transportation's Design Manual.

(f) A municipality enacting an ordinance implementing a traffic control photographic system may enter into a single 60-month contract with a contractor for the lease, lease-purchase, or purchase of the system and for the system's operation. After that period, the system shall either be the property of the municipality or the system shall be removed and returned to the contractor.

(g) The clear proceeds from the citations issued pursuant to the ordinance authorized by this section shall be paid to the county school fund. The clear proceeds from the citations shall mean the funds remaining after paying the contractor for operating the system and/or paying for the lease, lease-purchase, or purchase of the system.

(h) This section applies to all of the municipalities of Wake County, except for the Town of Cary."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 567

Short Title:	Cary Red Light Cameras.	(Local)
Sponsors:	Representative Ellis.	
Referred to:	Judiciary II.	

March 12, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF CARY TO USE TRAFFIC CONTROL PHOTOGRAPHIC SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-300.1(d) reads as rewritten:

"(d) This act applies to the Cities of Charlotte, Fayetteville, Greensboro, High Point, Rocky Mount, Wilmington, Greenville, and Lumberton, and the Towns of Cary, Chapel Hill, Cornelius, Huntersville, Matthews, and Pineville only."

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

HB 567:
Wake County Red Light Cameras

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Ellis
Date:	April 12, 2001	**Summary by:**	Jeff Hudson
Version:	H567-CSSB-18[v.1]		Committee Counsel

SUMMARY: The proposed committee substitute for House Bill 567 (H567-CSSB-17[v.4]) would create a new statute, G.S. 160A-300.2, that authorizes all municipalities in Wake County, except for the Town of Cary, to use traffic control photographic systems. Municipalities that are currently authorized to use traffic control photographic systems under G.S. 160A-300.1 would continue to do so under that statute. The act is effective when it becomes law.

Differences between G.S. 160A-300.1, the current red light statute, and G.S. 160-300.2.

- Under G.S. 160A-300.1, officials or agents of the municipality handle issues of incorrect citations and appeals. Under G.S. 160A-300.2, the mayor and the mayor's office handle issues of incorrect citations and appeals.
- G.S. 160A-300.2 provides an additional ground for appeal of a citation. A person who receives a citation is not responsible for it if the person provides a statement that the person is not the owner or driver of the vehicle or that the person was not driving a vehicle at the time and location designated in the citation.
- G.S. 160A-300.2 provides that a citation must be attached to photographic evidence of the violation and must identify the vehicle involved.
- G.S. 160A-300.2 limits the number of intersections at which a municipality may use traffic control photographic systems.
- G.S. 160A-300.2 provides for the duration of the yellow light at intersections where traffic control photographic systems are used.
- G.S. 160A-300.2 specifies certain requirements regarding the contract between the municipality and the provider of the traffic control photographic system.
- G.S. 160A-300.2 provides that the proceeds from citations must be paid to the county school fund.

Esther Manheimer, Committee Counsel to the House Judiciary II Committee, contributed to this summary.

VISITOR REGISTRATION SHEET

House Comm on Judiciary II
Name of Committee Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Hardy Rowland	NCLM.
[illegible]	[illegible]
Richard Mullinax	NCDOT - TEB
Milton Dean	NCDOT - Traffic Engineering
PS Powell	AOC
Alice Garland	Electricities
Jack Cozort	NAB
Col Cole	Parker, Poe, Adams & Bernstein LLP
Barbara Canaday	Manning, Fulton & Skinner
Bill Scoggin	Kennedy Covington
Michelle Frazier	NC Bar Assoc.
Tommy Hamilton	Enterprise Rent A Car
John Phelps	NCLM

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

April 17, 2001 – 10:00 a.m.

The House Committee on Judiciary II met on Tuesday, April 17, 2001, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Representatives Culpepper, Decker, Hall, Jeffus, Miller, Sherrill and Weiss. Robin Johnson, Esther Manheimer, Jeff Hudson, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

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

HB 567 Wake County Red Light Cameras. Rep. Baddour explained that he wanted to bring this bill back up to clarify the issue of ticketing at an intersection. Following comments from Rep. Hall and Rep. Sherrill, it was decided that this was one of the issues to be studied. The bill was not brought back up.

HB 7 Amend Worthless Check Program. Rep. Miller moved that the proposed committee substitute be before the committee for purposes of discussion, and without objection, the PCS was before the committee. Rep. Culpepper presided while Rep. Baddour explained the bill in Rep. Hill's absence. Members of the committee made brief comments, and heard from Pete Powell of the Administrative Office of the Courts. Rep. Sherrill moved that the proposed committee substitute be given a favorable report, unfavorable as to the original bill. Motion passed unanimously.

HB 377 Department of Social Services Changes 2. Rep. Miller moved that the proposed committee substitute be before the committee for purposes of discussion, and without objection, the PCS was before the committee. Rep. Culpepper, bill sponsor, was recognized to explain the bill. Rep. Decker questioned the impact this bill would have on the employer. Rep. Culpepper noted that the bill conforms to current practices. Rep. Sherrill questioned the splitting of support between counties. Barry Miller of the Child Support Enforcement section of the Department of Social Services outlined how they handled this issue. Rep. Decker offered an amendment to change the notification period, and the amendment was adopted. Rep. Culpepper moved that the amendment be rolled into a new committee substitute, and that the committee substitute be given a favorable report, unfavorable as to the original bill. Motion passed unanimously.

HB 1099 Substitute Letter of Credit for Surety Bond. The chair recognized Rep. Wainwright, bill sponsor, to explain the bill. Paul Stock of the Bankers Association spoke in support of the bill. Rep. Hall moved that the bill be given a favorable report. Motion passed.

HB 1053 Action on Construction Payment Bond. Rep. Culpepper presided as Rep. Baddour, bill sponsor, was recognized to explain the bill. Dave Simpson of Carolinas AGCs spoke in support of the bill. Rep. Baddour moved that the bill be given a favorable report. Motion passed unanimously.

The meeting adjourned at 10:55 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

HOUSE JUDICIARY II COMMITTEE
AGENDA

April 17, 2001
10:00 A.M. & 1:00 P.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Jeff Hudson
Elizabeth Kirkland (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDERED (any bill not heard at the 10am meeting will be considered during the 1pm meeting):

HB 567	~~Cary~~ Wake County Red Light Cameras – Rep. Ellis
HB 7	Amend Worthless Check Program – Rep. Hill
HB 377	Department of Social Services Changes 2 – Rep. Culpepper
HB 1099	Substitute Letter of Credit for Surety Bond – Rep. Church
HB 1053	Action on Construction Payment Bond – Rep. Baddour
HB 902	State Judicial Council Membership – Rep. Baddour
HB 989	Judicial Appointment/Voter Retention – Reps. Michaux & Sutton

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H 1

HOUSE BILL 567

Short Title:	Cary Red Light Cameras.	(Local)
Sponsors:	Representative Ellis.	
Referred to:	Judiciary II.	

March 12, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF CARY TO USE TRAFFIC CONTROL PHOTOGRAPHIC SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-300.1(d) reads as rewritten:

"(d) This act applies to the Cities of Charlotte, Fayetteville, Greensboro, High Point, Rocky Mount, Wilmington, Greenville, and Lumberton, and the Towns of Cary, Chapel Hill, Cornelius, Huntersville, Matthews, and Pineville only."

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

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 7 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A PROGRAM ESTABLISHED BY A DISTRICT ATTORNEY FOR THE COLLECTION OF WORTHLESS CHECK CASES IN CERTAIN COUNTIES MAY INCLUDE WORHTLESS CHECK OFFENSES PUNISHABLE AS CLASS I FELONIES AS WELL AS THOSE PUNISHABLES AS CLASS 2 MISDEMEANORS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill, which changes the title, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 7
PROPOSED COMMITTEE SUBSTITUTE H7-CSSB-10 [v.6]

3/23/2001 11:34:46 AM

Short Title: Amend Worthless Check Program. (Local)

Sponsors:

Referred to:

January 29, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PROGRAM ESTABLISHED BY A DISTRICT ATTORNEY FOR COLLECTION IN WORTHLESS CHECK CASES IN CERTAIN COUNTIES MAY INCLUDE WORTHLESS CHECK OFFENSES PUNISHABLE AS CLASS I FELONIES AND CLASS 1 MISDEMEANORS AS WELL AS THOSE PUNISHABLE AS CLASS 2 MISDEMEANORS AND TO MAKE OTHER CLARIFYING, CONFORMING, AND TECHNICAL CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S.14-107.2 reads as rewritten:

"**§ 14-107.2. Program for ~~the~~ collection ~~of~~ in worthless check cases.**

(a) As used in this section, the terms 'check passer' and 'check taker' have the same meaning as defined in G.S. 14-107.1.

(b) A district attorney may establish a program for the collection of worthless ~~check~~ checks in cases that ~~would, if~~ may be prosecuted under ~~G.S. 14-107, be punishable as a Class 2 misdemeanor.~~ G.S. 14-107. The district attorney may establish a program for the collection of worthless checks in cases that would be punishable as misdemeanors, in cases that would be punishable as felonies, or both. ~~The purpose of the program is to collect worthless checks in a more timely manner, to alleviate the need to prosecute each worthless check case, and to provide an opportunity for the check passer to avoid criminal prosecution. In creating the program, the~~ The district attorney ~~must~~ shall establish criteria for the types of worthless check cases that will be eligible ~~for collection~~ under the program.

(c) If ~~the~~ a check passer participates in the program by paying the fee under G.S. 7A-308(c) and providing restitution to the check taker for (i) the amount of the check or draft, (ii) any service charges imposed on the check taker by a bank or depository for processing the dishonored check, and (iii) any processing fees imposed by the check taker pursuant to ~~G.S. 25-3-512,~~ G.S. 25-3-506, then the district attorney ~~will~~ shall not prosecute the worthless check case under G.S. 14-107.

(d) The Administrative Office of the Courts ~~must~~ shall establish procedures for remitting the fee and providing restitution to the check taker. ~~For the purposes of this section, the terms "check passer" and "check taker" have the same meanings as defined in G.S. 14-107.1.~~

(e) This ~~act~~ section applies only to ~~Brunswick,~~ Bladen, Brunswick, Columbus, Cumberland, Durham, Edgecombe, Nash, New Hanover, Onslow, Pender, Rockingham, Wake, and Wilson Counties."

SECTION 2. G.S. 7A-346.2(b) reads as rewritten:

"(b) The Administrative Office of the Courts shall report by April 1 of each year to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety on the implementation of the worthless check collection programs ~~in Columbus, Durham, Rockingham, and Wake Counties and the establishment of such programs in Bladen, Brunswick, Cumberland, Edgecombe, Nash, New Hanover, Onslow, and Pender, and Wilson Counties,~~ established by district attorneys pursuant to G.S. 14-107.2, including their effectiveness in assisting the recipients of worthless checks in obtaining restitution and the amount of time saved ~~in~~ from not prosecuting worthless check cases."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 7

Short Title:	Amend Worthless Check Program.	(Local)
Sponsors:	Representatives Hill; Mitchell, Church, Bell, Justus, and Warwick.	
Referred to:	Rules, Calendar, and Operations of the House.	

January 29, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PROGRAM ESTABLISHED BY A DISTRICT ATTORNEY FOR THE COLLECTION OF WORTHLESS CHECK CASES IN CERTAIN COUNTIES MAY INCLUDE WORTHLESS CHECK OFFENSES PUNISHABLE AS CLASS I FELONIES AS WELL AS THOSE PUNISHABLE AS CLASS 2 MISDEMEANORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S.14-107.2 reads as rewritten:

"**§ 14-107.2. Program for the collection of worthless check cases.**

(a) A district attorney may establish a program for the collection of worthless check cases that would, if prosecuted under G.S. 14-107, be punishable as a Class 2 ~~misdemeanor.~~ misdemeanor or a Class I felony. The purpose of the program is to collect worthless checks in a more timely manner, to alleviate the need to prosecute each worthless check case, and to provide an opportunity for the check passer to avoid criminal prosecution. In creating the program, the district attorney must establish criteria for the types of worthless check cases that will be eligible for collection under the program. If the check passer participates in the program by paying the fee under G.S. 7A-308(c) and providing restitution to the check taker for (i) the amount of the check or draft, (ii) any service charges imposed on the check taker by a bank or depository for processing the dishonored check, and (iii) any processing fees imposed by the check taker pursuant to G.S. 25-3-512, then the district attorney will not prosecute the worthless check case under G.S. 14-107. The Administrative Office of the Courts must establish procedures for remitting the fee and providing restitution to the check taker. For the purposes of this section, the terms "check passer" and "check taker" have the same meanings as defined in G.S. 14-107.1.

(b) This act applies only to Brunswick, Bladen, Columbus, Cumberland, Durham, Edgecombe, Nash, New Hanover, Onslow, Pender, Rockingham, Wake, and Wilson Counties. "

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

HOUSE BILL 7:
Amend Worthless Check Program.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Hill
Date:	April 17, 2001	**Summary by:**	Jeff Hudson
Version:	Proposed Committee Substitute H7-CSSB-10[v.6]		Committee Counsel

SUMMARY: ***The proposed committee substitute for House Bill 7 would broaden the scope of programs established by district attorneys for collection in worthless check cases to include Class I felony and Class 1 misdemeanor cases as well as Class 2 misdemeanor cases.***

CURRENT LAW: Under current law, the district attorneys of Brunswick, Bladen, Columbus, Cumberland, Durham, Edgecombe, Nash, New Hanover, Onslow, Pender, Rockingham, Wake, and Wilson Counties may establish a program for collection in worthless check cases that would be punishable as Class 2 misdemeanors. Under current law:

- If the amount of the worthless check is more than $2,000, the violation is punishable as a Class I felony.
- If the amount of the worthless check is $2,000 or less and the check is drawn upon a nonexistent account or the check is drawn upon an account the drawer knows to be closed, the violation is punishable as a Class 1 misdemeanor.
- In other cases where the amount of the worthless check is $2,000 or less, the violation is punishable as a Class 2 misdemeanor.

A district attorney may not prosecute a worthless check case if the check passer participates in a worthless check collection program by paying a $50 fee to the Collection of Worthless Checks Fund and by providing restitution to the check taker for: (1) the amount of the worthless check, (2) any service charge imposed on the check taker by a bank for processing the dishonored check, and (3) a processing fee imposed by the check taker of up to $25.

BILL ANALYSIS: House Bill 7, as introduced, would broaden the scope of worthless check collection programs to include Class I felony cases as well as Class 2 misdemeanor cases. The proposed committee substitute for House Bill 7 would also allow inclusion of Class 1 misdemeanor cases. Furthermore, the proposed committee substitute provides that a district attorney may establish a program for misdemeanor cases, felony cases, or both. Finally, the proposed committee substitute makes a number of technical changes to the worthless check program statute and the statute that requires the Administrative Office of the Courts to report to legislative committees regarding the worthless check collection programs.

BACKGROUND: The worthless check collection program statute had its origin as an uncodified pilot program enacted in the 1997 Budget Bill. The initial pilot program included only Columbus, Durham, and Rockingham Counties. Wake County was added in 1998; Bladen, Brunswick, New Hanover, and Pender Counties were added in 1999; and Cumberland, Edgecombe, Nash, Onslow, and Wilson Counties were added in 2000. In 2000, the uncodified program was codified as G.S. 14-107.2 at the direction of the Revisor of Statutes.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 377 A BILL TO BE ENTITLED AN ACT TO MAKE CLARIFYING AND OTHER CHANGES TO THE GENERAL STATUTES PERTAINING TO CHILD SUPPORT.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 377*
PROPOSED COMMITTEE SUBSTITUTE H377-CSST-13 [v.5]

4/16/2001 10:23:26 AM

Short Title: DSS Changes 2-AB. (Public)

Sponsors:

Referred to:

March 1, 2001

A BILL TO BE ENTITLED

AN ACT TO MAKE CLARIFYING AND OTHER CHANGES TO THE GENERAL STATUTES PERTAINING TO CHILD SUPPORT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-13.4 reads as rewritten:

"**§ 50-13.4. Action for support of minor child.**

(a) Any parent, or any person, agency, organization or institution having custody of a minor child, or bringing an action or proceeding for the custody of such child, or a minor child by his guardian may institute an action for the support of such child as hereinafter provided.

(b) In the absence of pleading and proof that the circumstances otherwise warrant, the father and mother shall be primarily liable for the support of a minor child. In the absence of pleading and proof that the circumstances otherwise warrant, parents of a minor, unemancipated child who is the custodial or noncustodial parent of a child shall share this primary liability for their grandchild's support with the minor parent, the court determining the proper share, until the minor parent reaches the age of 18 or becomes emancipated. If both the parents of the child requiring support were unemancipated minors at the time of the child's conception, the parents of both minor parents share primary liability for their grandchild's support until both minor parents reach the age of 18 or become emancipated. If only one parent of the child requiring support was an unemancipated minor at the time of the child's conception, the parents of both parents are liable for any arrearages in child support owed by the adult or emancipated parent until the other parent reaches the age of 18 or becomes emancipated. In the absence of pleading and proof that the circumstances otherwise warrant, any other person, agency, organization or institution standing in loco parentis shall be secondarily liable for such support. Such other circumstances may include, but shall not be limited to, the relative ability of all the above-mentioned parties to provide support or the inability of one or more of them to provide support, and the needs and estate of the child. The judge may enter an order requiring any one or more of the

above-mentioned parties to provide for the support of the child as may be appropriate in the particular case, and if appropriate the court may authorize the application of any separate estate of the child to his support. However, the judge may not order support to be paid by a person who is not the child's parent or an agency, organization or institution standing in loco parentis absent evidence and a finding that such person, agency, organization or institution has voluntarily assumed the obligation of support in writing. The preceding sentence shall not be construed to prevent any court from ordering the support of a child by an agency of the State or county which agency may be responsible under law for such support.

The judge may order responsible parents in a IV-D establishment case to perform a job search, if the responsible parent is not incapacitated. This includes IV-D cases in which the responsible parent is a noncustodial mother or a noncustodial father whose affidavit of parentage has been filed with the court or when paternity is not at issue for the child. The court may further order the responsible parent to participate in work activities, as defined in 42 U.S.C. § 607, as the court deems appropriate.

(c) Payments ordered for the support of a minor child shall be in such amount as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case. Payments ordered for the support of a minor child shall be on a monthly basis, due and payable on the first day of each month. The requirement that orders be established on a monthly basis does not affect the availability of garnishment of disposable earnings based on an obligor's pay period.

The court shall determine the amount of child support payments by applying the presumptive guidelines established pursuant to subsection ~~(e1).~~(c1) of this section. However, upon request of any party, the Court shall hear evidence, and from the evidence, find the facts relating to the reasonable needs of the child for support and the relative ability of each parent to provide support. If, after considering the evidence, the Court finds by the greater weight of the evidence that the application of the guidelines would not meet or would exceed the reasonable needs of the child considering the relative ability of each parent to provide support or would be otherwise unjust or inappropriate the Court may vary from the guidelines. If the court orders an amount other than the amount determined by application of the presumptive guidelines, the court shall make findings of fact as to the criteria that justify varying from the guidelines and the basis for the amount ordered.

Payments ordered for the support of a child shall terminate when the child reaches the age of 18 except:

(1) If the child is otherwise emancipated, payments shall terminate at that time;

(2) If the child is still in primary or secondary school when the child reaches age 18, support payments shall continue until the child graduates, otherwise ceases to attend school on a regular basis, fails to make satisfactory academic progress towards graduation, or reaches

age 20, whichever comes first, unless the court in its discretion orders that payments cease at age 18 or prior to high school graduation.

In the case of graduation, or attaining age 20, payments shall terminate without order by the court, subject to the right of the party receiving support to show, upon motion and with notice to the opposing party, that the child has not graduated or attained the age of 20.

(c1) Effective July 1, 1990, the Conference of Chief District Judges shall prescribe uniform statewide presumptive guidelines for the computation of child support obligations of each parent as provided in Chapter 50 or elsewhere in the General Statutes and shall develop criteria for determining when, in a particular case, application of the guidelines would be unjust or inappropriate. Prior to May 1, 1990 these guidelines and criteria shall be reported to the General Assembly by the Administrative Office of the Courts by delivering copies to the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The purpose of the guidelines and criteria shall be to ensure that payments ordered for the support of a minor child are in such amount as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case. The guidelines shall include a procedure for setting child support, if any, in a joint or shared custody arrangement which shall reflect the other statutory requirements herein.

Periodically, but at least once every four years, the Conference of Chief District Judges shall review the guidelines to determine whether their application results in appropriate child support award amounts. The Conference may modify the guidelines accordingly. The Conference shall give the Department of Health and Human Services, the Administrative Office of the Courts, and the general public an opportunity to provide the Conference with information relevant to the development and review of the guidelines. Any modifications of the guidelines or criteria shall be reported to the General Assembly by the Administrative Office of the Courts before they become effective by delivering copies to the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The guidelines, when adopted or modified, shall be provided to the Department of Health and Human Services and the Administrative Office of the Courts, which shall disseminate them to the public through local IV-D offices, clerks of court, and the media.

Until July 1, 1990, the advisory guidelines adopted by the Conference of Chief District Judges pursuant to this subsection as formerly written shall operate as presumptive guidelines and the factors adopted by the Conference of Chief District Judges pursuant to this subsection as formerly written shall constitute criteria for varying from the amount of support determined by the guidelines.

(d) In non-IV-D cases, payments for the support of a minor child shall be ordered to be paid to the person having custody of the child or any other proper person, agency, organization or institution, or to the State Child Support Collection and Disbursement Unit, for the benefit of the child. In IV-D cases, payments for the support of a minor

child shall be ordered to be paid to the State Child Support Collection and Disbursement Unit for the benefit of the child.

(d1) For child support orders initially entered on or after January 1, 1994, the immediate income withholding provisions of G.S. 110-136.5(c1) shall apply.

(e) Payment for the support of a minor child shall be paid by lump sum payment, periodic payments, or by transfer of title or possession of personal property of any interest therein, or a security interest in or possession of real property, as the court may order. The court may order the transfer of title to real property solely owned by the obligor in payment of arrearages of child support so long as the net value of the interest in the property being transferred does not exceed the amount of the arrearage being satisfied. In every case in which payment for the support of a minor child is ordered and alimony or postseparation support is also ordered, the order shall separately state and identify each allowance.

(e1) In IV-D cases, the order for child support shall provide that the clerk shall transfer the case to another jurisdiction in this State if the IV-D agency requests the transfer on the basis that the obligor, the custodian of the child, and the child do not reside in the jurisdiction in which the order was issued. The IV-D agency shall provide notice of the transfer to the obligor by delivery of written notice in accordance with the notice requirements of Chapter 1A-1, Rule 5(b) of the Rules of Civil Procedure. The clerk shall transfer the case to the jurisdiction requested by the IV-D agency, which shall be a jurisdiction in which the obligor, the custodian of the child, or the child resides. Nothing in this subsection shall be construed to prevent a party from contesting the transfer.

(f) Remedies for enforcement of support of minor children shall be available as herein provided.

(1) The court may require the person ordered to make payments for the support of a minor child to secure the same by means of a bond, mortgage or deed of trust, or any other means ordinarily used to secure an obligation to pay money or transfer property, or by requiring the execution of an assignment of wages, salary or other income due or to become due.

(2) If the court requires the transfer of real or personal property or an interest therein as provided in subsection (e) as a part of an order for payment of support for a minor child, or for the securing thereof, the court may also enter an order which shall transfer title as provided in G.S. 1A-1, Rule 70 and G.S. 1-228.

(3) The remedy of arrest and bail, as provided in Article 34 of Chapter 1 of the General Statutes, shall be available in actions for child-support payments as in other cases.

(4) The remedies of attachment and garnishment, as provided in Article 35 of Chapter 1 of the General Statutes, shall be available in an action for child-support payments as in other cases, and for such purposes the child or person bringing an action for child support shall be deemed a

creditor of the defendant. Additionally, in accordance with the provisions of G.S. 110-136, a continuing wage garnishment proceeding for wages due or to become due may be instituted by motion in the original child support proceeding or by independent action through the filing of a petition.

(5) The remedy of injunction, as provided in Article 37 of Chapter 1 of the General Statutes and G.S. 1A-1, Rule 65, shall be available in actions for child support as in other cases.

(6) Receivers, as provided in Article 38 of Chapter 1 of the General Statutes, may be appointed in action for child support as in other cases.

(7) A minor child or other person for whose benefit an order for the payment of child support has been entered shall be a creditor within the meaning of Article 3A of Chapter 39 of the General Statutes pertaining to fraudulent conveyances.

(8) Except as provided in Article 15 of Chapter 44 of the General Statutes, a judgment for child support shall not be a lien against real property unless the judgment expressly so provides, sets out the amount of the lien in a sum certain, and adequately describes the real property affected; but past due periodic payments may by motion in the cause or by a separate action be reduced to judgment which shall be a lien as other ~~judgments.~~ judgments, and may include provisions for periodic payments.

(9) An order for the periodic payments of child support or a child support judgment that provides for periodic payments is enforceable by proceedings for civil contempt, and ~~its~~ disobedience may be punished by proceedings for criminal contempt, as provided in Chapter 5A of the General Statutes.

Notwithstanding the provisions of G.S. 1-294, an order for the payment of child support which has been appealed to the appellate division is enforceable in the trial court by proceedings for civil contempt during the pendency of the appeal. Upon motion of an aggrieved party, the court of the appellate division in which the appeal is pending may stay any order for civil contempt entered for child support until the appeal is decided, if justice requires.

(10) The remedies provided by Chapter 1 of the General Statutes, Article 28, Execution; Article 29B, Execution Sales; and Article 31, Supplemental Proceedings, shall be available for the enforcement of judgments for child support as in other cases, but amounts so payable shall not constitute a debt as to which property is exempt from execution as provided in Article 16 of Chapter 1C of the General Statutes.

(11) The specific enumeration of remedies in this section shall not constitute a bar to remedies otherwise available.

(g) An individual who brings an action or motion in the cause for the support of a minor child, and the individual who defends the action, shall provide to the clerk of the court in which the action is brought or the order is issued, the individual's social security number. The child support order shall contain the social security number of the parties as evidenced in the support proceeding.

(h) Child support orders initially entered or modified on and after October 1, 1998, shall contain the name of each of the parties, the date of birth of each party, the social security number of each party, and the court docket number. The Administrative Office of the Courts shall transmit to the Department of Health and Human Services, Child Support Enforcement Program, on a timely basis, the information required to be included on orders under this subsection."

SECTION 2. G.S. 110-132 reads as rewritten:

"**§ 110-132. ~~Acknowledgment of paternity~~Affidavit of parentage and agreement to support.**

(a) In lieu of or in conclusion of any legal proceeding instituted to establish paternity, the written ~~acknowledgment of paternity~~affidavits of parentage executed by the putative father ~~of the dependent child when accompanied by a written affirmation of paternity executed and sworn to by~~and the mother of the dependent child shall constitute an admission of paternity and shall have the same legal effect as a judgment of paternity for the purpose of establishing a child support obligation, subject to the right of either signatory to rescind within the earlier of:

(1) 60 days of the date the document is executed, or

(2) The date of entry of an order establishing paternity or an order for the payment of child support.

In order to rescind, a challenger must request the district court to order the ~~recision~~rescission and to include in the order specific findings of fact that the request for ~~recision~~rescission was filed with the clerk of court within 60 days of the signing of the document. The court must also find that all parties, including the child support enforcement agency, if appropriate, have been served in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. In the event the court orders ~~recision~~rescission and the putative father is thereafter found not to be the father of the child, then the clerk of court shall send a copy of the order of ~~recision~~rescission to the State Registrar of Vital Statistics. Upon receipt of an order of ~~recision,~~rescission, the State Registrar shall remove the putative father's name from the birth certificate. In the event that the putative father defaults or fails to present or prosecute the issue of paternity, the trial court shall find the putative father to be the biological father as a matter of law.

After 60 days have elapsed, execution of the document may be challenged in court only upon the basis of fraud, duress, mistake, or excusable neglect. The burden of proof shall be on the challenging party, and the legal responsibilities, including child support obligations, of any signatory arising from the executed documents may not be suspended during the challenge except for good cause shown.

A written agreement to support the child by periodic payments, which may include provision for reimbursement for medical expenses incident to the pregnancy and the

birth of the child, accrued maintenance and reasonable expense of prosecution of the paternity action, when acknowledged as provided herein, filed with, and approved by a judge of the district court at any time, shall have the same force and effect as an order of support entered by that court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases. The written ~~affirmation~~affidavit shall contain the social security number of the person executing the ~~affirmation, and the written acknowledgment shall contain the social security number of the person executing the acknowledgment.~~affidavit. Voluntary agreements to support shall contain the social security number of each of the parties to the agreement. The written ~~affirmations, acknowledgments~~affidavits and agreements to support shall be sworn to before a certifying officer or notary public or the equivalent or corresponding person of the state, territory, or foreign country where the affirmation, acknowledgment, or agreement is made, and shall be binding on the person executing the same whether the person is an adult or a minor. The child support enforcement agency shall ensure that the mother and putative father are given oral and written notice of the legal consequences and responsibilities arising from the signing of an ~~acknowledgement of paternity,~~affidavit of parentage, and of any alternatives to the execution of an ~~acknowledgment or affirmation of paternity.~~affidavit of parentage. The mother shall not be excused from making the ~~affirmation~~ affidavit on the grounds that it may tend to disgrace or incriminate her; nor shall she thereafter be prosecuted for any criminal act involved in the conception of the child as to whose paternity she ~~makes affirmation.~~attests.

(b) At any time after the filing with the district court of an ~~acknowledgment of paternity,~~affidavit of parentage, upon the application of any interested party, the court or any judge thereof shall cause a summons signed by him or by the clerk or assistant clerk of superior court, to be issued, requiring the putative father to appear in court at a time and place named therein, to show cause, if any he has, why the court should not enter an order for the support of the child by periodic payments, which order may include provision for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of the action under this subsection on the ~~acknowledgment of paternity~~affidavit of parentage previously filed with said court. The court may order the responsible parents in a IV-D establishment case to perform a job search, if the responsible parent is not incapacitated. This includes IV-D cases in which the responsible parent is a noncustodial mother or a noncustodial father whose affidavit of parentage has been filed with the court or when paternity is not at issue for the child. The court may further order the responsible parent to participate in the work activities, as defined in 42 U.S.C. § 607, as the court deems appropriate. The amount of child support payments so ordered shall be determined as provided in G.S. 50-13.4(c). The prior judgment as to paternity shall be res judicata as to that issue and shall not be reconsidered by the court."

SECTION 3. G.S. 110-134 reads as rewritten:

"**§ 110-134. Filing of ~~affirmations, acknowledgments,~~ affidavits, agreements and orders; fees.**

All ~~affirmations, acknowledgments, agreements~~affidavits, agreements, and resulting orders entered into under the provisions of G.S. 110-132 and G.S. 110- 133 shall be filed by the clerk of superior court in the county in which they are entered. The filing fee for the institution of an action through the entry of an order under either of these provisions shall be four dollars ($4.00)."

SECTION 4. G.S. 110-136.4 reads as rewritten:

"**§ 110-136.4. Implementation of withholding in IV-D cases.**

(a) Withholding based on arrearages or obligor's request.

(1) Advance notice of withholding. When an obligor in a IV-D case becomes subject to income withholding, the obligee shall, after verifying the obligor's current employer or other payor, wages or other disposable income, and mailing address, serve the obligor with advance notice of withholding in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure.

(2) Contents of advance notice. The advance notice to the obligor shall contain, at a minimum, the following information:

a. Whether the proposed withholding is based on the obligor's failure to make legally obligated child support, alimony or postseparation support payments on the obligor's request for withholding, on the obligee's request for withholding, or on the obligor's eligibility for withholding under G.S. 110-136.3(b)(3);

b. The amount of overdue child support, overdue alimony or postseparation support payments, the total amount to be withheld, and when the withholding will occur;

c. The name of each child or person for whose benefit the child support, alimony or postseparation support payments are due and information sufficient to identify the court order under which the obligor has a duty to support the child, spouse, or former spouse;

d. The amount and sources of disposable income;

e. That the withholding will apply to the obligor's wages or other sources of disposable income from current payors and all subsequent payors once the procedures under this section are invoked;

f. An explanation of the obligor's rights and responsibilities pursuant to this section;

g. That withholding will be continued until terminated pursuant to G.S. 110-136.10.

(3) Contested withholding. The obligor may contest the withholding only on the basis of a mistake of fact, except that G.S. 110-129(10)(a) is not applicable if withholding is based on the obligor's or obligee's request for withholding. To contest the withholding, the obligor must, within 10 days of receipt of the advance notice of withholding, request a

hearing in the county where the support order was entered before the district court and give notice to the obligee specifying the mistake of fact upon which the hearing request is based. If the asserted mistake of fact can be resolved by agreement between the obligee and the obligor, no hearing shall occur. Otherwise, a hearing shall be held and a determination made, within 30 days of the obligor's receipt of the advance notice of withholding, as to whether the asserted mistake of fact is valid. No withholding shall occur pending the hearing decision. The failure to hold a hearing within 30 days shall not invalidate an otherwise properly entered order. If it is determined that a mistake of fact exists, no withholding shall occur. Otherwise, within 45 days of the obligor's receipt of the advance notice of withholding, the obligee shall serve the payor, pursuant to G.S. 1A-1, ~~Rule 4,~~Rule 5, Rules of Civil Procedure, with notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk. In the event of appeal, withholding shall not be stayed. If the appeal is concluded in favor of the obligor, the obligee shall promptly repay sums wrongfully withheld and notify the payor to cease withholding.

(4) Uncontested withholding. If the obligor does not contest the withholding within the 10-day response period, the obligee shall serve the payor, pursuant to G.S. 1A-1, ~~Rule 4,~~Rule 5, Rules of Civil Procedure, with notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk.

(5) Payment not a defense to withholding. The payment of overdue support shall not be a basis for terminating or not implementing withholding.

(6) Inability to implement withholding. When an obligor is subject to withholding, but withholding under this section cannot be implemented because the obligor's location is unknown, because the extent and source of his disposable income cannot be determined, or for any other reason, the obligee shall either request the clerk of superior court to initiate enforcement proceedings under G.S. 15A-1344.1(d) or G.S. 50-13.9(d) or take other appropriate available measures to enforce the support obligation.

(b) Immediate income withholding. When a new or modified child support order is entered, the district court judge shall, after hearing evidence regarding the obligor's disposable income, place the obligor under an order for immediate income withholding. The IV-D agency shall serve the payor pursuant to G.S. 1A-1, ~~Rule 4,~~Rule 5, Rules of Civil Procedure, with a notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk. If information is unavailable regarding an obligor's disposable income, or the obligor is unemployed, or an agreement is reached between both parties which provides for an alternative arrangement,

immediate income withholding shall not apply. The obligor, however, is subject to income withholding pursuant to G.S. 110-136.4(a).

(c) Subsequent payors. If the obligor changes employment or source of disposable income, notice to subsequent payors of their obligation to withhold shall be served as required by G.S. 1A-1, ~~Rule 4,~~Rule 5, Rules of Civil Procedure. Copies of such notice shall be filed with the clerk of court and served upon the obligor by first class mail.

(d) Multiple withholdings. The obligor must notify the obligee if the obligor is currently subject to another withholding for child support. In the case of two or more withholdings against one obligor, the obligee or obligees shall attempt to resolve any conflict between the orders in a manner that is fair and equitable to all parties and within the limits specified by G.S. 110-136.6. If the conflict cannot be so resolved, an injured party, upon request, shall be granted a hearing in accordance with the procedure specified in G.S. 110-136.4(c). The conflict between the withholding orders shall be resolved in accordance with G.S. 110-136.7.

(e) Modification of withholding. When an order for withholding has been entered under this section, the obligee may modify the withholding based on changed circumstances. The obligee shall proceed as is provided in this section.

(f) Applicability of section. The provisions of this section apply to IV-D cases only."

SECTION 5. G.S. 110-136.3(d1) is recodified as G.S. 110-139(c1).

SECTION 6. G.S. 110-139(c1) reads as rewritten:

"(c1) Employment verifications. – For the purpose of ~~establishing~~ establishing, enforcing, 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 and 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 is admissible evidence in any action ~~establishing~~ establishing, enforcing, or modifying a child support order."

SECTION 7. G.S. 50-13.9(b1) reads as rewritten:

"§ 50-13.9. Procedure to insure payment of child support.

"(b1) In a IV-D case:

(1) The designated child support enforcement agency shall have the sole responsibility and authority for monitoring the obligor's compliance with all child support orders in the case and for initiating any enforcement procedures that it considers appropriate.

(2) The clerk of court shall maintain all official records in the case.

(3) The designated child support enforcement agency shall maintain any other records needed to monitor the obligor's compliance with or to enforce the child support orders in the case, including records showing

the amount of each payment of child support received from or on behalf of the obligor, along with the dates on which each payment was received. The payment records maintained by the designated child support enforcement agency shall be admissible evidence and may be authenticated by the designated representative in any action establishing, enforcing or modifying a child support order."

SECTION 8. Article 9 of Chapter 110 of the General Statutes is amended by adding a new section to read:

"**§ 110-136.11 National Medical Support Notice Required.**

(a) Notice Required. The National Medical Support Notice shall be used to notify employers and health insurers or health care plan administrators of an order entered pursuant to G.S. 50-13.11 for dependant health benefit plan coverage in a IV-D case. For purposes of this section and G.S. 110-136.12 through G.S. 110-136.14, the terms 'health benefit plan' and 'health insurer' are as defined in G.S. 108A-69(a).

(b) Exception. The National Medical Support Notice shall not be used in cases where the court has ordered non-employment-based health benefit plan coverage or where the parties have stipulated to non-employment-based health benefit plan coverage."

SECTION 9. Article 9 of Chapter 110 of the General Statutes is amended by adding a new section to read:

"**§ 110-136.12. IV-D Agency Responsibilities.**

(a) Within five business days after the order for dependent health benefit plan coverage has been filed in a IV-D case the IV-D agency shall serve, pursuant to G.S. 1A-1, Rule 5, Rules of Civil Procedure, the National Medical Support Notice on the employer, if known to the agency, of the non-custodial parent.

(b) In cases where the obligor is a newly hired employee, the agency shall serve, pursuant to G.S. 1A-1, Rule 5, Rules of Civil Procedure, the National Medical Support Notice, along with the income withholding notice pursuant to G.S. 110-136.8, on the employer within two business days after the date of entry of an obligor in the State Directory of New Hires.

(c) The IV-D agency shall promptly notify the employer when there is no longer a current order for medical support for which the agency is responsible.

(d) In cases where the health insurer or health care plan administrator reports that there is more than one health care option available under the health benefit plan, the IV-D agency, in consultation with the custodian, may within twenty business days of the date the insurer or administrator informed the agency of the option, select an option and inform the health insurer or health care plan administrator of the option selected."

SECTION 10. Article 9 of Chapter 110 of the General Statutes is amended by adding a new section to read:

"**§ 110-136.13. Employer Responsibilities.**

(a) For purposes of this section, G.S. 110-136.11, G.S. 110-136.12, and G.S. 110-14, the term 'employer' means employer as is defined at 29 USC § 203(d) in the Fair Labor Standards Act.

(b) Within 20 business days after the date of the National Medical Support Notice, the employer shall transfer the Notice to the health insurer or health care plan administrator that provides health benefit plan coverage for which the child is eligible unless one of following applies:

(1) The employer does not maintain or contribute to plans providing dependent or family health insurance.

(2) The employee is among a class of employees that are not eligible for family health benefit plan coverage under any group health plan maintained by the employer or to which the employer contributes.

(3) Health benefit plan coverage is not available because the employee is no longer employed by this employer.

(4) State or federal withholding limitations prevent the withholding from the obligor's income of the amount required to obtain insurance under the terms of the plan.

(c) If the employer is not required to transfer the Notice under subsection (b) of this section, then the employer shall, within the 20 business days after the date of the Notice, inform the agency in writing of the reason or reasons the Notice was not transferred.

(d) Upon receipt from the health insurer or health care plan administrator of the cost of dependent coverage, the employer shall withhold this amount from the obligor's wages and transfer this amount directly to the insurer or plan administrator.

(e) In the event the health insurer or health care plan administrator informs the employer that the Notice is not a qualified medical child support order (QMCSO), the employer shall notify the agency in writing.

(f) In the event the health insurer or health care plan administrator informs the employer of a waiting period for enrollment, the employer shall inform the insurer or administrator when the employee is eligible to be enrolled in the plan.

(g) An employer obligated to provide health benefit plan coverage pursuant to this section shall inform the IV-D agency upon termination of the non-custodial parent's employment within ten business days. The notice shall be in writing to the agency and shall include the obligor's last known address and the name and address of the new employer, if known.

(h) In the event the employee contests the withholding order, the employer shall initiate and continue the withholding until the employer receives notice that the contested case is resolved.

(i) An employer shall not discharge from employment, refuse to employ, or otherwise take disciplinary action against any obligor solely because of the withholding.

(j) If a court finds that an employer has failed to comply with this section, the employer is liable as a payor pursuant to G.S. 110-136.8(e). Additionally, an employer who violates this section is liable in a civil action for reasonable damages."

SECTION 11. Article 9 of Chapter 110 of the General Statutes is amended by adding a new section to read:

"**§ 110-136.14 Health Insurer or Health Care Plan Administrator Responsibilities.**

(a) Upon receipt of the National Medical Support Notice from the employer, and within forty business days after the date of the Notice, a health care plan administrator shall determine if the Notice is a "qualified medical child support order" (QMCSO), as defined under the Employee Retirement Income Security Act (ERISA) or the Child Support Performance and Incentive Act (CSPIA). If the Notice is not a qualified medical support order, the plan administrator shall inform the employer within the time set forth in this subsection.

(b) Upon receipt of the Notice in a non-qualified ERISA plan, or upon a finding that the Notice constitutes a qualified medical child support order, the health insurer or plan administrator shall enroll the dependant child or children in a health benefit plan, determine the cost of the coverage, and inform the employer of the amount of the employee contribution to be withheld from the obligor's wages if appropriate. If the child or children are already enrolled in a health benefit plan, the employer shall be so notified. The employer shall also be notified of any applicable enrollment waiting periods.

(c) If there is more than one health benefit plan in which the dependent child or children may be enrolled, the insurer or plan administrator shall so inform the custodian within the time specified in this subsection. If no plan has been selected within twenty days from the date the insurer or administrator informed the agency of the option, the insurer or administrator may enroll the child or children in the insurer's or administrator's default option.

(d) If the obligor is subject to a waiting period for enrollment, the insurer or administrator shall inform the agency, the employer, the obligor and the custodial parent. Upon the completion of the waiting period, the enrollment shall be instituted.

(e) When a court finds that a health insurer or health care plan administrator has failed to comply with this section, the employer is liable as a payor pursuant to G.S. 110-136.10(e). Additionally, a health insurer or health care plan administrator who violates this section is liable in a civil action for reasonable damages."

SECTION 12. Sections 9, 10, and 11 of this act become effective October 1, 2001. Section 11 of this act becomes- effective July 1, 2002. The remainder of this act is effective when it becomes law.

HOUSE BILL 377*

Short Title:	DSS Changes 2-AB.	(Public)
Sponsors:	Representatives Culpepper; and Alexander.	
Referred to:	Judiciary II.	

March 1, 2001

A BILL TO BE ENTITLED

AN ACT TO MAKE CLARIFYING AND OTHER CHANGES TO THE GENERAL STATUTES PERTAINING TO CHILD SUPPORT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-13.4 reads as rewritten:

"**§ 50-13.4. Action for support of minor child.**

(a) Any parent, or any person, agency, organization or institution having custody of a minor child, or bringing an action or proceeding for the custody of such child, or a minor child by his guardian may institute an action for the support of such child as hereinafter provided.

(b) In the absence of pleading and proof that the circumstances otherwise warrant, the father and mother shall be primarily liable for the support of a minor child. In the absence of pleading and proof that the circumstances otherwise warrant, parents of a minor, unemancipated child who is the custodial or noncustodial parent of a child shall share this primary liability for their grandchild's support with the minor parent, the court determining the proper share, until the minor parent reaches the age of 18 or becomes emancipated. If both the parents of the child requiring support were unemancipated minors at the time of the child's conception, the parents of both minor parents share primary liability for their grandchild's support until both minor parents reach the age of 18 or become emancipated. If only one parent of the child requiring support was an unemancipated minor at the time of the child's conception, the parents of both parents are liable for any arrearages in child support owed by the adult or emancipated parent until the other parent reaches the age of 18 or becomes emancipated. In the absence of pleading and proof that the circumstances otherwise warrant, any other person, agency, organization or institution standing in loco parentis shall be secondarily liable for such support. Such other circumstances may include, but shall not be limited to, the relative ability of all the above-mentioned parties to provide support or the inability of one or more of them to provide support, and the needs and

estate of the child. The judge may enter an order requiring any one or more of the above-mentioned parties to provide for the support of the child as may be appropriate in the particular case, and if appropriate the court may authorize the application of any separate estate of the child to his support. However, the judge may not order support to be paid by a person who is not the child's parent or an agency, organization or institution standing in loco parentis absent evidence and a finding that such person, agency, organization or institution has voluntarily assumed the obligation of support in writing. The preceding sentence shall not be construed to prevent any court from ordering the support of a child by an agency of the State or county which agency may be responsible under law for such support.

Responsible parents in a IV-D establishment case may be ordered by the judge to perform a job search, if the responsible parent is not incapacitated. This includes IV-D cases in which the responsible parent is a noncustodial mother or a noncustodial father whose affidavit of parentage has been filed with the court or when paternity is not at issue for the child. The court may further order the responsible parent to participate in work activities, as defined in 42 U.S.C. § 607, as the court deems appropriate.

(c) Payments ordered for the support of a minor child shall be in such amount as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case. Payments ordered for the support of a minor child shall be on a monthly basis, due and payable on the first day of each month. The requirement that orders be established on a monthly basis does not affect the availability of garnishment of disposable earnings based on an obligor's pay period.

The court shall determine the amount of child support payments by applying the presumptive guidelines established pursuant to subsection (c1). However, upon request of any party, the Court shall hear evidence, and from the evidence, find the facts relating to the reasonable needs of the child for support and the relative ability of each parent to provide support. If, after considering the evidence, the Court finds by the greater weight of the evidence that the application of the guidelines would not meet or would exceed the reasonable needs of the child considering the relative ability of each parent to provide support or would be otherwise unjust or inappropriate the Court may vary from the guidelines. If the court orders an amount other than the amount determined by application of the presumptive guidelines, the court shall make findings of fact as to the criteria that justify varying from the guidelines and the basis for the amount ordered.

Payments ordered for the support of a child shall terminate when the child reaches the age of 18 except:

(1) If the child is otherwise emancipated, payments shall terminate at that time;

(2) If the child is still in primary or secondary school when the child reaches age 18, support payments shall continue until the child graduates, otherwise ceases to attend school on a regular basis, fails to make satisfactory academic progress towards graduation, or reaches

age 20, whichever comes first, unless the court in its discretion orders that payments cease at age 18 or prior to high school graduation.

In the case of graduation, or attaining age 20, payments shall terminate without order by the court, subject to the right of the party receiving support to show, upon motion and with notice to the opposing party, that the child has not graduated or attained the age of 20.

(c1) Effective July 1, 1990, the Conference of Chief District Judges shall prescribe uniform statewide presumptive guidelines for the computation of child support obligations of each parent as provided in Chapter 50 or elsewhere in the General Statutes and shall develop criteria for determining when, in a particular case, application of the guidelines would be unjust or inappropriate. Prior to May 1, 1990 these guidelines and criteria shall be reported to the General Assembly by the Administrative Office of the Courts by delivering copies to the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The purpose of the guidelines and criteria shall be to ensure that payments ordered for the support of a minor child are in such amount as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case. The guidelines shall include a procedure for setting child support, if any, in a joint or shared custody arrangement which shall reflect the other statutory requirements herein.

Periodically, but at least once every four years, the Conference of Chief District Judges shall review the guidelines to determine whether their application results in appropriate child support award amounts. The Conference may modify the guidelines accordingly. The Conference shall give the Department of Health and Human Services, the Administrative Office of the Courts, and the general public an opportunity to provide the Conference with information relevant to the development and review of the guidelines. Any modifications of the guidelines or criteria shall be reported to the General Assembly by the Administrative Office of the Courts before they become effective by delivering copies to the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The guidelines, when adopted or modified, shall be provided to the Department of Health and Human Services and the Administrative Office of the Courts, which shall disseminate them to the public through local IV-D offices, clerks of court, and the media.

Until July 1, 1990, the advisory guidelines adopted by the Conference of Chief District Judges pursuant to this subsection as formerly written shall operate as presumptive guidelines and the factors adopted by the Conference of Chief District Judges pursuant to this subsection as formerly written shall constitute criteria for varying from the amount of support determined by the guidelines.

(d) In non-IV-D cases, payments for the support of a minor child shall be ordered to be paid to the person having custody of the child or any other proper person, agency, organization or institution, or to the State Child Support Collection and Disbursement Unit, for the benefit of the child. In IV-D cases, payments for the support of a minor

child shall be ordered to be paid to the State Child Support Collection and Disbursement Unit for the benefit of the child.

(d1) For child support orders initially entered on or after January 1, 1994, the immediate income withholding provisions of G.S. 110-136.5(c1) shall apply.

(e) Payment for the support of a minor child shall be paid by lump sum payment, periodic payments, or by transfer of title or possession of personal property of any interest therein, or a security interest in or possession of real property, as the court may order. The court may order the transfer of title to real property solely owned by the obligor in payment of arrearages of child support so long as the net value of the interest in the property being transferred does not exceed the amount of the arrearage being satisfied. In every case in which payment for the support of a minor child is ordered and alimony or postseparation support is also ordered, the order shall separately state and identify each allowance.

(e1) In IV-D cases, the order for child support shall provide that the clerk shall transfer the case to another jurisdiction in this State if the IV-D agency requests the transfer on the basis that the obligor, the custodian of the child, and the child do not reside in the jurisdiction in which the order was issued. The IV-D agency shall provide notice of the transfer to the obligor by delivery of written notice in accordance with the notice requirements of Chapter 1A-1, Rule 5(b) of the Rules of Civil Procedure. The clerk shall transfer the case to the jurisdiction requested by the IV-D agency, which shall be a jurisdiction in which the obligor, the custodian of the child, or the child resides. Nothing in this subsection shall be construed to prevent a party from contesting the transfer.

(f) Remedies for enforcement of support of minor children shall be available as herein provided.

(1) The court may require the person ordered to make payments for the support of a minor child to secure the same by means of a bond, mortgage or deed of trust, or any other means ordinarily used to secure an obligation to pay money or transfer property, or by requiring the execution of an assignment of wages, salary or other income due or to become due.

(2) If the court requires the transfer of real or personal property or an interest therein as provided in subsection (e) as a part of an order for payment of support for a minor child, or for the securing thereof, the court may also enter an order which shall transfer title as provided in G.S. 1A-1, Rule 70 and G.S. 1-228.

(3) The remedy of arrest and bail, as provided in Article 34 of Chapter 1 of the General Statutes, shall be available in actions for child-support payments as in other cases.

(4) The remedies of attachment and garnishment, as provided in Article 35 of Chapter 1 of the General Statutes, shall be available in an action for child-support payments as in other cases, and for such purposes the child or person bringing an action for child support shall be deemed a creditor of the defendant. Additionally, in accordance with the

provisions of G.S. 110-136, a continuing wage garnishment proceeding for wages due or to become due may be instituted by motion in the original child support proceeding or by independent action through the filing of a petition.

(5) The remedy of injunction, as provided in Article 37 of Chapter 1 of the General Statutes and G.S. 1A-1, Rule 65, shall be available in actions for child support as in other cases.

(6) Receivers, as provided in Article 38 of Chapter 1 of the General Statutes, may be appointed in action for child support as in other cases.

(7) A minor child or other person for whose benefit an order for the payment of child support has been entered shall be a creditor within the meaning of Article 3A of Chapter 39 of the General Statutes pertaining to fraudulent conveyances.

(8) Except as provided in Article 15 of Chapter 44 of the General Statutes, a judgment for child support shall not be a lien against real property unless the judgment expressly so provides, sets out the amount of the lien in a sum certain, and adequately describes the real property affected; but past due periodic payments may by motion in the cause or by a separate action be reduced to judgment which shall be a lien as other judgments. Additionally, the trial court may order periodic payments on child support judgments as an available enforcement remedy.

(9) An order for the periodic payments of child support is enforceable by proceedings for civil contempt, and its disobedience may be punished by proceedings for criminal contempt, as provided in Chapter 5A of the General Statutes.

Notwithstanding the provisions of G.S. 1-294, an order for the payment of child support which has been appealed to the appellate division is enforceable in the trial court by proceedings for civil contempt during the pendency of the appeal. Upon motion of an aggrieved party, the court of the appellate division in which the appeal is pending may stay any order for civil contempt entered for child support until the appeal is decided, if justice requires.

(10) The remedies provided by Chapter 1 of the General Statutes, Article 28, Execution; Article 29B, Execution Sales; and Article 31, Supplemental Proceedings, shall be available for the enforcement of judgments for child support as in other cases, but amounts so payable shall not constitute a debt as to which property is exempt from execution as provided in Article 16 of Chapter 1C of the General Statutes.

(11) The specific enumeration of remedies in this section shall not constitute a bar to remedies otherwise available.

(g) An individual who brings an action or motion in the cause for the support of a minor child, and the individual who defends the action, shall provide to the clerk of the

court in which the action is brought or the order is issued, the individual's social security number. The child support order shall contain the social security number of the parties as evidenced in the support proceeding.

(h) Child support orders initially entered or modified on and after October 1, 1998, shall contain the name of each of the parties, the date of birth of each party, the social security number of each party, and the court docket number. The Administrative Office of the Courts shall transmit to the Department of Health and Human Services, Child Support Enforcement Program, on a timely basis, the information required to be included on orders under this subsection."

SECTION 2. G.S. 110-132 reads as rewritten:

"**§ 110-132. ~~Acknowledgment of paternity~~Affidavit of parentage and agreement to support.**

(a) In lieu of or in conclusion of any legal proceeding instituted to establish paternity, the written ~~acknowledgment of paternity~~affidavits of parentage executed by the putative father ~~of the dependent child when accompanied by a written affirmation of paternity executed and sworn to by~~and the mother of the dependent child shall constitute an admission of paternity and shall have the same legal effect as a judgment of paternity for the purpose of establishing a child support obligation, subject to the right of either signatory to rescind within the earlier of:

(1) 60 days of the date the document is executed, or

(2) The date of entry of an order establishing paternity or an order for the payment of child support.

In order to rescind, a challenger must request the district court to order the ~~recision~~rescission and to include in the order specific findings of fact that the request for ~~recision~~rescission was filed with the clerk of court within 60 days of the signing of the document. The court must also find that all parties, including the child support enforcement agency, if appropriate, have been served in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. In the event the court orders ~~recision~~rescission and the putative father is thereafter found not to be the father of the child, then the clerk of court shall send a copy of the order of ~~recision~~rescission to the State Registrar of Vital Statistics. Upon receipt of an order of ~~recision,~~rescission, the State Registrar shall remove the putative father's name from the birth certificate. In the event that the putative father defaults or fails to present or prosecute the issue of paternity, the trial court shall find the putative father to be the biological father as a matter of law.

After 60 days have elapsed, execution of the document may be challenged in court only upon the basis of fraud, duress, mistake, or excusable neglect. The burden of proof shall be on the challenging party, and the legal responsibilities, including child support obligations, of any signatory arising from the executed documents may not be suspended during the challenge except for good cause shown.

A written agreement to support the child by periodic payments, which may include provision for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of prosecution of the paternity action, when acknowledged as provided herein, filed with, and approved by a judge of the district court at any time, shall have the same force and effect as an order of

support entered by that court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases. The written ~~affirmation~~affidavit shall contain the social security number of the person executing the ~~affirmation, and the written acknowledgment shall contain the social security number of the person executing the acknowledgment.~~affidavit. Voluntary agreements to support shall contain the social security number of each of the parties to the agreement. The written ~~affirmations, acknowledgments~~affidavits and agreements to support shall be sworn to before a certifying officer or notary public or the equivalent or corresponding person of the state, territory, or foreign country where the affirmation, acknowledgment, or agreement is made, and shall be binding on the person executing the same whether the person is an adult or a minor. The child support enforcement agency shall ensure that the mother and putative father are given oral and written notice of the legal consequences and responsibilities arising from the signing of an ~~acknowledgement of paternity,~~affidavit of parentage, and of any alternatives to the execution of an ~~acknowledgment or affirmation of paternity.~~affidavit of parentage. The mother shall not be excused from making the ~~affirmation~~ affidavit on the grounds that it may tend to disgrace or incriminate her; nor shall she thereafter be prosecuted for any criminal act involved in the conception of the child as to whose paternity she ~~makes affirmation.~~attests.

(b) At any time after the filing with the district court of an ~~acknowledgment of paternity,~~affidavit of parentage, upon the application of any interested party, the court or any judge thereof shall cause a summons signed by him or by the clerk or assistant clerk of superior court, to be issued, requiring the putative father to appear in court at a time and place named therein, to show cause, if any he has, why the court should not enter an order for the support of the child by periodic payments, which order may include provision for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of the action under this subsection on the ~~acknowledgment of paternity~~affidavit of parentage previously filed with said court. The court may order the responsible parents in a IV-D establishment case to perform a job search, if the responsible parent is not incapacitated. This includes IV-D cases in which the responsible parent is a noncustodial mother or a noncustodial father whose affidavit of parentage has been filed with the court or when paternity is not at issue for the child. The court may further order the responsible parent to participate in the work activities, as defined in 42 U.S.C. § 607, as the court deems appropriate. The amount of child support payments so ordered shall be determined as provided in G.S. 50-13.4(c). The prior judgment as to paternity shall be res judicata as to that issue and shall not be reconsidered by the court."

SECTION 3. G.S. 110-134 reads as rewritten:

"**§ 110-134. Filing of affirmations, acknowledgments, agreements and orders; fees.**

All ~~affirmations, acknowledgments, agreements~~affidavits, agreements, and resulting orders entered into under the provisions of G.S. 110-132 and G.S. 110- 133 shall be filed by the clerk of superior court in the county in which they are entered. The filing fee for the institution of an action through the entry of an order under either of these provisions shall be four dollars ($4.00)."

SECTION 4. G.S. 110-136.4 reads as rewritten:

"**§ 110-136.4. Implementation of withholding in IV-D cases.**

(a) Withholding based on arrearages or obligor's request.

(1) Advance notice of withholding. When an obligor in a IV-D case becomes subject to income withholding, the obligee shall, after verifying the obligor's current employer or other payor, wages or other disposable income, and mailing address, serve the obligor with advance notice of withholding in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure.

(2) Contents of advance notice. The advance notice to the obligor shall contain, at a minimum, the following information:

a. Whether the proposed withholding is based on the obligor's failure to make legally obligated child support, alimony or postseparation support payments on the obligor's request for withholding, on the obligee's request for withholding, or on the obligor's eligibility for withholding under G.S. 110-136.3(b)(3);

b. The amount of overdue child support, overdue alimony or postseparation support payments, the total amount to be withheld, and when the withholding will occur;

c. The name of each child or person for whose benefit the child support, alimony or postseparation support payments are due and information sufficient to identify the court order under which the obligor has a duty to support the child, spouse, or former spouse;

d. The amount and sources of disposable income;

e. That the withholding will apply to the obligor's wages or other sources of disposable income from current payors and all subsequent payors once the procedures under this section are invoked;

f. An explanation of the obligor's rights and responsibilities pursuant to this section;

g. That withholding will be continued until terminated pursuant to G.S. 110-136.10.

(3) Contested withholding. The obligor may contest the withholding only on the basis of a mistake of fact, except that G.S. 110-129(10)(a) is not applicable if withholding is based on the obligor's or obligee's request for withholding. To contest the withholding, the obligor must, within 10 days of receipt of the advance notice of withholding, request a hearing in the county where the support order was entered before the district court and give notice to the obligee specifying the mistake of fact upon which the hearing request is based. If the asserted mistake of fact can be resolved by agreement between the obligee and the obligor, no hearing shall occur. Otherwise, a hearing shall be held and a determination made, within 30 days of the obligor's receipt of the

advance notice of withholding, as to whether the asserted mistake of fact is valid. No withholding shall occur pending the hearing decision. The failure to hold a hearing within 30 days shall not invalidate an otherwise properly entered order. If it is determined that a mistake of fact exists, no withholding shall occur. Otherwise, within 45 days of the obligor's receipt of the advance notice of withholding, the obligee shall serve the payor, pursuant to G.S. 1A-1, ~~Rule 4,~~Rule 5, Rules of Civil Procedure, with notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk. In the event of appeal, withholding shall not be stayed. If the appeal is concluded in favor of the obligor, the obligee shall promptly repay sums wrongfully withheld and notify the payor to cease withholding.

(4) Uncontested withholding. If the obligor does not contest the withholding within the 10-day response period, the obligee shall serve the payor, pursuant to G.S. 1A-1, ~~Rule 4,~~Rule 5, Rules of Civil Procedure, with notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk.

(5) Payment not a defense to withholding. The payment of overdue support shall not be a basis for terminating or not implementing withholding.

(6) Inability to implement withholding. When an obligor is subject to withholding, but withholding under this section cannot be implemented because the obligor's location is unknown, because the extent and source of his disposable income cannot be determined, or for any other reason, the obligee shall either request the clerk of superior court to initiate enforcement proceedings under G.S. 15A-1344.1(d) or G.S. 50-13.9(d) or take other appropriate available measures to enforce the support obligation.

(b) Immediate income withholding. When a new or modified child support order is entered, the district court judge shall, after hearing evidence regarding the obligor's disposable income, place the obligor under an order for immediate income withholding. The IV-D agency shall serve the payor pursuant to G.S. 1A-1, ~~Rule 4,~~Rule 5, Rules of Civil Procedure, with a notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk. If information is unavailable regarding an obligor's disposable income, or the obligor is unemployed, or an agreement is reached between both parties which provides for an alternative arrangement, immediate income withholding shall not apply. The obligor, however, is subject to income withholding pursuant to G.S. 110-136.4(a).

(c) Subsequent payors. If the obligor changes employment or source of disposable income, notice to subsequent payors of their obligation to withhold shall be served as required by G.S. 1A-1, ~~Rule 4,~~Rule 5, Rules of Civil Procedure. Copies of such notice shall be filed with the clerk of court and served upon the obligor by first class mail.

(d) Multiple withholdings. The obligor must notify the obligee if the obligor is currently subject to another withholding for child support. In the case of two or more withholdings against one obligor, the obligee or obligees shall attempt to resolve any conflict between the orders in a manner that is fair and equitable to all parties and within the limits specified by G.S. 110-136.6. If the conflict cannot be so resolved, an injured party, upon request, shall be granted a hearing in accordance with the procedure specified in G.S. 110-136.4(c). The conflict between the withholding orders shall be resolved in accordance with G.S. 110-136.7.

(e) Modification of withholding. When an order for withholding has been entered under this section, the obligee may modify the withholding based on changed circumstances. The obligee shall proceed as is provided in this section.

(f) Applicability of section. The provisions of this section apply to IV-D cases only."

SECTION 5. The introductory language of Section 16 of S.L. 1999-293 reads as rewritten:

"Section 16. ~~G.S. 110-36.3~~G.S. 110-139 is amended by adding a new subsection to read:".

SECTION 6. G.S. 110-139(d1) is recodified as G.S. 110-139(c1).

SECTION 7. G.S. 110-139(c1) reads as rewritten:

"(c1) Employment verifications. – For the purpose of ~~establishing~~ establishing, enforcing, 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 and 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 is admissible evidence in any action ~~establishing~~ establishing, enforcing, or modifying a child support order."

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

HOUSE BILL 377:
DSS Changes 2-AB.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Culpepper
Date:	April 17, 2001	**Summary by:**	R. Erika Churchill
Version:	HB377-CSST-13v.5		Staff Counsel

*SUMMARY: **The proposed committee substitute would make various changes to statutes pertaining to child support. The proposed committee substitute differs from the bill as introduced by adding several sections implementing federal regulations regarding National Medical Support Notices.***

BILL ANALYSIS: The bill would make clarifying and other substantive changes to statutes pertaining to child support. The following is a summary of the changes, organized by broad category and referenced to the bill section.

CLARIFYING AND TECHNICAL CHANGES.

- **Changes the name of the forms used to acknowledge paternity to an "Affidavit of Parentage." Sections 2 and 3, pages 6-8.** Currently, the form signed by the father is referred to as the 'Acknowledgement of Paternity' and the form signed by the mother is referred to as the 'Affirmation of Paternity.' These sections would combine the forms, and rename it an "Affidavit of Parentage," thereby updating the language to that used in the federal statutes. Section 2 also corrects a spelling error. Effective when it becomes law.
- **Technical Corrections. Sections 5 and 6, page 10.** During the 1999 Session of the General Assembly, an incorrect citation was used in language enacting a new subsection. Sections 5 and 6 correct the citation, and recodify the new subsection in the appropriate place in the section. Section 7 then amends the new subsection to include the ability to admit into evidence the Employee Verification during a hearing to enforce a child support order. Effective when it becomes law.
- **Admissibility of Payment Records. Section 7, pages 10-11.** The bill would clarify that the payment record maintained by the Centralized Collections Office is admissible in a child support action, and that the IV-D agent is qualified to authenticate this record for the court. Effective when it becomes law.

SUBSTANTIVE CHANGES.

- **Require responsible parents to perform a job search. Sections 1 and 2, pages 1-7.** Currently, a judge may require that an unemployed responsible parent conduct a job search or participate in work activities, such as community service, when enforcing a child support order. Sections 1 and 2 would provide the ability for the court to require the same job search or participation in work activities when the court is establishing an order for child support. Effective when it becomes law.
- **Allow for periodic payments on child support judgments. Section 1, page 5.** Currently, an arrearage owed for failure to pay child support may be reduced to a civil judgment, and enforced as any other civil judgment. The bill would allow the court to set periodic payment provisions on that civil judgment, and failure to comply with the periodic payment provisions as ordered by the court could be enforced by action for civil or criminal contempt. Effective when it becomes law.

- **Change of Service Method.** Section 4, pages 8-10. Currently, a IV-D agency is required to follow Rule 4 of the Rules of Civil Procedure when serving a notice of income wage withholding on an employer. Rule 4 generally covers service of the summons in an action. Typically, the IV-D agency uses certified mail for this service. The bill would allow the notice to implement income wage withholding to be served in accordance with Rule 5 of the Rules of Civil Procedure, which would allow service to be completed by placing the notice to implement income wage withholding in a properly addressed wrapper in a post office or official depository under exclusive care and custody of the United States Postal Service. **Effective when it becomes law.**

- **National Medical Support Notice.** Sections 8 through 11, pages 11-13. These sections would carry out the federal requirements under the final regulations implementing the 1988 changes to the Social Security Act with respect to Child Support. P.L. 105-200. The bill would add four new statutes setting forth the requirements of the National Medical Support Notice. The National Medical Support Notice is a federally required form that the IV-D agency must serve on the employer of a non-custodial parent when the non-custodial parent is court ordered to provide health insurance for the child or children covered under the child support order. 42 USC 1396g-1 and 29 CFR Part 2590. Upon receiving the Notice, the employer is required to transfer the Notice to the health insurer or health care plan administrator unless:
    - The employer does not maintain or contribute to plans providing dependent or family health insurance.
    - The employee is not eligible for a family health insurance plan maintained by the employer or to which the employer contributes.
    - The employer no longer employs the employee.
    - Withholding limitations prevent the employer from withholding the amount required to obtain insurance.

  Effective October 1, 2001.

  Once the Notice is transferred to the health insurer or health care plan administrator, the health insurer or health care plan administrator must enroll the child or children, notify the employer of the amount to withhold, and notify the employer of any applicable enrollment waiting periods. **Effective July 1, 2002.**

  If either the employer, the health insurer, or the health care plan administrator does not comply with the provisions, they can be held liable for a civil penalty and are subject to a civil suit for reasonable damages.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1099 A BILL TO BE ENTITLED AN ACT TO ALLOW LETTERS OF CREDIT TO SUBSTITUTE FOR SURETY BONDS TO MEET CERTAIN STATUTORY REQUIREMENTS.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

HOUSE BILL 1099:
Substitute Letter of Credit for Surety Bond.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Reps. Church & Wainwright
Date:	April 17, 2001	**Summary by:**	Robin Johnson
Version:	First		Committee Counsel

SUMMARY: ***The bill would amend a number of statutes that currently require a surety bond to allow, as an alternative, an irrevocable letter of credit from a bank or savings institution insured by the Federal Deposit Insurance Corporation (FDIC).***

The bill would become effective December 1, 2001.

BILL ANALYSIS: House Bill 1099 would allow the posting of an irrevocable letter of credit from a bank or savings institution insured by the FDIC under the following circumstances:

- To submit an upset bid in court-ordered sales of real property. (Sec. 1)
- To submit an upset bid in execution sales of real property. (Sec. 2)
- To be licensed as a motor vehicle dealer, manufacturer, factory branch, distributor, distributor branch, or wholesaler. (Sec, 3)
- To be licensed as a housemover. (Sec. 4)
- To be appointed as a guardian of a ward of the United States Veterans Administration. (Sec. 5)
- To discharge a statutory lien (i.e., mechanics lien) on real property. (Sec. 6)
- As condition of bringing an action alleging that person was not mailed the notice, to which that person was entitled, of a sale under a power of sale in a deed in trust or mortgage. (Sec. 7)
- To submit an upset bid in a sale under a power of sale in a deed of trust or mortgage. (Sec. 8)
- To exempt a sale or lease of products, equipment, supplies, or services from the Business Opportunity Sales Act (which govern sales and leases for the purpose of enabling the purchaser to start a business) when the seller obtains a bond in an amount equal to or greater than the gross revenues received from the sale or lease during the preceding 12-month period that enabled the purchaser to start a business.. (Sec. 9)
- Required of certain sellers of products, equipment, supplies, or services under the Business Opportunity Sales Act. (Sec. 10)
- To do business as a loan broker. (Sec. 11)
- To obtain a permit to be a dealer in the business of purchasing precious metals. (Sec. 12)
- To do business as a credit repair business. (Sec. 13)
- To register as an athletic agent. (Sec. 14)
- When an individual employer makes application to self-insure its workers compensation liabilities. (Sec. 15)
- To accompany a proposal for a public contract. (Sec. 16)

- To obtain a permit to erect a modular building. (Sec. 17)
- To be licensed as a manufactured home manufacturer, dealer, or setup contractor. (Secs. 18 & 19)
- Required of a cemetery company or other entity that offers for sale or sells personal property or services that may be used in connection with the burial or commemoration of a deceased human being. (Sec. 20)
- As an alternative to payments made by a cemetery company to a pre-construction trust for the construction of mausoleums or belowground crypts. (Sec. 21)
- To accompany an application for a mass gathering (more than 5000 persons for more than 24 hours in an open space). (Secs. 22 & 23)
- As a condition of a contract between a city and a private solid waste collection firm for a service area that is subject to annexation. (Secs. 24-26)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 1099

Short Title:	Substitute Letter of Credit for Surety Bond.	(Public)
Sponsors:	Representatives Church and Wainwright (Primary Sponsors).	
Referred to:	Judiciary II.	

April 11, 2001

A BILL TO BE ENTITLED

AN ACT TO ALLOW LETTERS OF CREDIT TO SUBSTITUTE FOR SURETY BONDS TO MEET CERTAIN STATUTORY REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-339.25 reads as rewritten:

"**§ 1-339.25. Public sale; upset bid on real property; compliance bond.**

(a) An upset bid is an advanced, increased or raised bid in a public sale by auction whereby a person offers to purchase real property theretofore sold for an amount exceeding the reported sale price by a minimum of five percent (5%) thereof, but in any event with a minimum increase of seven hundred fifty dollars ($750.00). An upset bid shall be made by delivering to the clerk of superior court, with whom the report of the sale was filed, a deposit in cash or by certified check or cashier's check satisfactory to the clerk in an amount greater than or equal to five percent (5%) of the amount of the upset bid but in no event less than seven hundred fifty dollars ($750.00). The deposit required by this section shall be filed with the clerk of the superior court, with whom the report of sale was filed, by the close of normal business hours on the tenth day after the filing of the report of sale, and if the tenth day shall fall upon a Sunday or legal holiday or upon a day in which the office of the clerk is not open for the regular dispatch of its business, the deposit may be made on the day following when the office is open for the regular dispatch of its business. An upset bid need not be in writing, and the timely deposit with the clerk of the required amount, together with an indication to the clerk as to the sale to which it is applicable, is sufficient to constitute the upset bid, subject to the provisions of subsection (b) of this section.

(b) The clerk of the superior court may require a person submitting an upset bid also to deposit a cash bond, or, in lieu thereof at the option of the bidder, a surety bond or letter of credit, approved by the clerk, conditioned on compliance with the upset bid. The letter of credit shall be an irrevocable letter of credit from a bank or savings institution insured by the Federal Deposit Insurance Corporation. The amount of such

bond or letter of credit shall not exceed the amount of the upset bid less the amount of the required deposit.

(c) The clerk of the superior court may in the order of resale require the highest bidder at a resale had pursuant to an upset bid to deposit with the clerk a cash bond, or, in lieu thereof at the option of the bidder, a surety bond or letter of credit, approved by the clerk, conditioned on compliance with his bid. The letter of credit shall be an irrevocable letter of credit from a bank or savings institution insured by the Federal Deposit Insurance Corporation. The bond shall be in such amount as the clerk deems adequate, but in no case greater than the amount of the bid of the person being required to furnish the bond.

(d) A compliance bond or letter of credit, such as is provided for by subsections (b) and (c), shall be payable to the State of North Carolina for the use of the parties in interest and shall be conditioned on the principal obligor's compliance with his bid.

(e) The provisions of this section do not apply to public sales of timber by sealed bid."

SECTION 2. G.S. 1-339.64 reads as rewritten:

"**§ 1-339.64. Upset bid on real property; compliance bond.**

(a) An upset bid is an advanced, increased or raised bid whereby a person offers to purchase real property theretofore sold for an amount exceeding the reported sale price by a minimum of five percent (5%) thereof, but in any event with a minimum increase of seven hundred fifty dollars ($750.00). An upset bid shall be made by delivering to the clerk of superior court, with whom the report of sale was filed, a deposit in cash or by certified check or cashier's check satisfactory to the clerk in an amount greater than or equal to five percent (5%) of the amount of the upset bid but in no event less than seven hundred fifty dollars ($750.00). The deposit required by this section shall be filed with the clerk of the superior court, with whom the report of sale was filed, by the close of normal business hours on the tenth day after the filing of the report of sale, and if the tenth day shall fall upon a Sunday or legal holiday or upon a day in which the office of the clerk is not open for the regular dispatch of its business, the deposit may be made and the upset bid filed on the day following when said office is open for the regular dispatch of its business. An upset bid need not be in writing, and the timely deposit with the clerk of the required amount, together with an indication to the clerk as to the sale to which it is applicable, is sufficient to constitute the upset bid, subject to the provisions of subsection (b).

(b) The clerk of the superior court may require the person submitting an upset bid also to deposit a cash bond, or, in lieu thereof at the option of the bidder, a surety bond or letter of credit, approved by the clerk, conditioned on compliance with the upset bid. The amount of such bond or letter of credit shall not exceed the amount of the upset bid less the amount of the required deposit. The letter of credit shall be an irrevocable letter of credit from a bank or savings institution insured by the Federal Deposit Insurance Corporation.

(c) The clerk of the superior court may in the order of resale require the highest bidder at a resale had pursuant to an upset bid to deposit with the clerk a cash bond, or, in lieu thereof at the option of the bidder, a surety bond or letter of credit, approved by

the clerk, conditioned on compliance with his bid. The bond or letter of credit shall be in such amount as the clerk deems adequate but in no case greater than the amount of the bid of the person being required to furnish the ~~bond.~~ bond or letter of credit. The letter of credit shall be an irrevocable letter of credit from a bank or savings institution insured by the Federal Deposit Insurance Corporation.

(d) A compliance bond, such as is provided for by subsections (b) and (c), shall be payable to the State of North Carolina for the use of the parties in interest and shall be conditioned on the principal obligor's compliance with his bid."

SECTION 3. G.S. 20-288(e) reads as rewritten:

"(e) Each applicant approved by the Division for license as a motor vehicle dealer, manufacturer, factory branch, distributor, distributor branch, or wholesaler shall furnish a corporate surety ~~bond~~ bond, letter of credit, ~~or~~ cash bond or fixed value equivalent of the bond. The amount of the bond or letter of credit for an applicant for a motor vehicle dealer's license is twenty-five thousand dollars ($25,000) for one established salesroom of the applicant and ten thousand dollars ($10,000) for each of the applicant's additional established salesrooms. The amount of the bond or letter of credit for other applicants required to furnish a bond is twenty-five thousand dollars ($25,000) for one place of business of the applicant and ten thousand dollars ($10,000) for each of the applicant's additional places of business.

A corporate surety bond or letter of credit shall be approved by the Commissioner as to form and shall be conditioned that the obligor will faithfully conform to and abide by the provisions of this Article and Article 15. A cash bond or fixed value equivalent thereof shall be approved by the Commissioner as to form and terms of deposits as will secure the ultimate beneficiaries of the bond; and such bond shall not be available for delivery to any person contrary to the rules of the Commissioner. The letter of credit shall be an irrevocable letter of credit from a bank or savings institution insured by the Federal Deposit Insurance Corporation. Any purchaser of a motor vehicle who shall have suffered any loss or damage by any act of a license holder subject to this subsection that constitutes a violation of this Article or Article 15 shall have the right to institute an action to recover against the license holder and the surety. Every license holder against whom an action is instituted shall notify the Commissioner of the action within 10 days after served with process. A corporate surety bond or letter of credit shall remain in force and effect and may not be canceled by the surety unless the bonded person stops engaging in business or the person's license is denied, suspended, or revoked under G.S. 20-294. Such cancellation may be had only upon 30 days' written notice to the Commissioner and shall not affect any liability incurred or accrued prior to the termination of such 30-day period. This subsection does not apply to a license holder who deals only in trailers having an empty weight of 4,000 pounds or less. This subsection does not apply to manufacturers of, or dealers in, mobile or manufactured homes who furnish a corporate surety bond, cash bond, or fixed value equivalent thereof, pursuant to G.S. 143-143.12."

SECTION 4. G.S. 20-361 reads as rewritten:

"**§ 20-361. Application for permit and permit fee.**

Application for a permit to move a structure must be made to the division or district engineer having jurisdiction at least two days prior to the date of the move. For good cause shown, this time may be waived by the district or division engineer. A travel plan and a permit application fee of twenty dollars ($20.00) shall accompany the application. Division or district engineers are authorized to issue permits for individual moves of a structure or building whose width does not exceed 36 feet. The travel plan will show the proposed route, the time estimated for each segment of the move, a plan to handle traffic so that no one delay to other highway users shall exceed 20 minutes. The division or district engineers shall review the travel plan and if the route cannot accommodate the move due to roadway weight limits, bridge size or weight limits, or will cause undue interruption of traffic flow, the permit shall not be issued. The applicant may submit alternate plans if desired until an acceptable route is determined. If the width of the building or structure to be relocated is more than 36 feet, or if no acceptable travel plan has been filed, and the denial of the permit would cause a hardship, the application and travel plan may be submitted to the Department on appeal. After reviewing the route and travel plan, the Department may in its discretion issue the permit after considering the practical physical limitations of the route, the nature and purpose of the move, the size and weight of the structure, the distance the structure is to be moved, and the safety and convenience of the traveling public. A surety bond or irrevocable letter of credit from a bank or savings institution insured by the Federal Deposit Insurance Corporation in an amount to cover the cost of any damage to the pavement, structures, bridges, roadway or other damages that may occur can be required if deemed necessary by the Department."

SECTION 5. G.S. 34-9 reads as rewritten:

"**§ 34-9. Qualifications of guardian; surety bond.**

Before making an appointment under the provisions of this Chapter the court shall be satisfied that the guardian whose appointment is sought is a fit and proper person to be appointed. Upon the appointment being made the guardian shall execute and file a surety bond or irrevocable letter of credit from a bank or savings institution insured by the Federal Deposit Insurance Corporation to be approved by the court in an amount not less than the sum then due and estimated to become payable during the ensuing year. The said bond or letter of credit shall be in the form and be conditioned as required of guardians appointed under the guardianship laws of this State. The court shall have power from time to time to require the guardian to file an additional bond or letter of credit.

No bond or letter of credit shall be required of the banks and trust companies licensed to do trust business in North Carolina."

SECTION 6. G.S. 44A-16(6) reads as rewritten:

"(6) Whenever a corporate surety bond or irrevocable letter of credit from a bank or savings institution insured by the Federal Deposit Insurance Corporation, in a sum equal to one and one-fourth times the amount of the lien or liens claimed and conditioned upon the payment of the amount finally determined to be due in satisfaction of said lien or liens,

is deposited with the clerk of court, whereupon the clerk of superior court shall cancel the lien or liens of record."

SECTION 7. G.S. 45-21.17A(g) reads as rewritten:

"(g) Action for Damages from Foreclosure Sale for Failure to Comply. – A person entitled to notice of sale by virtue of this section shall not bring any action for damages resulting from the sale on grounds that he was not mailed the notice unless such action is brought within six months of the date of the filing of the final report and account as provided in G.S. 45-21.33. The party bringing such an action shall also deposit with the clerk a cash or surety bond or irrevocable letter of credit from a bank or savings institution insured by the Federal Deposit Insurance Corporation approved by the clerk and in such amount as the clerk deems adequate to secure the party defending the action for such costs, expenses, and reasonable attorneys' fees to be incurred in the action."

SECTION 8. G.S. 45-21.27 reads as rewritten:

"**§ 45-21.27. Upset bid on real property; compliance bonds.**

(a) An upset bid is an advanced, increased, or raised bid whereby any person offers to purchase real property theretofore sold, for an amount exceeding the reported sale price or last upset bid by a minimum of five percent (5%) thereof, but in any event with a minimum increase of seven hundred fifty dollars ($750.00). Subject to the provisions of subsection (b) of this section, an upset bid shall be made by delivering to the clerk of superior court, with whom the report of sale or last notice of upset bid was filed, a deposit in cash or by certified check or cashier's check satisfactory to the clerk in an amount greater than or equal to five percent (5%) of the amount of the upset bid but in no event less than seven hundred fifty dollars ($750.00). The deposit required by this section shall be filed with the clerk of the superior court, with whom the report of the sale or the last notice of upset bid was filed by the close of normal business hours on the tenth day after the filing of the report of the sale or the last notice of upset bid, and if the tenth day shall fall upon a Sunday or legal holiday, or upon a day in which the office of the clerk is not open for the regular dispatch of its business, the deposit may be made and the notice of upset bid filed on the day following when said office is open for the regular dispatch of its business. Subject to the provisions of G.S. 45-21.30, there shall be no resales; rather, there may be successive upset bids each of which shall be followed by a period of 10 days for a further upset bid. When an upset bid is not filed following a sale, resale, or prior upset bid within the time specified, the rights of the parties to the sale or resale become fixed.

(b) The clerk of the superior court may require an upset bidder or the highest bidder at a resale held pursuant to G.S. 45-21.30 also to deposit with the clerk a cash bond, or, in lieu thereof at the option of the bidder, a surety bond or irrevocable letter of credit from a bank or savings institution insured by the Federal Deposit Insurance Corporation, approved by the clerk. The compliance bond or letter of credit shall be in such amount as the clerk deems adequate, but in no case greater than the amount of the bid of the person being required to furnish the bond or letter of credit, less the amount of any required deposit. The compliance bond or letter of credit shall be payable to the State of North Carolina for the use of the parties in interest and shall be conditioned on the principal obligor's compliance with the bid.

(c), (d) Repealed by Session Laws 1993, c. 305, s. 16.

(e) At the same time that an upset bid on real property is submitted to the court as provided for in subsection (a) above, together with a compliance bond or letter of credit if one is required, the upset bidder shall simultaneously file with the clerk a notice of upset bid. The notice of upset bid shall:

(1) State the name, address, and telephone number of the upset bidder;

(2) Specify the amount of the upset bid;

(3) Provide that the sale shall remain open for a period of 10 days after the date on which the notice of upset bid is filed for the filing of additional upset bids as permitted by law; and

(4) Be signed by the upset bidder or the attorney or the agent of the upset bidder.

(e1) When an upset bid is made as provided in this section, the clerk shall notify the trustee or mortgagee who shall thereafter mail a written notice of upset bid by first-class mail to the last known address of the last prior bidder and the current record owner(s) of the property.

(f) When an upset bid is made as provided in this section, the last prior bidder, regardless of how the bid was made, shall be released from any further obligation on account of the bid and any ~~deposit~~ deposit, letter of credit, or bond provided by him shall be released.

(g) Any person offering to purchase real property by upset bid as permitted in this Article shall be subject to and bound by the terms of the original notice of sale except as modified by court order or the provisions of this Article.

(h) The clerk of superior court shall make all such orders as may be just and necessary to safeguard the interests of all parties, and shall have the authority to fix and determine all necessary procedural details with respect to upset bids in all instances in which this Article fails to make definite provisions as to that procedure."

SECTION 9. G.S. 66-94.1(a) reads as rewritten:

"(a) The provisions of Article 19 shall not apply to the sale or lease of any products, equipment, supplies or services where:

(1) The seller has not derived net income from such sales within the State during either of its two previous fiscal years, and does not intend to derive net income from such sales during its current fiscal year; and

(2) The primary commercial activity of the seller or its affiliate is substantially different from the sale of the goods or services to the purchaser, and the gross revenues received by the seller from all such sales during the current and each of the two previous fiscal years do not exceed ten percent (10%) of the total gross revenues from all operations for the same period of the seller and any other affiliated entity contractually obligated to compensate the purchaser for the purchaser's business activities arising from the sale; and

(3) The sale results in an improvement to realty owned or leased by the purchaser which enables the purchaser to receive goods on consignment from the seller or its affiliate. An "improvement to realty"

occurs when a building or other structure is constructed or when significant improvements to an existing building or structure are made; and

(4) The seller has either a net worth on a consolidated basis, according to its most recent audited financial statement, of not less than five million dollars ($5,000,000) or has obtained a surety bond from a surety company authorized to do business in this State or an irrevocable letter of credit from a bank or savings institution insured by the Federal Deposit Insurance Corporation in an amount equal to or greater than the gross revenues received from the sale or lease of products, equipment, supplies or services in this State during the preceding 12-month period which enabled the purchaser to start a business."

SECTION 10. G.S. 66-96 reads as rewritten:

"**§ 66-96. Bond or trust account required.**

If the business opportunity seller makes any of the representations set forth in G.S. 66-94(3), the seller must either have obtained a surety bond issued by a surety company authorized to do business in this State or an irrevocable letter of credit from a bank or savings institution insured by the Federal Deposit Insurance Corporation or have established a trust account with a licensed and insured bank or savings institution located in the State of North Carolina. The amount of the ~~bond~~ bond, letter of credit, or trust account shall be an amount not less than fifty thousand dollars ($50,000). The ~~bond~~ bond, letter of credit, or trust account shall be in favor of the State of North Carolina. Any person who is damaged by any violation of this Article, or by the seller's breach of the contract for the business opportunity sale or of any obligation arising therefrom may bring an action against the bond or trust account to recover damages suffered; provided, however, that the aggregate liability of the ~~surety~~ surety, letter of credit, or trustee shall be only for actual damages and in no event shall exceed the amount of the ~~bond~~ bond, letter of credit, or trust account."

SECTION 11. G.S. 66-108(a) reads as rewritten:

"(a) Every loan broker must obtain a surety bond issued by a surety company authorized to do business in this State, an irrevocable letter of credit from a bank or savings institution insured by the Federal Deposit Insurance Corporation or establish a trust account with a licensed and insured bank or savings institution located in the State of North Carolina. The amount of the ~~bond~~ bond, letter of credit, or trust account shall be ten thousand dollars ($10,000). The ~~bond~~ bond, letter of credit, or trust account shall be in favor of the State of North Carolina. Any person damaged by the loan broker's breach of contract or of any obligation arising therefrom, or by any violation of this Article, may bring an action against the ~~bond~~ bond, letter of credit, or trust account to recover damages suffered. The aggregate liability of the ~~surety~~ surety, issuer of the letter of credit, or trustee shall be only for actual damages and in no event shall exceed the amount of the bond or trust account."

SECTION 12. G.S. 66-168 reads as rewritten:

"**§ 66-168. Bond or trust account required.**

Before any permit shall be issued to a dealer pursuant to G.S. 66-165, the dealer shall execute a satisfactory cash or surety bond or establish a trust account ~~with~~ with, or obtain an irrevocable letter of credit from a licensed and insured bank or savings institution located in the State of North Carolina in the sum of ten thousand dollars ($10,000). The ~~bond~~ bond, letter of credit, or trust account shall be in favor of the State of North Carolina. A surety bond is to be executed by the dealer and by two responsible sureties or a surety company licensed to do business in the State of North Carolina and shall be on a form approved by the Department of Crime Control and Public Safety. Any bond shall be kept in full force and effect and shall be delivered to the law enforcement agency which first issued a current permit to the dealer. A ~~bond~~ bond, letter of credit, or trust account shall be for the faithful performance of the requirements and obligations of the dealer's business in conformity with this Article. Any law enforcement agency shall have full power and authority to revoke the permit and sue for forfeiture of the ~~bond~~ bond, letter of credit, or trust account upon a breach thereof. Any person who shall have suffered any loss or damage by any act of the permittee that constitutes a violation of this Article shall have the right to institute an action to recover against such permittee and the surety or trust account. Upon termination of the ~~bond~~ bond, letter of credit, or trust account the permit shall become void."

SECTION 13. G.S. 66-222 reads as rewritten:

"**§ 66-222. Bond or trust account required.**

Every credit repair business shall obtain a surety bond issued by a surety company authorized to do business in this State, or shall establish a trust account ~~with~~ with, or obtain an irrevocable letter of credit from a licensed and insured bank or savings institution located in the State of North Carolina. The amount of the ~~bond~~ bond, letter of credit, or trust account shall be ten thousand dollars ($10,000). The ~~bond~~ bond, letter of credit, or trust account shall be in favor of the State of North Carolina. Any person damaged by the credit repair business' breach of contract or of any obligation arising therefrom, or by any violation of this Article, may bring an action against the ~~bond~~ bond, letter of credit, or trust account to recover damages suffered. The aggregate liability of the ~~surety~~ surety, letter of credit, or trustee shall be only for actual damages and in no event shall exceed the amount of the ~~bond~~ bond, letter of credit, or trust account."

SECTION 14. G.S. 78C-72 reads as rewritten:

"**§ 78C-72. Registration requirements; renewal.**

(a) An athlete agent must register with the Secretary of State before the athlete agent may contact an athlete, either directly or indirectly, while the athlete is located in this State. An athlete agent may make those contacts only in accordance with this Article.

(b) An applicant for registration as an athlete agent must submit a written application for registration to the Secretary of State on a form prescribed by the Secretary of State. The applicant must provide the information required by the Secretary of State, which shall include:

(1) The name of the applicant and the address of the applicant's principal place of business;

(2) The business or occupation engaged in by the applicant for the five years immediately preceding the date of application;

(3) A description of the applicant's formal training, practical experience, and educational background relating to the applicant's professional activities as an athlete agent;

(4) If requested by the Secretary of State, the names and addresses of five professional references; and

(5) The names and addresses of all persons, except bona fide employees on stated salaries, that are financially interested as partners, associates, or profit sharers in the operation of the business of the athlete agent, except that an application for registration or renewal by any member of the North Carolina State Bar must state only the names and addresses of those persons that are involved in the activities of the athlete agent and is not required to state the names and addresses of all persons who may be financially interested as members of a law firm or professional corporation but who do not become involved in the business of the athlete agent.

(c) If the applicant is a corporation, the information required by subsection (b) of this section must be provided by each officer of the corporation. If the applicant is an association or a partnership, the information must be provided by each associate or partner.

(d) A certificate of registration issued under this Article is valid for one year from the date of issuance. The Secretary of State by rule may adopt a system under which certificates of registration expire on various dates during the year. For the year in which the registration expiration date is changed, the renewal fee payable on the anniversary of the date of issuance shall be prorated so that each registrant pays only that portion of the fee that is allocable to the number of months during which the registration is valid. On the renewal of the certificate of registration on the new expiration date, the total registration renewal fee is payable.

(e) A registered athlete agent may renew the registration by filing a renewal application in the form prescribed by the Secretary of State, accompanied by the renewal fee. The renewal application must include the information prescribed by the Secretary of State, which shall include:

(1) The names and addresses of all athletes for whom the athlete agent is providing professional services as an athlete agent for compensation at the time of the renewal; and

(2) The names and addresses of all athletes not currently represented by the athlete agent for whom the athlete agent has performed professional services as an athlete agent for compensation during the three years preceding the date of the application.

(f) The fee for issuing a certificate of registration or renewing a registration is two hundred dollars ($200.00). The fee is payable when an application for a certificate or the renewal of a certificate is filed and is not refundable to the applicant if the

certificate or renewal is denied. No fee is imposed for a temporary certificate of registration.

(g) When an application for registration or renewal is made and the registration process has not been completed, the Secretary of State may issue a temporary or provisional registration certificate that is valid for no more than 90 days.

(h) Before the issuance or renewal of a certificate of registration, an athlete agent that enters into a financial services contract with an athlete must deposit with the Secretary of State a surety bond or an irrevocable letter of credit from a bank or savings institution insured by the Federal Deposit Insurance Corporation in the sum of one hundred thousand dollars ($100,000), payable to the State and conditioned that the person applying for the registration will comply with this Article, will pay all amounts due any individual or group of individuals when the person or the person's representative or agent has received those amounts, and will pay all damages caused to any athlete by reason of the intentional misrepresentation, fraud, deceit, or any unlawful or negligent act or omission by the registered athlete agent or the agent's representative or employee while acting within the scope of the financial services contract. The athlete agent shall maintain the bond or letter of credit until two years after the date on which the athlete agent ceases to engage in the provision of financial services for an athlete. This subsection does not limit the recovery of damages to the amount of the surety bond.

(i) If an athlete agent that has entered into a financial services contract with an athlete fails to file a new bond or letter of credit with the Secretary of State not later than the 30th day after date of receipt of a notice of cancellation issued by the surety of the ~~bond,~~ bond or the issuer of the letter of credit, the Secretary of State shall suspend the certificate of registration issued to that athlete agent under the bond or letter of credit until the athlete agent files a new surety bond with the Secretary of State.

(j) An athlete agent that enters into an agent contract only is not required to meet the bond requirements of this section.

(k) The registration requirements of this section do not apply to a North Carolina licensed and resident attorney who:

(1) Neither advertises directly for, nor solicits, any athlete by representing to any person that he has special experience or qualifications with regard to representing athletes; and

(2) Represents no more than two athletes."

SECTION 15. G.S. 97-170(e) reads as rewritten:

"(e) Every applicant shall execute and file with the Commissioner an agreement, as part of the application, in which the applicant agrees to deposit with the Commissioner cash, acceptable securities, an irrevocable letter of credit from a bank or savings institution insured by the Federal Deposit Insurance Corporation, or a surety bond issued by a corporate surety that will guarantee the applicant's compliance with this Article and the Act pursuant to G.S. 97-185."

SECTION 16. G.S. 143-129(b) reads as rewritten:

"(b) Advertisement of the letting of such contracts shall be as follows:

Where the contract is to be let by a board or governing body of the State government, or of a State institution, as distinguished from a board or governing body of a subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in the State of North Carolina. Provided that the advertisements for bidders required by this section shall be published at such a time that at least seven full days shall lapse between the date of publication of notice and the date of the opening of bids.

Where the contract is to be let by a county, city, town or other subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in such county, city, town or other subdivision.

Such advertisement shall state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials or equipment may be had, and the time and place for opening of the proposals, and shall reserve to said board or governing body the right to reject any or all such proposals.

Proposals shall not be rejected for the purpose of evading the provisions of this Article. No board or governing body of the State or subdivision thereof shall assume responsibility for construction or purchase contracts, or guarantee the payments of labor or materials therefor except under provisions of this Article.

All proposals shall be opened in public and shall be recorded on the minutes of the board or governing body and the award shall be made to the lowest responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract. In the event the lowest responsible bids are in excess of the funds available for the project, the responsible board or governing body is authorized to enter into negotiations with the lowest responsible bidder above mentioned, making reasonable changes in the plans and specifications as may be necessary to bring the contract price within the funds available, and may award a contract to such bidder upon recommendation of the Department of Administration in the case of the State government or of a State institution or agency, or upon recommendation of the responsible commission, council or board in the case of a subdivision of the State, if such bidder will agree to perform the work at the negotiated price within the funds available therefor. If a contract cannot be let under the above conditions, the board or governing body is authorized to readvertise, as herein provided, after having made such changes in plans and specifications as may be necessary to bring the cost of the project within the funds available therefor. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefor.

No proposal shall be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash or a cashier's check, or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not less than five percent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed

under the laws of North Carolina to execute such bonds, or an irrevocable letter of credit from a bank or savings institution insured by the Federal Deposit Insurance Corporation, conditioned that the surety will upon demand forthwith make payment to the obligee upon said bond or letter of credit if the bidder fails to execute the contract in accordance with the bid bond. This deposit shall be retained if the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory surety as required herein. In the case of proposals for the purchase of apparatus, supplies, materials, or equipment, the board or governing body may waive the requirement for a bid ~~bond~~ bond, letter or credit, or other deposit.

Bids shall be sealed and the opening of an envelope or package with knowledge that it contains a bid or the disclosure or exhibition of the contents of any bid by anyone without the permission of the bidder prior to the time set for opening in the invitation to bid shall constitute a Class 1 misdemeanor."

SECTION 17. G.S. 143-139.1 reads as rewritten:

"**§ 143-139.1. Certification of manufactured buildings, structures or components by recognized independent testing laboratory.**

The State Building Code may provide, in circumstances deemed appropriate by the Building Code Council, for testing, evaluation, inspection, and certification of buildings, structures or components manufactured off the site on which they are to be erected, by a recognized independent testing laboratory having follow-up inspection services approved by the Building Code Council. Approval of such buildings, structures or components shall be evidenced by labels or seals acceptable to the Council. All building units, structures or components bearing such labels or seals shall be deemed to meet the requirements of the State Building Code and this Article without further inspection or payment of fees, except as may be required for the enforcement of the Code relative to the connection of units and components and enforcement of local ordinances governing zoning, utility connections, and foundations permits. The Building Code Council shall adopt and may amend from time to time such reasonable and appropriate rules and regulations as it deems necessary for approval of agencies offering such testing, evaluation, inspection, and certification services and for overseeing their operations. Such rules and regulations shall include provisions to insure that such agencies are independent and free of any potential conflicts of interest which might influence their judgment in exercising their functions under the Code. Such rules and regulations may include a schedule of reasonable fees to cover administrative expenses in approving and overseeing operations of such agencies and may require the posting of a bond or other security satisfactory to the Council guaranteeing faithful performance of duties under the Code.

The Building Code Council may also adopt rules to insure that any person that is not licensed, in accordance with G.S. 87-1, and that undertakes to erect a North Carolina labeled manufactured modular building, meets the manufacturer's installation instructions and applicable provisions of the State Building Code. Any such person, before securing a permit to erect a modular building, shall provide the code enforcement official proof that he has in force for each modular building to be erected a $5,000 surety bond or an irrevocable letter of credit from a bank or savings institution insured

by the Federal Deposit Insurance Corporation insuring compliance with the regulations of the State Building Code governing installation of modular buildings."

SECTION 18. G.S. 143-143.12 reads as rewritten:

"**§ 143-143.12. Bond required.**

(a) A person licensed as a manufactured home salesperson shall not be required to furnish a bond, but each applicant approved by the Board for license as a manufacturer, dealer, or setup contractor shall furnish a corporate surety bond, cash ~~bond~~ bond, irrevocable letter of credit from a bank or savings institution insured by the Federal Deposit Insurance Corporation or fixed value equivalent in the following amounts:

(1) For a manufacturer, two thousand dollars ($2,000) per manufactured home manufactured in the prior license year, up to a maximum of one hundred thousand dollars ($100,000). When no manufactured homes were produced in the prior year, the amount required shall be based on the estimated number of manufactured homes to be produced during the current year.

(2) For a dealer who has one place of business, the amount shall be thirty-five thousand dollars ($35,000).

(3) For a dealer who has more than one place of business, the amount shall be twenty-five thousand dollars ($25,000) for each additional place of business.

(4) For a setup contractor, the amount shall be ten thousand dollars ($10,000).

(b) A corporate surety bond or letter of credit shall be approved by the Board as to form and shall be conditioned upon the obligor faithfully conforming to and abiding by the provisions of this Article. A cash bond or fixed value equivalent shall be approved by the Board as to form and terms of deposits in order to secure the ultimate beneficiaries of the bond. A corporate surety bond or letter of credit shall be for a one-year period, and a new ~~bond~~ bond, letter of credit, or a proper continuation certificate shall be delivered to the Board at the beginning of each subsequent one-year period.

(c) Any buyer of a manufactured home who suffers any loss or damage by any act of a licensee that constitutes a violation of this Article may institute an action to recover against the licensee and the ~~surety.~~ letter of credit.

(d) The Board may adopt rules to assure satisfaction of claims."

SECTION 19. G.S. 143-143.13(a) reads as rewritten:

"(a) A license may be denied, suspended or revoked by the Board on any one or more of the following grounds:

(1) Making a material misstatement in application for license.

(2) Failing to post an adequate corporate surety ~~bond,~~ bond, irrevocable letter of credit from a bank or savings institution insured by the Federal Deposit Insurance Corporation, cash bond or fixed value equivalent.

(3) Engaging in the business of manufactured home manufacturer, dealer, salesperson, or setup contractor without first obtaining a license from the Board.
(4) Failing to comply with the warranty service obligations and claims procedure established by this Article.
(5) Failing to comply with the setup requirements established by this Article.
(6) Failing or refusing to account for or to pay over moneys or other valuables belonging to others that have come into licensee's possession arising out of the sale of manufactured homes.
(7) Using unfair methods of competition or committing unfair or deceptive acts or practices.
(8) Failing to comply with any provision of this Article.
(9) Failing to appear for a hearing before the Board or for a prehearing conference with a person or persons designated by the Board after proper notice or failing to comply with orders of the Board issued pursuant to this Article.
(10) Employing unlicensed salespersons.
(11) Offering for sale manufactured homes manufactured or assembled by unlicensed manufacturers or selling manufactured homes to unlicensed dealers for sale to buyers in this State.
(12) Conviction of a felony or any crime involving moral turpitude.
(13) Having had a license revoked, suspended or denied by the Board; or having had a license revoked, suspended or denied by a similar entity in another state; or engaging in conduct in another state which conduct, if committed in this State, would have been a violation under this Article.
(14) Employing or contracting with any person to perform setups who is not licensed by the Board as a setup contractor."

SECTION 20. G.S. 65-66(g) reads as rewritten:

"(g) In lieu of the deposits required under subsection (b) of this section, the cemetery company or other entity may post with the Commission a good and sufficient performance bond by surety company licensed to do business in North ~~Carolina~~ Carolina, or an irrevocable letter of credit from a bank or savings institution insured by the Federal Deposit Insurance Corporation, and in an amount sufficient to cover all payments made directly or indirectly by or on account of purchasers who have not received the purchased property and services. Money received from the sale or assignment of notes entered into by the purchasers, or otherwise, shall be treated as payments made by the purchasers."

SECTION 21. G.S. 65-70(f) reads as rewritten:

"(f) In lieu of the payments outlined hereunder to the preconstruction trust account the cemetery company may deliver to the Commission a good and sufficient completion or performance bond in an amount and by surety companies acceptable to

the ~~Commission.~~ Commission, or an irrevocable letter of credit from a bank or savings institution insured by the Federal Deposit Insurance Corporation."

SECTION 22. G.S. 130A-255(b) reads as rewritten:

"(b) The Secretary shall require the permittee within five days after issuance of the provisional permit to file with the Secretary a performance bond, irrevocable letter of credit from a bank or savings institution insured by the Federal Deposit Insurance Corporation, or other surety to be executed to the State in the amount of five thousand dollars ($5,000) for up to 10,000 persons and an additional one thousand dollars ($1,000) for each additional 5,000 persons or fraction reasonably estimated to attend the mass gathering. The bond or letter of credit shall be conditioned on full compliance with this Part and the rules of the Commission and shall be forfeitable upon noncompliance and a showing by the Secretary of injury, damage or other loss to the State or local governmental agencies caused by the noncompliance."

SECTION 23. G.S. 130A-256(d) reads as rewritten:

"(d) If the Secretary installs facilities or makes arrangements or provisions for cleanup pursuant to subsection (c), the Secretary may apply to a court of competent jurisdiction prior to or within 60 days after the action to order forfeiture of the permittee's performance ~~bond~~ bond, letter of credit, or surety for violation of this Part or the rules of the Commission. The court may order that the proceeds shall be applied to the extent necessary to reimburse State and local governmental agencies for expenditures made pursuant to the action taken by the Secretary upon the permittee's failure to comply with the order. Any excess proceeds shall be returned to the insurer of the bond or to the surety after deducting court costs."

SECTION 24. G.S. 160A-37.3(c) reads as rewritten:

"(c) The city may require that the contract contain:

(1) A requirement that the private firm post a performance ~~bond~~ bond or irrevocable letter of credit from a bank or savings institution insured by the Federal Deposit Insurance Corporation, and maintain public liability insurance coverage;

(2) A requirement that the private firm agree to service customers in the annexed area that were not served by that firm on the effective date of annexation;

(3) A provision that divides the annexed area into service areas if there were more than one firm being contracted within the area, such that the entire area is served by the private firms, or by the city as to customers not served by the private firms;

(4) A provision that the city may serve customers not served by the firm on the effective date of annexation;

(5) A provision that the contract can be cancelled for substantial violations of the contract, but no contract may be cancelled on these grounds unless the Local Government Commission finds that substantial violations have occurred, except that the city may suspend the contract for up to 30 days if it finds substantial violation of health laws;

(6) Performance standards, not exceeding city standards, with provision that the contract may be cancelled for substantial violations of those standards, but no contract may be cancelled on those grounds unless the Local Government Commission finds that substantial violations have occurred;

(7) A provision for monetary damages if there are violations of the 10 business days following receipt of the written request for information from the city, provided that the city's written request states that statutory rights will be forfeited in the absence of a timely response and includes a specific reference to this section."

SECTION 25. G.S. 160A-49.3(c) reads as rewritten:

"(c) The city may require that the contract contain:

(1) A requirement that the private firm post a performance ~~bond~~ bond or irrevocable letter of credit from a bank or savings institution insured by the Federal Deposit Insurance Corporation, and maintain public liability insurance coverage;

(2) A requirement that the private firm agree to service customers in the annexed area that were not served by that firm on the effective date of annexation;

(3) A provision that divides the annexed area into service areas if there were more than one firm being contracted within the area, such that the entire area is served by the private firms, or by the city as to customers not served by the private firms;

(4) A provision that the city may serve customers not served by the firm on the effective date of annexation;

(5) A provision that the contract can be cancelled for substantial violations of the contract, but no contract may be cancelled on these grounds unless the Local Government Commission finds that substantial violations have occurred, except that the city may suspend the contract for up to 30 days if it finds substantial violation of health laws;

(6) Performance standards, not exceeding city standards, with provision that the contract may be cancelled for substantial violations of those standards, but no contract may be cancelled on those grounds unless the Local Government Commission finds that substantial violations have occurred;

(7) A provision for monetary damages if there are violations of the contract or of performance standards."

SECTION 26. G.S. 160A-324(c) reads as rewritten:

"(c) The city may require that the contract contain:

(1) A requirement that the private firm post a performance ~~bond~~ bond or irrevocable letter of credit from a bank or savings institution insured by the Federal Deposit Insurance Corporation, and maintain public liability insurance coverage;

(2) A requirement that the private firm agree to service customers in the annexed area that were not served by that firm on the effective date of annexation;

(3) A provision that divides the annexed area into service areas if there were more than one firm being contracted within the area, such that the entire area is served by the private firms, or by the city as to customers not served by the private firms;

(4) A provision that the city may serve customers not served by the firm on the effective date of annexation;

(5) A provision that the contract can be cancelled for substantial violations of the contract, but no contract may be cancelled on these grounds unless the Local Government Commission finds that substantial violations have occurred, except that the city may suspend the contract for up to 30 days if it finds substantial violation of health laws;

(6) Performance standards, not exceeding city standards, with provision that the contract may be cancelled for substantial violations of those standards, but no contract may be cancelled on those grounds unless the Local Government Commission finds that substantial violations have occurred;

(7) A provision for monetary damages if there are violations of the contract or of performance standards."

SECTION 27. This act becomes effective December 1, 2001.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1053 A BILL TO BE ENTITLED AN ACT TO SHORTEN THE TIME PERIOD IN WHICH A CLAIMANT MAY BRING AN ACTION ON A PAYMENT BOND WHEN THE CLAIMANT HAS A DIRECT CONTRACTUAL RELATIONSHIP WITH A SUBCONTRACTOR IN CONNECTION WITH A CONSTRUCTION CONTRACT BUT NO CONTRACTUAL RELATIONSHIP WITH THE CONTRACTOR.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 1053

Short Title:	Action on Construction Payment Bond.	(Public)
Sponsors:	Representatives Baddour, McMahan, Gibson, and Cox (Primary Sponsors).	
Referred to:	Judiciary II.	

April 10, 2001

A BILL TO BE ENTITLED

AN ACT TO SHORTEN THE TIME PERIOD IN WHICH A CLAIMANT MAY BRING AN ACTION ON A PAYMENT BOND WHEN THE CLAIMANT HAS A DIRECT CONTRACTUAL RELATIONSHIP WITH A SUBCONTRACTOR IN CONNECTION WITH A CONSTRUCTION CONTRACT BUT NO CONTRACTUAL RELATIONSHIP WITH THE CONTRACTOR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 44A-27(b) reads as rewritten:

"(b) Any claimant who has a direct contractual relationship with any subcontractor but has no contractual relationship, express or implied, with the contractor may bring an action on the payment bond only if he has given written notice to the contractor within ~~180~~ 120 days from the date on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished."

SECTION 2. This act becomes effective October 1, 2001, and applies to actions on payment bonds filed on or after that date.

HB 1053:
Action on Construction Payment Bond

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Baddour
Date:	April 17, 2001	**Summary by:**	Esther Manheimer
Version:	First Edition		Committee Counsel

BILL ANALYSIS: Under current law, lower-tiered subcontractors that have a contractual relationship with a subcontractor but no contractual relationship with the prime contractor may bring an action on a payment bond posted by the prime contractor for the recovery of monies owed the lower-tiered subcontractor by the subcontractor. However, to have the right to bring the action, the lower-tiered subcontractor must give notice to the prime contractor as to the amount claimed within 180 days after the lower-tiered subcontractor finishes his or her work for the subcontractor. This bill would change the number of days the lower-tiered subcontractor has to notify the prime contractor of the claim against the bond from 180 days to 120 days.

This bill is effective October 1, 2001, and applies to actions on payment bonds on or after that date.

North Carolina General Assembly
Legislative Services Office

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(919) 733-2578

MEMORANDUM

TO: Representative Culpepper, Bill Sponsor
Representative Baddour, Chair, House Judiciary II Committee

FROM: R. Erika Churchill, Staff Attorney, Research Division
Jim Johnson, Director, Fiscal Research Division

RE: Certificate for House Bill 377 – DSS Changes 2-AB.

DATE: April 23, 2001

North Carolina G.S. 120-36.8 requires the attachment of a certification prepared by the Fiscal Research Division to any bill proposing a change in law that purports to:

1. Be required to implement a federal law;
2. Bring the State into compliance with federal law; or
3. Be necessary in order for the State to qualify for receipt of federal funds.

House Bill 377, as amended in the proposed committee substitute approved by the House Judiciary II Committee, purports to bring North Carolina into compliance with federal law and regulation in order to continue receiving federal funds. This memorandum will serve as the certificate as required in G.S. 120-36.8.

SUMMARY OF FEDERAL LEGISLATION.

In June 1998, the President signed the Child Support Performance and Incentive Act of 1998 (the Act) into law. P.L. 105-200. As a part of the Act, the Secretaries of the Departments of Health and Human Services and Labor were required to design and implement a standardized medical support notice. In turn, all State child support enforcement agencies are required to use this standardized form to communicate the issuance of a medical support order to continue receiving federal funds under the Act. Additionally, employers are required to accept the form as a "qualified medical support order" under the Employee Retirement Income Security Act (ERISA). Regulations implementing these provisions of the Act were published in December 2000, requiring States to adopt laws regarding the procedures set forth in the regulations. The final regulations require States to begin using the National Medical Support Notice (Notice) by October 1, 2001.

HOUSE BILL 377.

Sections 8 through 11 of the proposed committee substitute as adopted by the Committee would carry out the federal requirements under the final regulations implementing the Act. The bill would add four new statutes setting forth the requirements of the Notice. The National Medical Support Notice is the federally required form, developed by the Secretaries of the Departments of Health and Human Services and Labor, that a IV-D agency must serve on the employer of a non-custodial parent when the non-custodial parent is court ordered to provide health insurance for the child or children covered under the child support order. 42 USC 1396g-1 and 29 CFR Part 2590.

As required by the final implementing regulations, effective October 1, 2001 the employer, upon receipt, is required to transfer the Notice to the health insurer or health care plan administrator within 20 business days unless:

- The employer does not maintain or contribute to plans providing dependent or family health insurance.
- The employee is not eligible for a family health insurance plan maintained by the employer or to which the employer contributes.
- The employer no longer employs the employee.
- Withholding limitations prevent the employer from withholding the amount required to obtain insurance.

Once the Notice is transferred to the health insurer or health care plan administrator, the health insurer or health care plan administrator must enroll the child or children, notify the employer of the amount to withhold, and notify the employer of any applicable enrollment waiting periods. If the employer, the health insurer, or the health care plan administrator does not comply with the provisions, they can be held liable for a civil penalty and are subject to a civil suit for reasonable damages.

FISCAL RESEARCH OPINION.

It is the opinion of the Fiscal Research Division, after consultation with the Research Division, that House Bill 377 will bring the State into compliance with the final regulations implementing P.L. 105-200 regarding the National Medical Support Notice.

VISITOR REGISTRATION SHEET

Judiciary II — Name of Committee

4-17-01 — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	NCDSS
Barry Miller	NCDSS/CSE
Margaret Westbrook	Kennedy Covington
[illegible]	[illegible]
Paul Stock	NC Bankers
Matt Willoughby	NCAJ
Bennie Hollers	DHHS
Jon Carr	Jordan Price
John Phelps	NCLM
Dave Simpson	CAROLINAS AGC
JAN Frye	NCAAL
Charles Cromer	NCATL
Carole Lawler	EGHS
Ken Boxley	NCAggregates Assoc
Sharon Hudson	NC Social Services Consortium
Kristine Lanning	AG
Soren Schmidt	NC Justice Center
Frank Gray	N.C. Collectors Assn.

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

April 17, 2001 – 1:00 p.m.

The House Committee on Judiciary II met on Tuesday, April 17, 2001, in Room 421 LOB at 1:00 p.m. The following members were present: Chairman Phil Baddour, Vice Chairman Phil Haire, Representatives Bowie, Gulley, Hall, Jeffus, Miller, Sherrill and Weiss. Robin Johnson, Esther Manheimer, Jeff Hudson, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order, and then called for consideration of the following bills:

HB 902 State Judicial Council Membership. Rep. Weiss moved that the proposed committee substitute be before the committee for consideration, and without objection, the PCS was before the committee. Rep. Haire presided while Rep. Baddour, bill sponsor, explained the bill. Rep. Weiss moved that the committee substitute bill be given a favorable report, unfavorable as to the original bill. Motion passed unanimously.

HB 989 Judicial Appointment/Voter Retention. Rep. Hall moved that the proposed committee substitute be before the committee for consideration, and without objection, the PCS was before the committee. The chair recognized Rep. Michaux, bill sponsor, to explain the bill. Rep. Michaux noted that this bill was recommended by the Courts Commission. Rep. Miller questioned the logic behind a retention election. Rep. Sherrill questioned the history of appointments to the bench, and the number of states that have retention elections. Jim Drennan of the Institute of Government cited that around 30 states have retention elections. Rep. Gulley stated that he did not see a compelling reason to support the bill. Dick Taylor of the North Carolina Academy of Trial Lawyers voiced the Academy's opposition to the bill. Following additional comments from the committee, Rep. Hall moved that the proposed committee substitute be given a favorable report, unfavorable as to the original bill. Motion failed.

The meeting adjourned at 1:45 p.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

HOUSE JUDICIARY II COMMITTEE
AGENDA

April 17, 2001
1:00 P.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Jeff Hudson
Elizabeth Kirkland (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDERED:

HB 902	State Judicial Council Membership – Rep. Baddour
HB 989	Judicial Appointment/Voter Retention – Reps. Michaux & Sutton

ADJOURNMENT

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 902 A BILL TO BE ENTITLED AN ACT TO ADD AN APPOINTEE OF THE INDIGENT DEFENSE SERVICES COMMISSION TO THE STATE JUDICIAL COUNCIL.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill, which changes the title, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 902*
PROPOSED COMMITTEE SUBSTITUTE H902-CSRH-26 [v.1]

4/16/2001 9:30:11 PM

Short Title: State Judicial Council Membership. (Public)

Sponsors:

Referred to:

March 29, 2001

A BILL TO BE ENTITLED

AN ACT TO ADD AN APPOINTEE OF THE COMMISSION ON INDIGENT DEFENSE SERVICES TO THE STATE JUDICIAL COUNCIL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-409 reads as rewritten:

"**§ 7A-409. Composition of State Judicial Council.**

(a) The State Judicial Council shall consist of ~~17~~ 18 members as follows:

(1) The Chief Justice, who chairs the Council;

(2) The Chief Judge of the Court of Appeals;

(3) A district attorney chosen by the Conference of District Attorneys;

(4) A public defender chosen by the public defenders;

(5) A superior court judge chosen by the Conference of Superior Court Judges;

(6) A district court judge chosen by the Conference of District Court Judges;

(7) A clerk of superior court chosen by the Association of Clerks of Superior Court of North Carolina;

(8) A magistrate appointed by the North Carolina Magistrates' Association;

(9) An attorney appointed by the Council of the State Bar;

(10) One attorney and one nonattorney appointed by the Chief Justice;

(11) One nonattorney and one attorney appointed by the Governor;

(12) One nonattorney and one attorney appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; ~~and~~

(13) One nonattorney and one attorney appointed by the General Assembly upon the recommendation of the President Pro Tempore of the ~~Senate.~~ Senate; and

(14) One member appointed by the Commission on Indigent Defense Services.

(b) The Chief Justice and the Chief Judge shall be members of the State Judicial Council during their terms in those judicial offices. The terms of the other members selected initially for the State Judicial Council shall be as follows:

(1) One year. – The district court judge, the attorney appointed upon the recommendation of the President Pro Tempore of the Senate, and the attorney appointed upon the recommendation of the Speaker of the House of Representatives.

(2) Two years. – The district attorney, the magistrate, the nonattorney appointed by the Governor, and the nonattorney appointed by the Chief Justice.

(3) Three years. – The public defender, the attorney appointed by the Council of the State Bar, the nonattorney appointed upon the recommendation of the President Pro Tempore of the Senate, and the nonattorney appointed upon the recommendation of the Speaker of the House of Representatives.

(4) Four years. – The superior court judge, the clerk of superior court, the attorney appointed by the Governor, ~~and~~ the attorney appointed by the Chief ~~Justice.~~ Justice, and the member appointed by the Commission on Indigent Defense Services.

After these initial terms, the members of the State Judicial Council shall serve terms of four years. All terms of members shall begin on January 1 and end on December 31. No member may serve more than two consecutive full terms. Any vacancy on the Council shall be filled by a person appointed by the official or entity who appointed the person vacating the position.

(c) If an official or entity is authorized to appoint more than one member of the State Judicial Council, the members appointed by that official or entity must reside in different judicial districts.

(d) No incumbent member of the General Assembly or incumbent judicial official, other than the ones specifically identified by office in subsection (a) of this section, may serve on the State Judicial Council.

(e) The appointing authorities shall confer with each other and attempt to arrange their appointments so that the members of the State Judicial Council fairly represent each area of the State, both genders, and each major racial group."

SECTION 2. This act becomes effective July 1, 2001, and the term of the member added to the Judicial Council by this act begins on that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H

HOUSE BILL 902*

Short Title:	State Judicial Council Membership.	(Public)
Sponsors:	Representative Baddour.	
Referred to:	Judiciary II.	

March 29, 2001

A BILL TO BE ENTITLED

AN ACT TO ADD AN APPOINTEE OF THE INDIGENT DEFENSE SERVICES COMMISSION TO THE STATE JUDICIAL COUNCIL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-409 reads as rewritten:

"**§ 7A-409. Composition of State Judicial Council.**

(a) The State Judicial Council shall consist of ~~17~~ 18 members as follows:

(1) The Chief Justice, who chairs the Council;

(2) The Chief Judge of the Court of Appeals;

(3) A district attorney chosen by the Conference of District Attorneys;

(4) A public defender chosen by the public defenders;

(5) A superior court judge chosen by the Conference of Superior Court Judges;

(6) A district court judge chosen by the Conference of District Court Judges;

(7) A clerk of superior court chosen by the Association of Clerks of Superior Court of North Carolina;

(8) A magistrate appointed by the North Carolina Magistrates' Association;

(9) An attorney appointed by the Council of the State Bar;

(10) One attorney and one nonattorney appointed by the Chief Justice;

(11) One nonattorney and one attorney appointed by the Governor;

(12) One nonattorney and one attorney appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; ~~and~~

(13) One nonattorney and one attorney appointed by the General Assembly upon the recommendation of the President Pro Tempore of the ~~Senate.~~ Senate; and

(14) A member of the Indigent Defense Services Commission selected by the Commission.

(b) The Chief Justice and the Chief Judge shall be members of the State Judicial Council during their terms in those judicial offices. The terms of the other members selected initially for the State Judicial Council shall be as follows:

(1) One year. – The district court judge, the attorney appointed upon the recommendation of the President Pro Tempore of the Senate, and the attorney appointed upon the recommendation of the Speaker of the House of Representatives.

(2) Two years. – The district attorney, the magistrate, the nonattorney appointed by the Governor, and the nonattorney appointed by the Chief Justice.

(3) Three years. – The public defender, the attorney appointed by the Council of the State Bar, the nonattorney appointed upon the recommendation of the President Pro Tempore of the Senate, and the nonattorney appointed upon the recommendation of the Speaker of the House of Representatives.

(4) Four years. – The superior court judge, the clerk of superior court, the attorney appointed by the Governor, ~~and~~ the attorney appointed by the Chief ~~Justice.~~ Justice, and the member appointed by the Indigent Defense Services Commission.

After these initial terms, the members of the State Judicial Council shall serve terms of four years. All terms of members shall begin on January 1 and end on December 31. No member may serve more than two consecutive full terms. Any vacancy on the Council shall be filled by a person appointed by the official or entity who appointed the person vacating the position.

(c) If an official or entity is authorized to appoint more than one member of the State Judicial Council, the members appointed by that official or entity must reside in different judicial districts.

(d) No incumbent member of the General Assembly or incumbent judicial official, other than the ones specifically identified by office in subsection (a) of this section, may serve on the State Judicial Council.

(e) The appointing authorities shall confer with each other and attempt to arrange their appointments so that the members of the State Judicial Council fairly represent each area of the State, both genders, and each major racial group."

SECTION 2. This act becomes effective July 1, 2001, and the term of the member added to the Judicial Council by this act begins on that date.

HOUSE BILL 902:
State Judicial Council Membership.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Rep. Baddour
Date:	April 17, 2001	**Summary by:**	Robin Johnson
Version:	H902-CSRH-26[v.1]		Committee Counsel

The PCS corrects the name of the Commission on Indigent Defense Services (Commission) and clarifies that the member appointed by the Commission to serve on the State Judicial Council (Council) is not required to be a member of the Commission.

SUMMARY: This bill would add an appointee of the Commission to the State Judicial Council. The bill would take effect July 1, 2001, and the term of the first appointee would begin on that date.

CURRENT LAW: The Council consists of 17 members, who serve four-year terms. The Council studies the judicial system, the budget prepared by the Director of the Administrative Office of the Courts, salaries and benefits for judicial officials, the creation of judgeships, changes in boundaries for judicial districts and divisions, and other issues related to the administration of justice and the effectiveness of the Judicial Branch. It also monitors the use of alternative dispute resolution. The Council reports and advises the Chief Justice, and makes recommendations to the General Assembly.

Members of the Council who are not State officers or employees receive compensation and reimbursement for travel and subsistence expenses. Members who are State officers or employees receive reimbursement for travel and subsistence expenses.

The Commission on Indigent Defense Services consists of 13 appointed members, who also serve four-year terms. The main purpose of the Commission is to develop and improve programs by which the Office of Indigent Defense Services provides legal representation to indigent persons.

BILL ANALYSIS: House Bill 902 would amend G.S. 7A-409 by increasing from 17 to 18 the number of members of the State Judicial Council. The Commission on Indigent Defense Services would appoint the new member.

H902-SMRH-002

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 989*
PROPOSED COMMITTEE SUBSTITUTE H989-CSSK-22 [v.1]

4/16/2001 4:20:04 PM

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

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO PROVIDE FOR GUBERNATORIAL APPOINTMENT OF JUSTICES OF THE SUPREME COURT AND JUDGES OF THE COURT OF APPEALS SUBJECT TO CONFIRMATION BY THE GENERAL ASSEMBLY AND TO PROVIDE FOR RETENTION BY VOTE OF THE PEOPLE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 16 of Article IV of the North Carolina Constitution reads as rewritten:

"**Sec. 16. ~~Terms of office and election of Justices of the Supreme Court, Judges of the Court of Appeals, and Judges of the Superior Court.~~ Selection and tenure of Justices of the Supreme Court and Judges of the Court of Appeals; election of Judges of the Superior Court.**

(1) *Election of judges of the Superior Court.* ~~Justices of the Supreme Court, Judges of the Court of Appeals, and regular~~ Judges of the Superior Court ~~shall be elected by the qualified voters and~~ shall hold office for terms of eight years and until their successors are elected and qualified. ~~Justices of the Supreme Court and Judges of the Court of Appeals shall be elected by the qualified voters of the State.~~ Regular Judges of the Superior Court ~~may~~ shall be elected by the qualified voters of ~~the State or by the voters of~~ their respective ~~districts, as the General Assembly may prescribe.~~ districts.

(2) *Appointment, retention election, and terms of justices and judges of the Appellate Division.* On and after January 1, 2003, when a vacancy occurs in the office of Chief Justice, Associate Justice, or Judge of the Appellate Division, the Governor shall appoint a person to fill the vacancy. For the purposes of this section, creation of a new judgeship within the Appellate Division creates a vacancy. Prior to appointment, such nominations by the Governor shall be subject to confirmation of the General Assembly by a simple majority of the members of each house present and voting. Each house of the General Assembly shall vote on confirmation within 60 calendar days of

the date of nomination, except that no day shall be included within that calculation if it is:

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

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

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

The term of office by appointment as Chief Justice, Associate Justice, or Judge of the Appellate Division extends through December 31 after the next statewide election for members of the General Assembly that is held more than 60 months after the appointment. At that election, a person holding by appointment the office of Chief Justice, Associate Justice, or Judge of the Appellate Division who desires to continue in office shall be subject to approval by nonpartisan ballot, by a majority of the votes cast on the issue of the Justice's or Judge's retention. A Chief Justice, Associate Justice, or Judge of the Appellate Division then approved for retention serves a regular term.

The regular term of office of the Chief Justice, Associate Justices, and Judges of the Appellate Division is eight years and expires on December 31.

A Chief Justice, Associate Justice, or Judge of the Appellate Division who desires to continue in office shall be subject to approval by nonpartisan ballot, by a majority of the votes cast on the issue of the Justice's or Judge's retention during the next general election preceding December 31 of the year that the Justice's or Judge's eight-year term would expire.

If the voters fail to approve the retention in office of a Chief Justice, Associate Justice, or Judge of the Appellate Division serving an appointed or regular term, the office shall become vacant at the end of the term of office, and it shall be filled by appointment as prescribed in this section.

Voting in a retention election on the Chief Justice, Associate Justices, and Judges of the Appellate Division shall be the qualified voters of the whole State.

(3) *Transition provisions.* A person elected before January 1, 2003, to the office of Chief Justice, Associate Justice, or Judge of the Appellate Division for a term which extends beyond January 1, 2003, and who is in office on January 1, 2003, may continue to serve for the remainder of the term. That person may stand for retention in the office for a succeeding regular term as provided in this section, subject to the provisions of G.S. 7A-4.20. If the person continues to serve for the remainder of the term but does not

stand for retention election, a vacancy is created in the office upon expiration of the term, and this vacancy shall be filled by appointment as provided in this section.

The term of office of a person who has been appointed before January 1, 2003, to the office of Chief Justice, Associate Justice, or Judge of the Appellate Division for a term which extends beyond January 1, 2003, and who is in office on January 1, 2003, shall end on December 31, 2004. If the person so appointed wishes to continue to serve an additional term, that person shall provide written notice to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than 5:00 p.m. on April 30, 2004, and shall be reappointed subject to confirmation by the General Assembly as provided herein. The term of office by reappointment of the person, if so confirmed, shall be the same as the term of office when the Governor makes an appointment and the appointment is confirmed by the General Assembly, as provided herein. The term of office for the person will begin January 1, 2005.

Upon the death, resignation, removal, or retirement of any incumbent Justice or Judge on or after January 1, 2003, and before the expiration of the Justice's or Judge's term of office, the resulting vacancy shall be filled by appointment as provided in this section.

Vacancies in judicial offices in the Appellate Division occurring before January 1, 2003, and not filled by that date shall be filled by appointment as provided in this section.

From the date any incumbent described in this subsection is continued in office by retention vote for a term next succeeding the term in progress on January 1, 2003, or is succeeded in office by another person, the office is held subject to the provisions of this section.

(4) The General Assembly may implement this section by general law."

SECTION 2. The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the general election in November 2002, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes.

"[ ] FOR [ ] AGAINST

Constitutional amendment to replace the present practice of partisan election of justices and judges of the Appellate Division with a method by which justices and judges of the Appellate Division will be appointed by the Governor, confirmed by the General Assembly, and then serve for limited terms after which the question of the justice's or judge's retention in office is regularly submitted for approval or disapproval by nonpartisan vote of the people at general elections."

SECTION 3. If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment becomes effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office.

SECTION 3.1. Chapter 7A of the General Statutes is amended by adding a new Article to read:

"Article 1A.

"Appointment of Justices and Judges; Retention Elections.

"**§ 7A-4.1. Appointment of justices and judges by Governor.**

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

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

"**§ 7A-4.2. Confirmation procedures.**

(a) A legislative committee to which the issue of confirmation is referred may conduct an investigation of the nominee. The investigation may include an evaluation of the nominee's ethical conduct, the nominee's knowledge of and application of the law, the nominee's management of the courts over which he or she has presided, the nominee's work habits, the nominee's health, and the nominee's judicial demeanor. The nominee shall be given an opportunity to present to the committee any information that the nominee determines to be appropriate.

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

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

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

When a judge is retained in office by vote of the people, the Governor shall issue a commission attesting that fact, which the Governor shall issue upon receipt of a certification by the Secretary of State of the results of the election.

"**§ 7A-4.4. No elections in 2003.**

No partisan election as previously provided by law for Chief Justice or Associate Justice of the Supreme Court, or Judge of the Court of Appeals shall be held in 2003 or thereafter.

"**§ 7A-4.5. Retention elections.**

(a) As provided by Section 16 of Article IV of the North Carolina Constitution, a Chief Justice or Associate Justice of the Supreme Court or Judge of the Court of Appeals desiring to continue in office shall be subject to approval by nonpartisan ballot, by a majority of votes cast on the issue of the justice's or judge's retention.

(b) A person subject to subsection (a) of this section shall indicate the desire to continue in office by filing a notice to that effect with the State Board of Elections no later than 12:00 noon on the first business day of July in the year of the election. The notice shall be on a form approved by the State Board of Elections. Notice can be withdrawn at any time prior to the deadline for filing notice under this subsection.

(c) Retention elections shall be conducted and canvassed in accordance with rules of the State Board of Elections in the same general manner as general elections under Chapter 163 of the General Statutes, except that the retention election is nonpartisan. The form of the ballot shall be determined by the State Board of Elections.

(d) Retention elections shall be placed at the top of the ballot above all other elections or matters for decision, whether partisan, nonpartisan, or otherwise.

(e) If a person who has filed a notice calling a retention election dies or is removed from office prior to the time that the ballots are printed, the retention election is cancelled. If a person who has filed a notice calling a retention election dies or is removed from office after the ballots are printed, the State Board of Elections may cancel the election if it determines that the ballots can be reprinted without significant expense. If the ballots cannot be reprinted, then the results of the election shall be ineffective.

"**§ 7A-4.6. Filing fees; refunds.**

A person filing a notice to continue in office shall pay to the State Board of Elections at the time of filing a filing fee in the amount of one percent (1%) of the annual salary of the office sought. If any person who has filed a notice under this section and paid the filing fee withdraws his or her notice prior to the date on which the right to file for that office expires, he or she shall be entitled to have the fee refunded. The chairman of the State Board of Elections shall cause a warrant to be drawn on the State Treasurer for the refund payment. If any person who has filed a notice under this section and paid the filing fee dies prior to the date of the election, the personal representative of the estate shall be entitled to have the fee refunded if application is made to the State Board of Elections no later than one year after the date of death, and refund shall be made in the same manner as in withdrawal of candidacy."

SECTION 3.2. G.S. 163-140(a) reads as rewritten:

"(a) Kinds of General Election Ballots; Right to Combine. – For purposes of general elections, there shall be seven kinds of official ballots entitled:

(1) Ballot for presidential electors
(2) Ballot for United States Senator
(3) Ballot for member of the United States House of Representatives
(4) State ballot
(5) County ballot

(6) Repealed by Session Laws 1973, c. 793, s. 56
(7) Ballot for constitutional amendments and other propositions submitted to the people
(8) Judicial ballot for superior court.

Use of official ballots shall be limited to the purposes indicated by their titles. The printing on all ballots shall be plain and legible but, unless large type is specified by this section, type larger than 10-point shall not be used in printing ballots. All general election ballots shall be prepared in such a way as to leave sufficient blank space beneath each name printed thereon in which a voter may conveniently write the name of any person for whom he may desire to vote.

Unless prohibited by this section, the board of elections, State or county, charged by law with printing ballots may, in its discretion, combine any two or more official ballots. Whenever two or more ballots are combined, the voting instructions for the State ballot set out in ~~subsection~~subdivision (b)(4) of this section shall be used, except that if the two ballots being combined do not contain a ~~multi-seat~~multiseat race, then the second sentence of instruction b. shall not appear on the ballot.

Contests in the general election for seats in the State House of Representatives and State Senate shall be on ballots that are separate from ballots containing ~~non-legislative~~nonlegislative contests, except where the voting system used makes separation of ballots impractical. State House and State Senate contests shall be on the same ballot, unless one is a single-seat contest and the other a ~~multi-seat~~multiseat contest.

~~All candidates for the Appellate Division shall appear on the same ballot.~~

SECTION 3.3. For the purpose of Section 1 of this act, terms of justices and judges covered by Section 2 of Chapter 98 of the 1995 Session Laws are as provided by that act.

SECTION 3.4. G.S. 7A-10(a) reads as rewritten:

"(a) The Supreme Court shall consist of a Chief Justice and six associate ~~justices, elected by the qualified voters of the State for terms of eight years.~~justices selected as provided by Article 1A of this Chapter. Before entering upon the duties of his office, each justice shall take an oath of office. Four justices shall constitute a quorum for the transaction of the business of the court. Except as otherwise provided in this subsection, sessions of the court shall be held in the city of Raleigh, and scheduled by rule of court so as to discharge expeditiously the court's business. The court may by rule hold sessions not more than twice annually in the Old Chowan County Courthouse (1767) in the Town of Edenton, which is a State-owned court facility that is designated as a National Historic Landmark by the United States Department of the Interior."

SECTION 3.5. G.S. 7A-16 reads as rewritten:

"**§ 7A-16. Creation and organization.**

~~The Court of Appeals is created effective January 1, 1967. It shall consist initially of six judges, elected by the qualified voters of the State for terms of eight years. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge, to~~

~~serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.~~

~~The Governor on or after July 1, 1967, shall make temporary appointments to the six initial judgeships. The appointees shall serve until January 1, 1969. Their successors shall be elected at the general election for members of the General Assembly in November, 1968, and shall take office on January 1, 1969, to serve for the remainder of the unexpired term which began on January 1, 1967.~~

~~Upon the appointment of at least five judges, and the designation of a Chief Judge, the court is authorized to convene, organize, and promulgate, subject to the approval of the Supreme Court, such supplementary rules as it deems necessary and appropriate for the discharge of the judicial business lawfully assigned to it.~~

~~Effective January 1, 1969, the number of judges is increased to nine, and the Governor, on or after March 1, 1969, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1971. Their successors shall be elected at the general election for members of the General Assembly in November, 1970, and shall take office on January 1, 1971, to serve for the remainder of the unexpired term which began on January 1, 1969.~~

~~Effective January 1, 1977, the number of judges is increased to 12; and the Governor, on or after July 1, 1977, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1979. Their successors shall be elected at the general election for members of the General Assembly in November, 1978, and shall take office on January 1, 1979, to serve the remainder of the unexpired term which began on January 1, 1977.~~

~~On or after December 15, 2000, the Governor shall appoint three additional judges to increase the number of judges to 15. Each judgeship shall not become effective until the temporary appointment is made, and each appointee shall serve from the date of qualification until January 1, 2005. Those judges' successors shall be elected in the 2004 general election and shall take office on January 1, 2005, to serve terms expiring December 31, 2012.~~

The Court of Appeals shall consist of 15 judges, selected as provided in Article 1A of this Chapter. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.

The Court of Appeals shall sit in panels of three judges each. The Chief Judge insofar as practicable shall assign the members to panels in such fashion that each member sits a substantially equal number of times with each other member. He shall preside over the panel of which he is a member, and shall designate the presiding judge of the other panel or panels.

Three judges shall constitute a quorum for the transaction of the business of the court, except as may be provided in §G.S. 7A-32.

In the event the Chief Judge is unable, on account of absence or temporary incapacity, to perform the duties placed upon him as Chief Judge, the Chief Justice shall appoint an acting Chief Judge from the other judges of the Court, to temporarily discharge the duties of Chief Judge."

SECTION 3.6. G.S. 163-106(c) reads as rewritten:

"(c) Time for Filing Notice of Candidacy. – Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

Governor
Lieutenant Governor
All State executive officers
~~Justices of the Supreme Court, Judges of the Court of Appeals~~
Judges of the district courts
United States Senators
Members of the House of Representatives of the United States
District attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

State Senators
Members of the State House of Representatives
All county offices."

SECTION 3.7. G.S. 163-106(d) reads as rewritten:

"(d) Notice of Candidacy for Certain Offices to Indicate Vacancy. – In any primary in which there are ~~two or more vacancies for Chief Justice and associate justices of the Supreme Court, two or more vacancies for judge of the Court of Appeals, or~~ two vacancies for United States Senator from North Carolina or two or more vacancies for the office of district court judge to be filled by nominations, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks nomination. Votes cast for a candidate shall be effective only for his nomination to the vacancy for which he has given notice of candidacy as provided in this subsection.

A person seeking party nomination for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which he seeks nomination."

SECTION 3.8. G.S. 163-107(a) reads as rewritten:

"(a) Fee Schedule. – At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of G.S.

163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	Amount of Filing Fee
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All ~~Justices, Judges, and~~ District Court Judges and District Attorneys of the General Court of Justice	One percent (1%) of the annual salary of the office sought
United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
County commissioners, if compensated entirely by fees	Ten dollars ($10.00)
Members of county board of education, if compensated entirely by fees	Five dollars ($5.00)
Sheriff, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Clerk of superior court, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Register of deeds, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Any other county office, if compensated entirely by fees	Twenty dollars ($20.00), plus one percent (1%) of the income of the

	office above two thousand dollars ($2,000)
All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)."

SECTION 3.9. G.S. 163-107.1(b) reads as rewritten:

"(b) If the candidate is seeking the office of United States Senator, Governor, Lieutenant Governor, or any State executive officer, ~~Justice of the Supreme Court or Judge of the Court of Appeals,~~ the petition must be signed by 10,000 registered voters who are members of the political party in whose primary the candidate desires to run, except that in the case of a political party as defined by G.S. 163-96(a)(2) which will be making nominations by primary election, the petition must be signed by ten percent (10%) of the registered voters of the State who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 10,000 registered voters regardless of the voter's political party affiliation, whichever requirement is greater. The petition must be filed with the State Board of Elections not later than 12:00 noon on Monday preceding the filing deadline before the primary in which he seeks to run. The names on the petition shall be verified by the board of elections of the county where the signer is registered, and the petition must be presented to the county board of elections at least 15 days before the petition is due to be filed with the State Board of Elections. When a proper petition has been filed, the candidate's name shall be printed on the primary ballot."

SECTION 3.10. G.S. 163-111(c)(1) reads as rewritten:

"(1) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing or by telegram with the Executive Secretary-Director of the State Board of Elections no later than 12:00 noon on the seventh day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State Board of Elections determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the Executive Secretary-Director of the State Board of Elections shall immediately notify such candidate and permit him to exercise any options available to him within a 48-hour period following the notification:

Governor,

Lieutenant Governor,

All State executive officers,

~~Justices, Judges, or~~ District Court Judges or District Attorneys of the General Court of Justice, other than superior court judge,
United States Senators,
Members of the United States House of Representatives,
State Senators in ~~multi-county~~multicounty senatorial districts, and
Members of the State House of Representatives in ~~multi-county~~multicounty representative districts."

SECTION 3.11. G.S. 163-177 reads as rewritten:

"**§ 163-177. Disposition of duplicate abstracts.**

Within six hours after the returns of a primary or election have been canvassed and the results judicially determined, the chairman of the county board of elections shall mail, or otherwise deliver, to the State Board of Elections the duplicate-original abstracts prepared in accordance with G.S. 163-176 for all offices and referenda for which the State Board of Elections is required to canvass the votes and declare the results including:

President and Vice-President of the United States
Governor, Lieutenant Governor, and all other State executive officers
United States Senators
Members of the House of Representatives of the United States Congress
~~Justices, Judges, and~~ Superior Court Judges, District Court Judges, and District Attorneys of the General Court of Justice
State Senators in ~~multi-county~~multicounty senatorial districts
Members of the State House of Representatives in ~~multi-county~~multicounty representative districts
Constitutional amendments and propositions submitted to the voters of the State.

One duplicate abstract prepared in accordance with G.S. 163-176 for all offices and referenda for which the county board of elections is required to canvass the votes and declare the results (and which are listed below) shall be retained by the county board, which shall forthwith publish and declare the results; the second duplicate abstract shall be mailed to the chairman of the State Board of Elections, to the end that there be one set of all primary and election returns available at the seat of government.

All county offices
State Senators in single-county senatorial districts
Members of the State House of Representatives in single-county representative districts
Propositions submitted to the voters of one county.

If the chairman of the county board of elections fails or neglects to transmit duplicate abstracts to the chairman of the State Board of Elections within the time prescribed in this section, he shall be guilty of a Class 2 misdemeanor. Provided, that the penalty shall not apply if the chairman was prevented from performing the

prescribed duty because of sickness or other unavoidable delay, but the burden of proof shall be on the chairman to show that his failure to perform was due to sickness or unavoidable delay."

SECTION 3.12. G.S. 163-192 reads as rewritten:

"**§ 163-192. State Board of Elections to prepare abstracts and declare results of primaries and elections.**

(a) After Primary. – At the conclusion of its canvass of the primary election, the State Board of Elections shall prepare separate abstracts of the votes cast:

(1) For Governor and all State ~~officers, justices of the Supreme Court, judges of the Court of Appeals,~~ officers and United States Senators.

(2) For members of the United States House of Representatives for the several congressional districts in the State.

(3) For district court judges for the several district court districts in the State.

(3a) For superior court judges for the several superior court districts in the State.

(4) For district attorney in the several prosecutorial districts in the State.

(5) For State Senators in the several senatorial districts in the State composed of more than one county.

(6) For members of the State House of Representatives in the several representative districts in the State composed of more than one county.

Abstracts prepared by the State Board of Elections under this subsection shall state the total number of votes cast for each candidate of each political party for each of the various offices canvassed by the State Board of Elections. They shall also state the name or names of the person or persons whom the State Board of Elections shall ascertain and judicially determine by the count to be nominated for each office.

Abstracts prepared under this subsection shall be signed by the members of the State Board of Elections in their official capacity and shall have the great seal of the State affixed thereto.

(b) After General Election. – At the conclusion of its canvass of the general election, the State Board of Elections shall prepare abstracts of the votes cast:

(1) For President and Vice-President of the United States, when an election is held for those offices.

(2) For Governor and all State ~~officers, justices of the Supreme Court, judges of the Court of Appeals,~~ officers and United States Senators.

(3) For members of the United States House of Representatives for the several congressional districts in the State.

(4) For district court judges for the several district court districts as defined in G.S. 7A-133 in the State.

(4a) For superior court judges for the several superior court districts in the State.

(5) For district attorney in the several prosecutorial districts in the State.

(6) For State Senators in the several senatorial districts in the State composed of more than one county.

(7) For members of the State House of Representatives in the several representative districts in the State composed of more than one county.

(8) For and against any constitutional amendments or propositions submitted to the people.

Abstracts prepared by the State Board of Elections under this subsection shall state the names of all persons voted for, the office for which each received votes, and the number of legal ballots cast for each candidate for each office canvassed by the State Board of Elections. They shall also state the name or names of the person or persons whom the State Board of Elections shall ascertain and judicially determine by the count to be elected to each office.

Abstracts prepared under this subsection shall be signed by the members of the State Board of Elections in their official capacity and shall have the great seal of the State affixed thereto.

(c) Disposition of Abstracts of Returns. – The State Board of Elections shall file with the Secretary of State the original abstracts of returns prepared by it under the provisions of subsections (a) and (b) of this section, and also the duplicate county abstracts transmitted to the State Board of Elections under the provisions of G.S. 163-177. Upon the request of the Legislative Services Office, the Secretary of State shall submit a copy of the original abstracts to that Office."

SECTION 3.13. G.S. 163-194 reads as rewritten:

"**§ 163-194. Governor to issue commissions to certain elected officials.**

Every person duly elected to one of the offices listed below, upon obtaining a certificate of his election from the Secretary of State under the provisions of G.S. 163-193, shall procure from the Governor a commission attesting his election to the specified office, which the Governor shall issue upon production of the Secretary of State's certificate:

Members of the United States House of Representatives,

~~Justices, Judges, and~~ Superior Court Judges, District Court Judges, and District Attorneys of the General Court of Justice."

SECTION 3.14. G.S. 163-1 is amended in the table by deleting the entries for "Justices and Judges of the Appellate Division".

SECTION 3.15. G.S. 163-9 reads as rewritten:

"**§ 163-9. Filling vacancies in State and district judicial offices.**

(a) Vacancies occurring in the ~~offices of Justice of the Supreme Court, judge of the Court of Appeals, and~~ office of judge of the superior court for causes other than expiration of term shall be filled by appointment of the Governor. An appointee to the office of Justice of the Supreme Court or judge of the Court of Appeals shall hold office until January 1 next following the election for members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held for an eight-year term and until a successor is elected and qualified.

(b) Except for judges specified in the next paragraph of this subsection, an appointee to the office of judge of superior court shall hold his place until the next election for members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held to fill the unexpired term of the office.

Appointees for judges of the superior court from any district:

(1) With only one resident judge; or

(2) In which no county is subject to section 5 of the Voting Rights Act of 1965,

shall hold the office until the next election of members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held to fill an eight-year term.

(c) When the unexpired term of the office in which the vacancy has occurred expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office.

(d) Vacancies in the office of district judge which occur before the expiration of a term shall not be filled by election. Vacancies in the office of district judge shall be filled in accordance with G.S. 7A-142."

SECTION 3.16. Sections 3.1 through 3.15 of this act are effective only if the constitutional amendment proposed by Section 1 of this act is approved by the qualified voters in accordance with Section 2 of this act.

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

HOUSE BILL 989*

Short Title:	Judicial App./ Voter Retention.	(Public)
Sponsors:	Representatives Michaux, Sutton (Primary Sponsors); and Barefoot.	
Referred to:	Judiciary II.	

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO PROVIDE FOR GUBERNATORIAL APPOINTMENT OF JUSTICES OF THE SUPREME COURT AND JUDGES OF THE COURT OF APPEALS SUBJECT TO CONFIRMATION BY THE GENERAL ASSEMBLY AND TO PROVIDE FOR RETENTION BY VOTE OF THE PEOPLE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 16 of Article IV of the North Carolina Constitution reads as rewritten:

"**Sec. 16. ~~Terms of office and election of Justices of the Supreme Court, Judges of the Court of Appeals, and Judges of the Superior Court.~~ Selection and tenure of Justices of the Supreme Court and Judges of the Court of Appeals; election of Judges of the Superior Court.**

(1) *Election of judges of the Superior Court.* ~~Justices of the Supreme Court, Judges of the Court of Appeals, and regular~~ Judges of the Superior Court ~~shall be elected by the qualified voters and~~ shall hold office for terms of eight years and until their successors are elected and qualified. ~~Justices of the Supreme Court and Judges of the Court of Appeals shall be elected by the qualified voters of the State.~~ Regular Judges of the Superior Court ~~may~~ shall be elected by the qualified voters of ~~the State or by the voters of~~ their respective ~~districts, as the General Assembly may prescribe.~~ districts.

(2) *Appointment, retention election, and terms of justices and judges of the Appellate Division.* On and after January 1, 2003, when a vacancy occurs in the office of Chief Justice, Associate Justice, or Judge of the Appellate Division, the Governor shall appoint a person to fill the vacancy. For the purposes of this section, creation of a new judgeship within the Appellate Division creates a vacancy. Prior to appointment, such nominations by the Governor shall be subject to confirmation of the General Assembly by a simple majority of the members of each house present and voting. Each house of the General Assembly shall vote on confirmation within 60 calendar days of

the date of nomination, except that no day shall be included within that calculation if it is:

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

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

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

The term of office by appointment as Chief Justice, Associate Justice, or Judge of the Appellate Division extends through December 31 after the next statewide election for members of the General Assembly that is held more than 60 months after the appointment. At that election, a person holding by appointment the office of Chief Justice, Associate Justice, or Judge of the Appellate Division who desires to continue in office shall be subject to approval by nonpartisan ballot, by a majority of the votes cast on the issue of the Justice's or Judge's retention. A Chief Justice, Associate Justice, or Judge of the Appellate Division then approved for retention serves a regular term.

The regular term of office of the Chief Justice, Associate Justices, and Judges of the Appellate Division is eight years and expires on December 31.

A Chief Justice, Associate Justice, or Judge of the Appellate Division who desires to continue in office shall be subject to approval by nonpartisan ballot, by a majority of the votes cast on the issue of the Justice's or Judge's retention during the next general election preceding December 31 of the year that the Justice's or Judge's eight-year term would expire.

If the voters fail to approve the retention in office of a Chief Justice, Associate Justice, or Judge of the Appellate Division serving an appointed or regular term, the office shall become vacant at the end of the term of office, and it shall be filled by appointment as prescribed in this section.

Voting in a retention election on the Chief Justice, Associate Justices, and Judges of the Appellate Division shall be the qualified voters of the whole State.

(3) *Transition provisions.* A person elected before January 1, 2003, to the office of Chief Justice, Associate Justice, or Judge of the Appellate Division for a term which extends beyond January 1, 2003, and who is in office on January 1, 2003, may continue to serve for the remainder of the term. That person may stand for retention in the office for a succeeding regular term as provided in this section, subject to the provisions of G.S. 7A-4.20. If the person continues to serve for the remainder of the term but does not stand for retention election, a vacancy is created in the office upon expiration of the term, and this vacancy shall be filled by appointment as provided in this section.

The term of office of a person who has been appointed before January 1, 2003, to the office of Chief Justice, Associate Justice, or Judge of the Appellate Division for a term which extends beyond January 1, 2003, and who is in office on January 1, 2003, shall end on December 31, 2004. If the person so appointed wishes to continue to serve an additional term, that person shall provide written notice to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than 5:00 p.m. on April 30, 2004, and shall be reappointed subject to confirmation by the General Assembly as provided herein. The term of office by reappointment of the person, if so confirmed, shall be the same as the term of office when the Governor makes an appointment and the appointment is confirmed by the General Assembly, as provided herein. The term of office for the person will begin January 1, 2005.

Upon the death, resignation, removal, or retirement of any incumbent Justice or Judge on or after January 1, 2003, and before the expiration of the Justice's or Judge's term of office, the resulting vacancy shall be filled by appointment as provided in this section.

Vacancies in judicial offices in the Appellate Division occurring before January 1, 2003, and not filled by that date shall be filled by appointment as provided in this section.

From the date any incumbent described in this subsection is continued in office by retention vote for a term next succeeding the term in progress on January 1, 2003, or is succeeded in office by another person, the office is held subject to the provisions of this section.

(4) The General Assembly may implement this section by general law."

SECTION 2. The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the general election in November 2002, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes.

"[ ] FOR [ ] AGAINST

Constitutional amendment to replace the present practice of partisan election of justices and judges of the Appellate Division with a method by which justices and judges of the Appellate Division will be appointed by the Governor, confirmed by the General Assembly, and then serve for limited terms after which the question of the justice's or judge's retention in office is regularly submitted for approval or disapproval by nonpartisan vote of the people at general elections."

SECTION 3. If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment becomes effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office.

SECTION 3.1. Chapter 7A of the General Statutes is amended by adding a new Article to read:

"Article 1A.

"Appointment of Justices and Judges;

Retention Elections.

"**§ 7A-4.1. Appointment of justices and judges by Governor.**

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

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

"**§ 7A-4.2. Confirmation procedures.**

(a) A legislative committee to which the issue of confirmation is referred may conduct an investigation of the nominee. The investigation may include an evaluation of the nominee's ethical conduct, the nominee's knowledge of and application of the law, the nominee's management of the courts over which he has presided, the nominee's work habits, the nominee's health, and the nominee's judicial demeanor. The nominee or judge shall be given an opportunity to present to the committee any information that the nominee determines to be appropriate.

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

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

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

When a judge is retained in office by vote of the people, the Governor shall issue a commission attesting that fact, which the Governor shall issue upon receipt of a certification by the Secretary of State of the results of the election.

"**§ 7A-4.4. No elections in 2003.**

No partisan election as previously provided by law for Chief Justice or Associate Justice of the Supreme Court, or Judge of the Court of Appeals shall be held in 2003 or thereafter.

"**§ 7A-4.5. Retention elections.**

(a) As provided by Section 16 of Article IV of the North Carolina Constitution, a Chief Justice or Associate Justice of the Supreme Court or Judge of the Court of Appeals desiring to continue in office shall be subject to approval by nonpartisan ballot, by a majority of votes cast on the issue of the justice's or judge's retention.

(b) A person subject to subsection (a) of this section shall indicate the desire to continue in office by filing a notice to that effect with the State Board of Elections no later than 12:00 noon on the first business day of July in the year of the election. The

notice shall be on a form approved by the State Board of Elections. Notice can be withdrawn at any time prior to the deadline for filing notice under this subsection.

(c) Retention elections shall be conducted and canvassed in accordance with rules of the State Board of Elections in the same general manner as general elections under Chapter 163 of the General Statutes, except that the retention election is nonpartisan. The form of the ballot shall be determined by the State Board of Elections.

(d) Retention elections shall be placed at the top of the ballot above all other elections or matters for decision, whether partisan, nonpartisan, or otherwise.

(e) If a person who has filed a notice calling a retention election dies or is removed from office prior to the time that the ballots are printed, the retention election is cancelled. If a person who has filed a notice calling a retention election dies or is removed from office after the ballots are printed, the State Board of Elections may cancel the election if it determines that the ballots can be reprinted without significant expense. If the ballots cannot be reprinted, then the results of the election shall be ineffective.

"**§ 7A-4.6. Filing fees; refunds.**

A person filing a notice to continue in office shall pay to the State Board of Elections at the time of filing a filing fee in the amount of one percent (1%) of the annual salary of the office sought. If any person who has filed a notice under this section and paid the filing fee withdraws his or her notice prior to the date on which the right to file for that office expires, he or she shall be entitled to have the fee refunded. The chairman of the State Board of Elections shall cause a warrant to be drawn on the State Treasurer for the refund payment. If any person who has filed a notice under this section and paid the filing fee dies prior to the date of the election, the personal representative of the estate shall be entitled to have the fee refunded if application is made to the State Board of Elections no later than one year after the date of death, and refund shall be made in the same manner as in withdrawal of candidacy."

SECTION 3.2. G.S. 163-140(a) reads as rewritten:

"(a) Kinds of General Election Ballots; Right to Combine. – For purposes of general elections, there shall be seven kinds of official ballots entitled:

(1) Ballot for presidential electors
(2) Ballot for United States Senator
(3) Ballot for member of the United States House of Representatives
(4) State ballot
(5) County ballot
(6) Repealed by Session Laws 1973, c. 793, s. 56
(7) Ballot for constitutional amendments and other propositions submitted to the people
(8) Judicial ballot for superior court.

Use of official ballots shall be limited to the purposes indicated by their titles. The printing on all ballots shall be plain and legible but, unless large type is specified by this section, type larger than 10-point shall not be used in printing ballots. All general election ballots shall be prepared in such a way as to leave sufficient blank space

beneath each name printed thereon in which a voter may conveniently write the name of any person for whom he may desire to vote.

Unless prohibited by this section, the board of elections, State or county, charged by law with printing ballots may, in its discretion, combine any two or more official ballots. Whenever two or more ballots are combined, the voting instructions for the State ballot set out in ~~subsection~~subdivision (b)(4) of this section shall be used, except that if the two ballots being combined do not contain a ~~multi-seat~~multiseat race, then the second sentence of instruction b. shall not appear on the ballot.

Contests in the general election for seats in the State House of Representatives and State Senate shall be on ballots that are separate from ballots containing ~~non-legislative~~nonlegislative contests, except where the voting system used makes separation of ballots impractical. State House and State Senate contests shall be on the same ballot, unless one is a single-seat contest and the other a ~~multi-seat~~multiseat contest.

~~All candidates for the Appellate Division shall appear on the same ballot.~~

SECTION 3.3. For the purpose of Section 1 of this act, terms of justices and judges covered by Section 2 of Chapter 98 of the 1995 Session Laws are as provided by that act.

SECTION 3.4. G.S. 7A-10(a) reads as rewritten:

"(a) The Supreme Court shall consist of a Chief Justice and six associate ~~justices, elected by the qualified voters of the State for terms of eight years.~~justices selected as provided by Article 1A of this Chapter. Before entering upon the duties of his office, each justice shall take an oath of office. Four justices shall constitute a quorum for the transaction of the business of the court. Except as otherwise provided in this subsection, sessions of the court shall be held in the city of Raleigh, and scheduled by rule of court so as to discharge expeditiously the court's business. The court may by rule hold sessions not more than twice annually in the Old Chowan County Courthouse (1767) in the Town of Edenton, which is a State-owned court facility that is designated as a National Historic Landmark by the United States Department of the Interior."

SECTION 3.5. G.S. 7A-16 reads as rewritten:

"**§ 7A-16. Creation and organization.**

~~The Court of Appeals is created effective January 1, 1967. It shall consist initially of six judges, elected by the qualified voters of the State for terms of eight years. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge, to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.~~

~~The Governor on or after July 1, 1967, shall make temporary appointments to the six initial judgeships. The appointees shall serve until January 1, 1969. Their successors shall be elected at the general election for members of the General Assembly in November, 1968, and shall take office on January 1, 1969, to serve for the remainder of the unexpired term which began on January 1, 1967.~~

~~Upon the appointment of at least five judges, and the designation of a Chief Judge, the court is authorized to convene, organize, and promulgate, subject to the approval of~~

~~the Supreme Court, such supplementary rules as it deems necessary and appropriate for the discharge of the judicial business lawfully assigned to it.~~

~~Effective January 1, 1969, the number of judges is increased to nine, and the Governor, on or after March 1, 1969, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1971. Their successors shall be elected at the general election for members of the General Assembly in November, 1970, and shall take office on January 1, 1971, to serve for the remainder of the unexpired term which began on January 1, 1969.~~

~~Effective January 1, 1977, the number of judges is increased to 12; and the Governor, on or after July 1, 1977, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1979. Their successors shall be elected at the general election for members of the General Assembly in November, 1978, and shall take office on January 1, 1979, to serve the remainder of the unexpired term which began on January 1, 1977.~~

~~On or after December 15, 2000, the Governor shall appoint three additional judges to increase the number of judges to 15. Each judgeship shall not become effective until the temporary appointment is made, and each appointee shall serve from the date of qualification until January 1, 2005. Those judges' successors shall be elected in the 2004 general election and shall take office on January 1, 2005, to serve terms expiring December 31, 2012.~~

The Court of Appeals shall consist of 15 judges, selected as provided in Article 1A of this Chapter. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.

The Court of Appeals shall sit in panels of three judges each. The Chief Judge insofar as practicable shall assign the members to panels in such fashion that each member sits a substantially equal number of times with each other member. He shall preside over the panel of which he is a member, and shall designate the presiding judge of the other panel or panels.

Three judges shall constitute a quorum for the transaction of the business of the court, except as may be provided in §G.S. 7A-32.

In the event the Chief Judge is unable, on account of absence or temporary incapacity, to perform the duties placed upon him as Chief Judge, the Chief Justice shall appoint an acting Chief Judge from the other judges of the Court, to temporarily discharge the duties of Chief Judge."

SECTION 3.6. G.S. 163-106(c) reads as rewritten:

"(c) Time for Filing Notice of Candidacy. – Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

Governor

Lieutenant Governor

All State executive officers

~~Justices of the Supreme Court, Judges of the Court of Appeals~~
Judges of the district courts
United States Senators
Members of the House of Representatives of the United States
District attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

State Senators
Members of the State House of Representatives
All county offices."

SECTION 3.7. G.S. 163-106(d) reads as rewritten:

"(d) Notice of Candidacy for Certain Offices to Indicate Vacancy. – In any primary in which there are ~~two or more vacancies for Chief Justice and associate justices of the Supreme Court, two or more vacancies for judge of the Court of Appeals, or~~ two vacancies for United States Senator from North Carolina or two or more vacancies for the office of district court judge to be filled by nominations, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks nomination. Votes cast for a candidate shall be effective only for his nomination to the vacancy for which he has given notice of candidacy as provided in this subsection.

A person seeking party nomination for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which he seeks nomination."

SECTION 3.8. G.S. 163-107(a) reads as rewritten:

"(a) Fee Schedule. – At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of G.S. 163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	Amount of Filing Fee
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All ~~Justices, Judges, and~~ District Court Judges and District Attorneys of the General Court of Justice	One percent (1%) of the annual salary of the office sought
United States Senator	One percent (1%) of the annual salary of the office sought

Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
County commissioners, if compensated entirely by fees	Ten dollars ($10.00)
Members of county board of education, if compensated entirely by fees	Five dollars ($5.00)
Sheriff, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Clerk of superior court, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Register of deeds, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Any other county office, if compensated entirely by fees	Twenty dollars ($20.00), plus one percent (1%) of the income of the office above two thousand dollars ($2,000)
All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)."

SECTION 3.9. G.S. 163-107.1(b) reads as rewritten:

"(b) If the candidate is seeking the office of United States Senator, Governor, Lieutenant Governor, or any State executive officer, ~~Justice of the Supreme Court or Judge of the Court of Appeals,~~ the petition must be signed by 10,000 registered voters who are members of the political party in whose primary the candidate desires to run, except that in the case of a political party as defined by G.S. 163-96(a)(2) which will be making nominations by primary election, the petition must be signed by ten percent (10%) of the registered voters of the State who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 10,000 registered voters regardless of the voter's political party affiliation, whichever requirement is greater. The petition must be filed with the State Board of Elections not later than 12:00 noon on Monday preceding the filing

deadline before the primary in which he seeks to run. The names on the petition shall be verified by the board of elections of the county where the signer is registered, and the petition must be presented to the county board of elections at least 15 days before the petition is due to be filed with the State Board of Elections. When a proper petition has been filed, the candidate's name shall be printed on the primary ballot."

SECTION 3.10. G.S. 163-111(c)(1) reads as rewritten:

"(1) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing or by telegram with the Executive Secretary-Director of the State Board of Elections no later than 12:00 noon on the seventh day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State Board of Elections determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the Executive Secretary-Director of the State Board of Elections shall immediately notify such candidate and permit him to exercise any options available to him within a 48-hour period following the notification:

Governor,

Lieutenant Governor,

All State executive officers,

~~Justices, Judges, or~~ District Court Judges or District Attorneys of the General Court of Justice, other than superior court judge,

United States Senators,

Members of the United States House of Representatives,

State Senators in ~~multi-county~~multicounty senatorial districts, and

Members of the State House of Representatives in ~~multi-county~~multicounty representative districts."

SECTION 3.11. G.S. 163-177 reads as rewritten:

"**§ 163-177. Disposition of duplicate abstracts.**

Within six hours after the returns of a primary or election have been canvassed and the results judicially determined, the chairman of the county board of elections shall mail, or otherwise deliver, to the State Board of Elections the duplicate-original abstracts prepared in accordance with G.S. 163-176 for all offices and referenda for which the State Board of Elections is required to canvass the votes and declare the results including:

President and Vice-President of the United States

Governor, Lieutenant Governor, and all other State executive officers

United States Senators

Members of the House of Representatives of the United States Congress

~~Justices, Judges, and~~ Superior Court Judges, District Court Judges, and District Attorneys of the General Court of Justice

State Senators in ~~multi-county~~multicounty senatorial districts

Members of the State House of Representatives in ~~multi-county~~multicounty representative districts

Constitutional amendments and propositions submitted to the voters of the State.

One duplicate abstract prepared in accordance with G.S. 163-176 for all offices and referenda for which the county board of elections is required to canvass the votes and declare the results (and which are listed below) shall be retained by the county board, which shall forthwith publish and declare the results; the second duplicate abstract shall be mailed to the chairman of the State Board of Elections, to the end that there be one set of all primary and election returns available at the seat of government.

All county offices

State Senators in single-county senatorial districts

Members of the State House of Representatives in single-county representative districts

Propositions submitted to the voters of one county.

If the chairman of the county board of elections fails or neglects to transmit duplicate abstracts to the chairman of the State Board of Elections within the time prescribed in this section, he shall be guilty of a Class 2 misdemeanor. Provided, that the penalty shall not apply if the chairman was prevented from performing the prescribed duty because of sickness or other unavoidable delay, but the burden of proof shall be on the chairman to show that his failure to perform was due to sickness or unavoidable delay."

SECTION 3.12. G.S. 163-192 reads as rewritten:

"**§ 163-192. State Board of Elections to prepare abstracts and declare results of primaries and elections.**

(a) After Primary. – At the conclusion of its canvass of the primary election, the State Board of Elections shall prepare separate abstracts of the votes cast:

(1) For Governor and all State ~~officers, justices of the Supreme Court, judges of the Court of Appeals,~~ officers and United States Senators.

(2) For members of the United States House of Representatives for the several congressional districts in the State.

(3) For district court judges for the several district court districts in the State.

(3a) For superior court judges for the several superior court districts in the State.

(4) For district attorney in the several prosecutorial districts in the State.

(5) For State Senators in the several senatorial districts in the State composed of more than one county.

(6) For members of the State House of Representatives in the several representative districts in the State composed of more than one county.

Abstracts prepared by the State Board of Elections under this subsection shall state the total number of votes cast for each candidate of each political party for each of the various offices canvassed by the State Board of Elections. They shall also state the name or names of the person or persons whom the State Board of Elections shall ascertain and judicially determine by the count to be nominated for each office.

Abstracts prepared under this subsection shall be signed by the members of the State Board of Elections in their official capacity and shall have the great seal of the State affixed thereto.

(b) After General Election. – At the conclusion of its canvass of the general election, the State Board of Elections shall prepare abstracts of the votes cast:

(1) For President and Vice-President of the United States, when an election is held for those offices.

(2) For Governor and all State ~~officers, justices of the Supreme Court, judges of the Court of Appeals,~~ officers and United States Senators.

(3) For members of the United States House of Representatives for the several congressional districts in the State.

(4) For district court judges for the several district court districts as defined in G.S. 7A-133 in the State.

(4a) For superior court judges for the several superior court districts in the State.

(5) For district attorney in the several prosecutorial districts in the State.

(6) For State Senators in the several senatorial districts in the State composed of more than one county.

(7) For members of the State House of Representatives in the several representative districts in the State composed of more than one county.

(8) For and against any constitutional amendments or propositions submitted to the people.

Abstracts prepared by the State Board of Elections under this subsection shall state the names of all persons voted for, the office for which each received votes, and the number of legal ballots cast for each candidate for each office canvassed by the State Board of Elections. They shall also state the name or names of the person or persons whom the State Board of Elections shall ascertain and judicially determine by the count to be elected to each office.

Abstracts prepared under this subsection shall be signed by the members of the State Board of Elections in their official capacity and shall have the great seal of the State affixed thereto.

(c) Disposition of Abstracts of Returns. – The State Board of Elections shall file with the Secretary of State the original abstracts of returns prepared by it under the provisions of subsections (a) and (b) of this section, and also the duplicate county abstracts transmitted to the State Board of Elections under the provisions of G.S. 163-177. Upon the request of the Legislative Services Office, the Secretary of State shall submit a copy of the original abstracts to that Office."

SECTION 3.13. G.S. 163-194 reads as rewritten:

"§ 163-194. Governor to issue commissions to certain elected officials.

Every person duly elected to one of the offices listed below, upon obtaining a certificate of his election from the Secretary of State under the provisions of G.S. 163-193, shall procure from the Governor a commission attesting his election to the specified office, which the Governor shall issue upon production of the Secretary of State's certificate:

Members of the United States House of Representatives,

~~Justices, Judges, and~~ Superior Court Judges, District Court Judges, and District Attorneys of the General Court of Justice."

SECTION 3.14. G.S. 163-1 is amended in the table by deleting the entries for "Justices and Judges of the Appellate Division".

SECTION 3.15. G.S. 163-9 reads as rewritten:

"**§ 163-9. Filling vacancies in State and district judicial offices.**

(a) Vacancies occurring in the ~~offices of Justice of the Supreme Court, judge of the Court of Appeals, and~~ office of judge of the superior court for causes other than expiration of term shall be filled by appointment of the Governor. An appointee to the office of Justice of the Supreme Court or judge of the Court of Appeals shall hold office until January 1 next following the election for members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held for an eight-year term and until a successor is elected and qualified.

(b) Except for judges specified in the next paragraph of this subsection, an appointee to the office of judge of superior court shall hold his place until the next election for members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held to fill the unexpired term of the office.

Appointees for judges of the superior court from any district:

(1) With only one resident judge; or

(2) In which no county is subject to section 5 of the Voting Rights Act of 1965,

shall hold the office until the next election of members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held to fill an eight-year term.

(c) When the unexpired term of the office in which the vacancy has occurred expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office.

(d) Vacancies in the office of district judge which occur before the expiration of a term shall not be filled by election. Vacancies in the office of district judge shall be filled in accordance with G.S. 7A-142."

SECTION 3.16. Sections 3.1 through 3.15 of this act are effective only if the constitutional amendment proposed by Section 1 of this act is approved by the qualified voters in accordance with Section 2 of this act.

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

HB 989:
Judicial App./Voter Retention

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representatives Michaux, Sutton, and Barefoot
Date:	April 17, 2001		
Version:	H989-CSSK-22[v.2]	**Summary by:**	Esther Manheimer Committee Counsel

BILL SUMMARY: This bill provides for the appointment, confirmation, and retention election of Appeals Court and Supreme Court Judges.

BILL ANALYSIS:

Constitutional Amendment: This bill would require a referendum on a constitutional amendment at the general election in November of 2002. The amendments to the North Carolina Constitution, if approved by the voters, are as follows.

- **Provide for the Appointment of Appeals Court and Supreme Court Judges.** Under the North Carolina Constitution, North Carolina Appeals Court and Supreme Court judges are elected by the people. These judges are appointed by the governor only when a vacancy occurs. This bill would require a statewide referendum on a constitutional amendment authorizing the governor to appoint all Appeals Court and Supreme Court judges. The appointment must be confirmed by the General Assembly. Appointed judges will serve an initial term that expires on December 31st after the next statewide election for General Assembly members that is held more than 60 months after the appointment. In other words, the term could last a minimum of five years to a maximum of almost seven years depending on when the statewide election is held. If the 2002 referendum passes, the first appointments may take place to fill vacancies occurring on or after January 1, 2003 or vacancies in existence on January 1, 2003.
- **60 Days to Confirm and Special Session.** The General Assembly has 60 days from the date of the nomination to vote on the confirmation of a judge. However, this does not include the period between sessions. The Governor may call an extra session to consider a nomination. The General Assembly must take action within the first two days of the extra session.
- **Retention Election.** If, after a judge's first term, the judge desires to continue serving on the bench, he or she must run in a retention election. The election is nonpartisan. If the judge fails to retain their seat, then the governor fills the vacancy. Judges **elected** before January 1, 2003 and in office on January 1, 2003 may serve the remainder of their term and then must run in a retention election to retain their seat. Judges **appointed** before January 1, 2003 and in office on January 1, 2003 (this would only apply to judges appointed less than 60 days before the November 2003 election), may be reappointed, subject to confirmation by the General Assembly.
- **Superior Court Judges.** Under the North Carolina Constitution, the General Assembly determines whether Regular Superior Court Judges are elected "by the qualified voters of the State or by the voters of their respective district." (Section 16 of Art. IV of the NC Const.) This bill would require Regular Superior Court Judges to be elected by the voters of their district.

Statutory Changes: Subject to the passage of the constitutional amendment, this bill makes a number of technical and conforming changes to existing statutes. The bill also creates a new Article 1A of Chapter 7A. The new article states the requirements for the appointment,

confirmation and retention election of Appeals Court and Supreme Court Judges. These requirements include:

- Legislative hearing procedures for the confirmation of judges.
- The requirement that the governor must issue commissions to nominees confirmed by the Legislature
- That no partisan elections for judges shall be held in 2003.
- That those running in a retention election must file by the first working day of July before the election, and that retention elections must be placed at the top of the ballot.
- That the filing fee for running in a retention election is equal to 1% of the annual salary of the office sought, and the circumstances under which this filing fee may be refunded (death, removal from office, etc.).

EFFECTIVE DATE: The sections amending the statutory provisions are effective only if the constitutional amendment is approved by the voters and the remainder of the bill is effective when it becomes law.

BACKGROUND: House Judiciary IV heard a similar bill, SB 12, in 1999. SB 12 differed from this bill in some aspects, including that it did not require the legislature to confirm appointments.

VISITOR REGISTRATION SHEET

Judiciary II — 4-17-01 — 1:PM

Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim DRENNAN	Institute of Gov't
HE Powell	AOC
Charles Cromer	NCATL
Paul Anderson	City of Hickory
Michelle Frazier	NC Bar Assoc.
FRAN PRESTON	NC Retail Merchants Asso
TOM TODD	Freedom
Andy Ellen	NCRMA
Dell Allen	NCAOC
Gary Roberts	AP

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

April 18, 2001 – 1:00 p.m.

The House Committee on Judiciary II met on Wednesday, April 18, 2001, in Room 421 LOB at 1:00 p.m. The following members were present: Chairman Phil Baddour, Vice Chairman Phil Haire, Representatives Bowie, Hall, Jeffus, Justus, Sherrill and Weiss. Robin Johnson, Esther Manheimer, Jeff Hudson, Staff Attorneys, were also present.

The Chairman called the meeting to order, and then called for consideration of the following bills:

HB 953 Utter/Possess Counterfeit U.S. Currency. Rep. Baddour recognized Rep. Eddins, bill sponsor, to explain the bill. A summary of the bill is attached for the record. Fran Preston of the Retail Merchants Association spoke in support of the bill. After brief comments from the committee, Rep. Sherrill moved that the bill receive a favorable report. Motion passed.

HB 1100 Counterfeiting Negotiable Instruments. Rep. Haire presided while Rep. Baddour, bill sponsor, explained the bill. Fran Preston of the Retail Merchants Association described the need for this legislation. Rep. Hall moved that the bill receive a favorable report. Motion passed unanimously.

HB 434 Amend Rule 9 (j). Rep. Haire, bill sponsor, was recognized to explain the bill. Rep. Hall moved that a technical amendment be adopted, motion passed. Rep. Haire described current law and the problems associated with it. Attorneys Burton Craig and Jim Kerr were on hand to speak in support of the bill, as was Dick Taylor of the North Carolina Academy of Trial Lawyers. Rep. Justus moved that the amendment be rolled into a new committee substitute, and that the committee substitute be given a favorable report, unfavorable as to the original bill. Motion passed.

The meeting adjourned at 1:50 p.m.

Phil Baddour
Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

HOUSE JUDICIARY II COMMITTEE
AGENDA

April 18, 2001
1:00 P.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Jeff Hudson
Elizabeth Kirkland (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDERED:

HB 953	Utter/Possess Counterfeit U.S. Currency – Rep. Eddins
HB 1100	Counterfeiting/Negotiable Instruments – Rep. Baddour
HB 434	Amend Rule 9(j) – Reps. Haire & Pope
HB 1070	Removal Resignation of Trustees – Rep. Haire

ADJOURNMENT

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 953 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT IT IS A FELONY TO POSSESS, PASS, OR UTTER COUNTERFEIT UNITED STATES CURRENCY WITH THE INTENT TO DEFRAUD ANOTHER.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 953

Short Title:	Utter/Possess Counterfeit U.S. Currency.	(Public)
Sponsors:	Representative Eddins.	
Referred to:	Judiciary II.	

April 3, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT IT IS A FELONY TO POSSESS, PASS, OR UTTER COUNTERFEIT UNITED STATES CURRENCY WITH THE INTENT TO DEFRAUD ANOTHER.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-13.1. Possess, utter, or pass counterfeit United States currency with an intent to defraud another.**

(a) Any person who, knowingly and with the intent to defraud, utters, or passes counterfeit United States currency is guilty of a Class I felony.

(b) Any person who knowingly possesses counterfeit United States currency is guilty of a Class I felony.

(c) Any person who attempts to commit a violation of subsection (a) or (b) of this section or who aids or abets another person in violating subsection (a) or (b) of this section is guilty of a Class I felony."

SECTION 2. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

HOUSE BILL 953:
Utter/Possess Counterfeit U.S. Currency.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Rep. Eddins
Date:	April 18, 2001	**Summary by:**	Robin Johnson
Version:	First		Committee Counsel

SUMMARY: ***The bill would make it a Class I felony to knowingly and with the intent to defraud, utter or pass or attempt to utter or pass, to knowingly possess or attempt to possess, counterfeit U.S. currency.***

The bill would take effect December 1, 2001, and apply to offenses committed on or after that date.

CURRENT LAW: Currently, it is a Class I felony to falsely make, forge ,counterfeit, or to pass, sell, or publish, or to willingly aid in these endeavors, with the intent to defraud, coins of gold or silver. (See G.S. 14-13 – attached) Also, it is a Class 3 misdemeanor to issue, pass or receive substitutes for money without authority under G.S. 14-15 and 14-16 (see attached).

There also are federal laws that govern counterfeiting.

BILL ANALYSIS: The bill would create a new G.S. 14-13.1 in Article 5 of Chapter 14 of the General Statutes (Counterfeiting and Issuing Monetary Substitutes).

Conviction of a Class I felony has a presumptive minimum sentence of four to six months community punishment, assuming no prior convictions.

H953-SMRH-001

§ 14-13. Counterfeiting coin and uttering coin that is counterfeit.
If any person shall falsely make, forge or counterfeit, or cause or procure to be falsely made, forged or counterfeited, or willingly aid or assist in falsely making, forging or counterfeiting the resemblance or similitude or likeness of any coin of gold or silver which is in common use and received in the discharge of contracts by the citizens of the State; or shall pass, utter, publish or sell, or attempt to pass, utter, publish or sell, or bring into the State from any other place with intent to pass, utter, publish or sell as true, any such false, forged or counterfeited coin, knowing the same to be false, forged or counterfeited, with intent to defraud any person whatsoever, every person so offending shall be punished as a Class I felon.

§ 14-15. Issuing substitutes for money without authority.
If any person or corporation, unless the same be expressly allowed by law, shall issue any bill, due bill, order, ticket, certificate of deposit, promissory note or obligation, or any other kind of security, whatever may be its form or name, with the intent that the same shall circulate or pass as the representative of, or as a substitute for, money, he shall be guilty of a Class 3 misdemeanor and only punishable by a fine not to exceed the sum of fifty dollars ($50.00); and if the offender be a corporation, it shall in addition forfeit its charter. Every person or corporation offending against this section, or aiding or assisting therein, shall be guilty of a Class 3 misdemeanor and only punishable by a fine not to exceed fifty dollars ($50.00).

§ 14-16. Receiving or passing unauthorized substitutes for money.
If any person or corporation shall pass or receive, as the representative of, or as the substitute for, money, any bill, check, certificate, promissory note, or other security of the kind mentioned in G.S. 14-15, whether the same be issued within or without the State, such person or corporation, and the officers and agents of such corporation aiding therein, who shall offend against this section shall be guilty of a Class 3 misdemeanor and only punishable by a fine not to exceed five dollars ($5.00).

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1100 A BILL TO BE ENTITLED AN ACT TO CREATE THE CRIMINAL OFFENSE OF COUNTERFEITING NEGOTIABLE INSTRUMENTS.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 1100

Short Title:	Counterfeiting/Negotiable Instruments.	(Public)
Sponsors:	Representative Baddour.	
Referred to:	Judiciary II.	

April 11, 2001

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF COUNTERFEITING NEGOTIABLE INSTRUMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 21 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-119.1. Counterfeiting of negotiable instruments.**

(a) The following definitions apply in this section:

(1) Counterfeited. – A negotiable instrument that purports to be genuine, but is not, because it has been falsely made, manufactured, embossed, encoded, duplicated, or altered.

(2) Negotiable instrument. – Defined in G.S. 25-3-104.

(b) Any person who makes, manufactures, buys, sells, exchanges, transfers, tenders, or receives a counterfeited negotiable instrument with the intent that the same be passed or used as true and genuine is guilty of a Class H felony.

(c) Any person with the intent to defraud who transports or possesses three or more counterfeited negotiable instruments is guilty of a Class G felony."

SECTION 2. G.S. 14-119(a) reads as rewritten:

"(a) ~~If~~ Unless the conduct is covered under G.S. 14-119.1, if a person makes, forges, or counterfeits:

(1) Any bill, note, warrant, check, order, or similar instrument in imitation of, or purporting to be, a bill, note, warrant, check, order, or similar instrument of or on any financial institution or governmental unit, or any cashier or officer of such an institution or unit; or

(2) Any security purporting to be issued by, or on behalf of, any corporation, financial institution, or governmental unit,

with the intent to injure or defraud any person, corporation, financial institution, or governmental unit, he shall be punished as a Class I felon."

SECTION 3. G.S. 14-120 reads as rewritten:

"**§ 14-120. Uttering forged paper or instrument containing a forged endorsement.**

~~If~~ Unless the conduct is covered under G.S. 14-119.1, if any person, directly or indirectly, whether for the sake of gain or with intent to defraud or injure any other person, shall utter or publish any such false, forged or counterfeited instrument as is mentioned in G.S. 14-119, or shall pass or deliver, or attempt to pass or deliver, any of them to another person (knowing the same to be falsely forged or counterfeited) the person so offending shall be punished as a Class I felon. If any person, directly or indirectly, whether for the sake of gain or with intent to defraud or injure any other person, shall falsely make, forge or counterfeit any endorsement on any instrument described in the preceding section, whether such instrument be genuine or false, or shall knowingly utter or publish any such instrument containing a false, forged or counterfeited endorsement or, knowing the same to be falsely endorsed, shall pass or deliver or attempt to pass or deliver any such instrument containing a forged endorsement to another person, the person so offending shall be guilty of a Class I felony."

SECTION 4. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

HB 1100

STRENGTHEN COUNTERFEITING LAWS AND REGULATE CHECK PRODUCING SOFTWARE

The Background

Over the past two years, the number of fraudulent checks passed to retailers in North Carolina has increased dramatically. Although stolen checks still account for some of the losses, counterfeit checks now makeup the majority of fraudulent checks passed in North Carolina. The majority of these checks are bogus checks that are created to look like a legitimate check from a legitimate company. The most common counterfeit check is made using a product called "Versacheck." Versacheck is a software product, intended to be used by legitimate businesses to print payroll checks at a reduced cost. However, the primary user of Versacheck has changed from small business to counterfeiters. One retailer estimates that over 70% of all Versachecks tendered in North Carolina are fraudulent checks.

The process begins when a legitimate check belonging to a business or consumer is obtained by a counterfeiter. The counterfeiter uses check producing software to create a check the same size and color as the original. The routing number from the legitimate check is printed on the counterfeit check with magnetic ink. The counterfeiter scans in the company logo and signature and prints out the counterfeit check. He thereby creates a check that is in every way indistinguishable from the check belonging to the business or consumer. Using fake ID's the "frontmen" for these counterfeit rings drop tens of thousands of dollars in our state leaving retailers, banks and average citizens to suffer huge losses.

The Problem

The current North Carolina laws for counterfeiting and forgery have not kept up with technology. The definition of the elements of counterfeiting and forgery still remain in common law and are not present in the General Statutes, which makes District Attorneys less willing to prosecute people committing these crimes. The manufacturers of Versacheck and similar products continue to distribute their product even though innocent parties are consistently being harmed and the cost of goods is driven up due to losses attributable to their use.

The Solution

The elements of the crimes of counterfeiting and forgery should be modernized and placed in the General Statutes. The penalties should be increased to a Class H felony and require a person convicted of such a crime to pay civil damages to those injured by the commission of these crimes. Finally, any software that allows a purchaser to produce checks should be inoperable until the purchaser unlocks the software by registering with the manufacturer and any checks printed with this type of software must bear a registration number attributable to the purchaser.

PASS HB 1100

Fran Preston, President • Andrew Ellen, General Counsel • Ann Edmondson, Lobbyist • 919.832.0811

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 434 A BILL TO BE ENTITLED AN ACT TO AMEND RULE 9(J) OF THE RULES OF CIVIL PROCEDURE BY CLARIFYING WHICH JUDGE MAY SIGN ORDERS EXTENDING THE STATUTE OF LIMITATIONS IN CERTAIN CASES AS RECOMMENDED BY THE CIVIL LITIGATION STUDY COMMISSION.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 2

HOUSE BILL 434
Committee Substitute Favorable 4/19/01

Short Title: Amend Rule 9(j). (Public)

Sponsors:

Referred to:

March 1, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND RULE 9(J) OF THE RULES OF CIVIL PROCEDURE BY CLARIFYING WHICH JUDGE MAY SIGN ORDERS EXTENDING THE STATUTE OF LIMITATIONS IN CERTAIN CASES AS RECOMMENDED BY THE CIVIL LITIGATION STUDY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 9(j) reads as rewritten:

"(j) Medical malpractice. – Any complaint alleging medical malpractice by a health care provider as defined in G.S. 90-21.11 in failing to comply with the applicable standard of care under G.S. 90-21.12 shall be dismissed unless:

(1) The pleading specifically asserts that the medical care has been reviewed by a person who is reasonably expected to qualify as an expert witness under Rule 702 of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care;

(2) The pleading specifically asserts that the medical care has been reviewed by a person that the complainant will seek to have qualified as an expert witness by motion under Rule 702(e) of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care, and the motion is filed with the complaint; or

(3) The pleading alleges facts establishing negligence under the existing common-law doctrine of res ipsa loquitur.

Upon motion by the complainant prior to the expiration of the applicable statute of limitations, a resident judge of the superior court ~~of the county~~ for the judicial district in which venue for the cause of action ~~arose~~ is appropriate under G.S. 1-82 or, if no resident judge for that judicial district is physically present in that judicial district, otherwise available, or able or willing to consider the motion, then any presiding judge of the superior court for that judicial district may allow a motion to extend the statute of

limitations for a period not to exceed 120 days to file a complaint in a medical malpractice action in order to comply with this Rule, upon a determination that good cause exists for the granting of the motion and that the ends of justice would be served by an extension. The plaintiff shall provide, at the request of the defendant, proof of compliance with this subsection through up to ten written interrogatories, the answers to which shall be verified by the expert required under this subsection. These interrogatories do not count against the interrogatory limit under Rule 33."

SECTION 2. This act becomes effective October 1, 2001, and applies to actions filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 434

Short Title:	Amend Rule 9(j).	(Public)
Sponsors:	Representatives Haire, Pope; Barefoot and Hackney.	
Referred to:	Judiciary II.	

March 1, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND RULE 9(J) OF THE RULES OF CIVIL PROCEDURE BY CLARIFYING WHICH JUDGE MAY SIGN ORDERS EXTENDING THE STATUTE OF LIMITATIONS IN CERTAIN CASES AS RECOMMENDED BY THE CIVIL LITIGATION STUDY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 9(j) reads as rewritten:

"(j) Medical malpractice. – Any complaint alleging medical malpractice by a health care provider as defined in G.S. 90-21.11 in failing to comply with the applicable standard of care under G.S. 90-21.12 shall be dismissed unless:

(1) The pleading specifically asserts that the medical care has been reviewed by a person who is reasonably expected to qualify as an expert witness under Rule 702 of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care;

(2) The pleading specifically asserts that the medical care has been reviewed by a person that the complainant will seek to have qualified as an expert witness by motion under Rule 702(e) of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care, and the motion is filed with the complaint; or

(3) The pleading alleges facts establishing negligence under the existing common-law doctrine of res ipsa loquitur.

Upon motion by the complainant prior to the expiration of the applicable statute of limitations, a resident judge of the superior court ~~of the county~~ for the judicial district in which venue for the cause of action ~~arose~~ is appropriate under G.S. 1-82 or if no resident judge for that judicial district is physically present in that judicial district, otherwise available, or able or willing to consider the motion, then any presiding judge

of the superior court for that judicial district may allow a motion to extend the statute of limitations for a period not to exceed 120 days to file a complaint in a medical malpractice action in order to comply with this Rule, upon a determination that good cause exists for the granting of the motion and that the ends of justice would be served by an extension. The plaintiff shall provide, at the request of the defendant, proof of compliance with this subsection through up to ten written interrogatories, the answers to which shall be verified by the expert required under this subsection. These interrogatories do not count against the interrogatory limit under Rule 33."

SECTION 2. This act becomes effective October 1, 2001, and applies to actions filed on or after that date.

HOUSE BILL 434: Amend Rule 9(j)

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representatives Haire and Pope
Date:	April 18, 2001		
Version:	First Edition	**Summary by:**	Jeff Hudson Committee Counsel

SUMMARY: ***House Bill 434 would amend Rule 9(j) to provide that a resident judge of the superior court for the judicial district in which venue for a medical malpractice cause of action is appropriate under G.S. 1-82 or, if no resident judge for that judicial district is physically present in that judicial district, otherwise available, or able or willing to consider the motion, then any presiding judge of the superior court for that judicial district may allow a motion to extend the statute of limitations for a period not to exceed 120 days to file a complaint in a medical malpractice action.***

CURRENT LAW: Current Rule 9(j) provides that a resident judge of the superior court of the county in which a medical malpractice cause of action arose may allow a motion to extend the statute of limitations for a period not to exceed 120 days to file a complaint in a medical malpractice action.

BILL ANALYSIS: House Bill 434 is a recommendation of the Civil Litigation Study Commission. It would amend Rule 9(j) to provide that a resident judge of the superior court for the judicial district in which venue for a medical malpractice cause of action is appropriate under G.S. 1-82 or, if no resident judge for that judicial district is physically present in that judicial district, otherwise available, or able or willing to consider the motion, then any presiding judge of the superior court for that judicial district may allow a motion to extend the statute of limitations for a period not to exceed 120 days to file a complaint in a medical malpractice action.

BACKGROUND: G.S. 1-82 (Venue in all other cases) generally provides that an action must be tried in the county in which the plaintiff or the defendant resides at the commencement of the suit.

EFFECTIVE DATE: House Bill 434 would become effective October 1, 2001, and apply to actions filed on or after that date.

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

April 19, 2001 – 10:00 a.m.

The House Committee on Judiciary II met on Thursday, April 19, 2001, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairman Phil Haire, Representatives Culpepper, Decker, Hall, Jeffus, Justus, Miller, Miner, Pope, and Sherrill. Robin Johnson, Esther Manheimer, Jeff Hudson, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

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

HB 1118 Fraud Against Financial Institutions. Rep. Baddour recognized Rep. Church, bill sponsor, to explain the bill. The committee raised a few questions with regard to the practical implications of this bill. The chair recognized Paul Stock of the North Carolina Bankers Association to express his support for the bill. Rep. Justus moved that the bill receive a favorable report. Motion passed unanimously.

HB 1174 Increase Penalty/Drug Sales @ Parks. The chair recognized Rep. Miller, bill sponsor to explain the bill. Rep. Sherrill questioned why the bill was limited to those 21 years or older. Rep. Miller explained that the idea was to target older adults who were preying on younger children. Rep. Hall moved that the bill be given a favorable report. Motion passed.

HB 1314 County Appeal of Juvenile Orders. Rep. Haire presided as Rep. Baddour, bill sponsor, explained the bill. Rep. Justus questioned the need for the bill, and Rep. Decker questioned whether or not this bill allowed counties to appeal the type of treatment ordered by the court. Patrice Rossler of the Association of County Commissioners stated that the bill came about because judges were directing a juvenile to a particular facility rather than assigning them to a particular form of treatment. There being further questions and comments from the committee, the bill was displaced.

The meeting adjourned at 10:45 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

HOUSE JUDICIARY II COMMITTEE
AGENDA

April 19, 2001
10:00 A.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Jeff Hudson
Elizabeth Kirkland (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDERED:

HB 1118	**Fraud Against Financial Institutions – Rep. Church**
HB 277	**Juvenile Extended Commitment Procedure – Rep. Haire**
HB 1174	**Increase Penalty/Drug Sales @ Parks – Rep. Miller**
HB 1314	**County Appeal of Juvenile Orders – Rep. Baddour**

ADJOURNMENT

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1118 A BILL TO BE ENTITLED AN ACT TO ESTABLISH THE CRIMINAL OFFENSE OF FRAUD AGAINST FINANCIAL INSTITUTIONS.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

HOUSE BILL 1118

Short Title:	Fraud Against Financial Institutions.	(Public)
Sponsors:	Representatives Church, Morgan; and Harrington.	
Referred to:	Judiciary II.	

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE CRIMINAL OFFENSE OF FRAUD AGAINST FINANCIAL INSTITUTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 20 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-118.6. Financial institutions fraud.**

(a) Any person who knowingly and willfully executes, or attempts to execute, a scheme or artifice to do any of the following is guilty of fraud and shall be punished as a Class I felon:

(1) Defraud a financial institution.

(2) Obtain any of the monies, funds, credits, assets, securities, or other property owned by, or under the custody and control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises.

(b) For purposes of this section, 'financial institution' means a bank, savings bank, savings and loan association, trust company, credit union, or other entity principally engaged in the business of lending money or receiving or soliciting money on deposit."

SECTION 2. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

HOUSE BILL 1118:
Fraud Against Financial Institutions.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Reps. Church & Morgan
Date:	April 19, 2001	**Summary by:**	Robin Johnson
Version:	First		Committee Counsel

SUMMARY: ***The bill would make it a Class I felony to knowingly and willfully execute, or attempt to execute, a scheme to defraud a financial institution or obtain by false pretenses any of the funds, credits, assets, securities, or other property of the financial institution.***

The bill would become effective December 1, 2001, and apply to offenses committed on or after that date.

CURRENT LAW: Currently, there are a variety of state laws governing fraudulent transactions. There also are federal laws governing fraud against financial institutions.

Conviction of a Class I felony has a presumptive minimum sentence of four to six months community punishment, assuming no prior convictions.

BILL ANALYSIS: House Bill 1118 would amend Article 20 of Chapter 14 of the General Statutes (Frauds) to add a new G.S. 14-118.6 (Financial institutions fraud).

H1118-SMRH-001

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1174 A BILL TO BE ENTITLED AN ACT TO INCREASE THE CRIMINAL PENALTY FOR THE SALE OF DRUGS IN PUBLIC PARKS AND PLAYGROUNDS.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 1174

Short Title:	Increase Penalty/Drug Sales @ Parks.	(Public)
Sponsors:	Representative Miller.	
Referred to:	Judiciary II.	

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR THE SALE OF DRUGS IN PUBLIC PARKS AND PLAYGROUNDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-95(e) reads as rewritten:

"(e) The prescribed punishment and degree of any offense under this Article shall be subject to the following conditions, but the punishment for an offense may be increased only by the maximum authorized under any one of the applicable conditions:

(1), (2) Repealed by Session Laws 1979, c. 760, s. 5.

(3) If any person commits a Class 1 misdemeanor under this Article and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be punished as a Class I felon. The prior conviction used to raise the current offense to a Class I felony shall not be used to calculate the prior record level.

(4) If any person commits a Class 2 misdemeanor, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 1 misdemeanor. The prior conviction used to raise the current offense to a Class 1 misdemeanor shall not be used to calculate the prior conviction level.

(5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person under 16 years of age but more than 13 years of age or a pregnant female shall be punished as a Class D felon. Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled

substance to a person who is 13 years of age or younger shall be punished as a Class C felon. Mistake of age is not a defense to a prosecution under this section. It shall not be a defense that the defendant did not know that the recipient was pregnant.

(6) For the purpose of increasing punishment under G.S. 90-95(e)(3) and (e)(4), previous convictions for offenses shall be counted by the number of separate trials at which final convictions were obtained and not by the number of charges at a single trial.

(7) If any person commits an offense under this Article for which the prescribed punishment requires that any sentence of imprisonment be suspended, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 2 misdemeanor.

(8) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property used for an elementary or secondary school or within 300 feet of the boundary of real property used for an elementary or secondary school shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).

(9) Any person who violates G.S. 90-95(a)(3) on the premises of a penal institution or local confinement facility shall be guilty of a Class H felony.

(10) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property that is a playground in a public park or within 300 feet of the boundary of real property that is a playground in a public park shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1). For purposes of this subdivision the term "playground" means any outdoor facility (including any parking lot appurtenant thereto) intended for recreation open to the public, and with any portion thereof containing three or more separate apparatuses intended for the recreation of children including, but not limited to, sliding boards, swingsets, and teeterboards."

SECTION 2. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

HOUSE BILL 1174:
Increase Penalty/Drug Sales at Parks

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Miller
Date:	April 19, 2001	**Summary by:**	Jeff Hudson
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 1174 would provide that any person 21 years of age or older who manufactures, sells, or delivers or who possesses with intent to manufacture, sell, or deliver a controlled substance on or within 300 feet of a playground in a public park will be punished as a Class E felon.***

CURRENT LAW: Under current law, except as authorized under the Controlled Substances Act, it is unlawful for any person to manufacture, sell, or deliver, or possess with intent to manufacture, sell, or deliver a controlled substance. The penalties for violation of this prohibition depend on the type and amount of controlled substance involved and generally range from a Class I felony to a Class C felony. The higher-level felonies (Class C and D) are reserved for very large quantities of particular controlled substances.

BILL ANALYSIS: House Bill 1174 would provide that any person 21 years of age or older who manufactures, sells, or delivers or who possesses with intent to manufacture, sell, or deliver a controlled substance on or within 300 feet of a playground in a public park will be punished as a Class E felon. This provision would not apply to the transfer of less than five grams of marijuana for no payment. "Playground" is defined as any outdoor facility, including any parking lot serving the facility, intended for recreation, open to the public, and containing three or more separate apparatuses intended for the recreation of children.

EFFECTIVE DATE: House Bill 1174 would become effective December 1, 2001, and would apply to offenses committed on or after that date.

H1174-SMSB-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 1314

Short Title:	County Appeal of Juvenile Orders.	(Public)
Sponsors:	Representative Baddour.	
Referred to:	Judiciary II.	

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO ALLOW COUNTIES TO APPEAL CERTAIN ORDERS IN JUVENILE COURT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-1001 reads as rewritten:

"**§ 7B-1001. Right to appeal.**

Upon ~~motion of~~ appeal by a proper party as defined in G.S. 7B-1002, review of any final order of the court in a juvenile matter under this Article shall be before the Court of Appeals. Notice of appeal shall be given in open court at the time of the hearing or in writing within 10 days after entry of the order. However, if no disposition is made within 60 days after entry of the order, written notice of appeal may be given within 70 days after such entry. A final order shall include:

(1) Any order finding absence of jurisdiction;

(2) Any order ~~which~~ that in effect determines the action and prevents a judgment from which appeal might be taken;

(3) Any order of disposition after an adjudication that a juvenile is abused, neglected, or dependent; or

(4) Any order modifying custodial rights."

SECTION 2. G.S. 7B-1002 reads as rewritten:

"**§ 7B-1002. Proper parties for appeal.**

An appeal may be taken by the guardian ad litem or juvenile, the juvenile's parent, guardian, or custodian, the ~~State or~~ State, or a county or county agency."

SECTION 3. G.S. 7B-1003 reads as rewritten:

"**§ 7B-1003. Disposition pending appeal.**

(a) Pending disposition of an appeal, the return of the juvenile to the custody of the juvenile's ~~parent or guardian~~ parent, guardian, or custodian of the juvenile, with or without conditions, should issue in every case unless the court orders otherwise. When the court has found that a juvenile has suffered physical abuse and that the individual

responsible for the abuse has a history of violent behavior, the court shall consider the opinion of the mental health professional who performed the evaluation under G.S. 7B-503(b) before returning the juvenile to the custody of that individual. For compelling reasons which must be stated in writing, the court may enter a temporary order affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile or the State. The provisions of subsections (b), (c), and (d) of G.S. 7B-905 shall apply to any order entered under this section which provides for the placement or continued placement of a juvenile in foster care.

(b) Notwithstanding G.S. 1-294, pending appeal by a county of an order to pay the costs of evaluation or treatment pursuant to G.S. 7B-903 or 7B-904, the order being appealed shall remain in effect."

SECTION 4. G.S. 7B-2602 reads as rewritten:

"**§ 7B-2602. Right to appeal.**

Upon ~~motion of~~ appeal by a proper party as defined in G.S. 7B-2604, review of any final order of the court in a juvenile matter under this Article shall be before the Court of Appeals. Notice of appeal shall be given in open court at the time of the hearing or in writing within 10 days after entry of the order. However, if no disposition is made within 60 days after entry of the order, written notice of appeal may be given within 70 days after such entry. A final order shall include:

(1) Any order finding absence of jurisdiction;

(2) Any order ~~which~~ that in effect determines the action and prevents a judgment from which appeal might be taken;

(3) Any order of disposition after an adjudication that a juvenile is delinquent or undisciplined; or

(4) Any order modifying custodial rights."

SECTION 5. G.S. 7B-2604 reads as rewritten:

"**§ 7B-2604. Proper parties for appeal.**

(a) An appeal may be taken by the juvenile, the juvenile's parent, guardian, or custodian, or the State. The State's appeal is limited to the following orders in delinquency or undisciplined cases:

(1) An order finding a State statute to be unconstitutional; and

(2) Any order ~~which~~ that terminates the prosecution of a petition by upholding the defense of double jeopardy, by holding that a cause of action is not stated under a statute, or by granting a motion to suppress.

(b) A county or county agency may appeal the following orders in delinquency or undisciplined cases:

(1) An order to pay the costs of evaluation or treatment of the juvenile pursuant to G.S. 7B-2502.

(2) An order to pay the costs of evaluation or treatment of the juvenile's parent pursuant to G.S. 7B-2702.

(3) An order to pay the costs of support of the juvenile pursuant to G.S. 7B-2704."

SECTION 6. G.S. 7B-2605 reads as rewritten:

"**§ 7B-2605. Disposition pending appeal.**

(a) Pending disposition of an appeal, the release of the juvenile, with or without conditions, should issue in every case unless the court orders otherwise. For compelling reasons which must be stated in writing, the court may enter a temporary order affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile or the State.

(b) Notwithstanding G.S. 1-294, pending appeal by a county or a county agency of an order to pay the costs of evaluation or treatment pursuant to G.S. 7B-2502 or G.S. 7B-2702, or to pay the cost of the juvenile's support pursuant to G.S. 7B-2704, the order being appealed shall remain in effect."

SECTION 7. This act becomes effective October 1, 2001, and applies to orders entered on or after that date.

HB 1314:
County Appeal of Juvenile Orders

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Baddour
Date:	April 19, 2001	**Summary by:**	Esther Manheimer
Version:	H1314-CSSK-28[v.1]		Committee Counsel

BILL ANALYSIS: HB 1314 makes technical and conforming changes. The following are substantive changes made by the bill:

- HB 1314 allows counties to appeal the following orders in juvenile abuse, neglect, and dependency cases:
  - (1) An order to pay the costs of medical, surgical, psychiatric, or psychological evaluation or treatment of a juvenile under G.S. 7B-903.
  - (2) An order to pay the costs of psychiatric or psychological evaluation or treatment of a juvenile's parent under G.S. 7B-904.
- HB 1314 also allows counties to appeal the following orders in juvenile delinquency or undisciplined cases:
  - (1) An order to pay the costs of medical, surgical, psychiatric, or psychological evaluation or treatment of a juvenile under G.S. 7B-2502.
  - (2) An order to pay the costs of psychiatric or psychological evaluation or treatment of a juvenile's parent under G.S. 7B-2702.
  - (3) An order to pay for the support of a juvenile under G.S. 7B-2704.
- While a county's appeal of an order to pay the costs of the juvenile's or the parent's evaluation or treatment under G.S. 7B-903 or G.S. 7B-904 is pending, the order to pay must remain in effect. In addition, while the county's appeal to pay under G.S. 7B-2502, G.S. 7B-2702, or G.S. 7B-2704 is pending, the order to pay must remain in effect.

EFFECTIVE DATE: This act becomes effective October 1, 2001, and applies to orders entered on or after that date.

VISITOR REGISTRATION SHEET

Judiciary II — Name of Committee

4-19-01 — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Carol Teal	Friends of Residents in Long Term Care
Will Polk	Gov. Office
John McHugh	Governors Office
Jane Royall	N.C. Family Policy Council
Margaret Westbrook	Kennedy Covington
Paul Stock	NCBA
VB Powell	AOC
DAVID BARNES	Poyner + Spruill
John McMillan	MF+S P.A.
Ken McHan	Alley Associates
Reg Dover	Conference of DAs
Jeff Hunt	DA - 29th
Jenny Fullbright	Hunton & Wms.
DAMICO	W-S Journal
Palmer Rourke	NCACC
Sullivan	NCMS

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

April 19, 2001 – 1:00 p.m.

The House Committee on Judiciary II met on Thursday, April 19, 2001, in Room 421 LOB at 1:00 p.m. The following members were present: Chairman Phil Baddour, Vice Chairmen Phil Haire and Toby Fitch, Representatives Bowie, Culpepper, Decker, Gulley, Hall, Jeffus, Miller, Miner, Pope, Sherrill, and Weiss. Robin Johnson, Esther Manheimer, Jeff Hudson, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order, and then called for consideration of the following bill:

HB 1284 Openness of Court Records & Proceedings. Rep. Culpepper moved that the proposed committee substitute be before the committee for purposes of discussion, and without objection, the PCS was before the committee. Rep. Baddour recognized Rep. Weiss, bill sponsor, to explain the bill. Rep. Weiss provided a section by section review of the bill for the committee. Rep. Fitch questioned why the financial aspect was eliminated. Dick Taylor with the Academy of Trial Lawyers pointed out that this legislation was similar to that of other states, and the monetary amount was not disclosed because it was not related to the public interest. Jennie Buckner, editor of the Charlotte Observer, spoke in support of the bill. Rep. Pope and Rep. Fitch question how the bill complies with Rule 5. Jeff Hunt with the Conference of D.A.s suggested that the criminal aspect be removed from the bill, and that the bill deal solely with civil court. John Bussian of the North Carolina Press Association spoke in support of the bill, and stated that it simply codifies a constitutionally required safeguard. Following much discussion and debate from the committee, Rep. Fitch moves to amend the portion of the bill dealing with the Supreme Court. Motion passed unanimously. No further action was taken.

The meeting adjourned at 1:50 p.m.

Phil Baddour
Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

HOUSE JUDICIARY II COMMITTEE
AGENDA

April 19, 2001
1:00 P.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Jeff Hudson
Elizabeth Kirkland (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDERED:

HB 1284 Openness of Court Records & Proceedings – Rep. Weiss

ADJOURNMENT

HB 1284:
Openness of Court Records and Proceedings

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Weiss
Date:	April 19, 2001	**Summary by:**	Esther Manheimer
Version:	H1284-CSSK-24		Committee Counsel

BILL ANALYSIS: This bill would create a presumption that court records and proceeding are open as to all civil actions, contested administrative cases, criminal cases, motions to alter or vacate an order to close a trial or hearing that is conducted as a closed trial or hearing. The bill provides procedures for sealing a court record or closing a trial or hearing. Records may be sealed and trials and hearings may be closed only if:

(1) A specific, serious, and substantial interest exists that outweighs any likely adverse effect that sealing the record or conducting a closed trial or hearing would have upon the public interest, public health, or public safety.

(2) There is no less restrictive means than sealing the court record or conducting a closed trial or hearing to adequately and effectively protect the interest under (1).

Definition of 'court record' for purposes of this bill means:

(1) Any pleading, order of the court, or any other paper that is filed with the court under Rule 5.

(2) With the exception of references in a settlement agreement to money damages to be paid for personal injuries, settlement agreements not filed of record that concern actions alleging personal injury, wrongful death, monetary or property damages caused by a defective product, an environmental hazard, or a financial fraud.

Effective Date: This act becomes effective October 1, 2001, and applies to all court records subject to this act that are filed on or after that date, applies to all civil actions, contested administrative cases, and criminal cases commenced or pending on or after that date, and applies to all motions to alter or vacate a trial or hearing that is conducted as a closed trial or hearing on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1284
PROPOSED COMMITTEE SUBSTITUTE H1284-CSSK-24 [v.3]

4/18/2001 5:50:57 PM

Short Title: Openness of Court Records and Proceedings. (Public)

Sponsors:

Referred to:

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PRESUMPTION THAT COURT RECORDS FOR CIVIL, ADMINISTRATIVE, AND CRIMINAL CASES ARE OPEN, TO PROVIDE THE PROCEDURE TO OBTAIN AN ORDER TO SEAL A COURT RECORD, TO ESTABLISH A PRESUMPTION THAT THE HEARINGS, PROCEEDINGS, AND TRIALS FOR CIVIL, ADMINISTRATIVE, AND CRIMINAL CASES ARE OPEN, AND TO PROVIDE THE PROCEDURE TO OBTAIN AN ORDER TO CONDUCT A CLOSED HEARING, PROCEEDING, OR TRIAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 5 is amended by adding a new subsection to read:

"(f) No pleadings and no other papers filed with the court under this rule shall be removed from the court files unless specifically provided by statute or court rule."

SECTION 2. Article 2 of Chapter 1A of the General Statutes is amended by adding a new Rule to read:

"**Rule 5.1. Openness of court records.**

(a) Standard. – No court record shall be sealed except as provided in this section. Court records are presumed to be open. The presumption under this section may be rebutted by the party seeking to seal a court record upon a showing of all of the following:

(1) A specific, serious, and substantial interest exists that outweighs any likely adverse effect that sealing the record would have upon the public interest, public health, or public safety.

(2) There is no less restrictive means than sealing the court record to adequately and effectively protect the interest alleged under subdivision (1) of this subsection.

(b) Motion to Seal Court Record. – Upon the written motion of a party, the court may order a court record to be sealed. The moving party shall post a public notice where

notices for meetings of county government are required to be posted in the county where the action was brought. This notice shall contain a statement that shall substantially comply with the following: 'A hearing will be held in open court on a motion to seal one or more court records in (case name). Any person may intervene and be heard concerning the sealing of the court records.' The notice also shall include the time and place of hearing the motion to seal the court records, the type and number of the action, a brief description of both the nature of the case and the court record that the moving party seeks to have sealed, and the name of the moving party. The moving party shall also file a verified copy of the notice under this subsection under Rule 5 and with the Clerk of the North Carolina Supreme Court.

(c) Hearing on Motion. – A hearing shall be held in open court on the motion under subsection (b) of this section as soon as practicable, but not less than three days after the public notice was posted under subsection (b) of this section. Any party may participate in the hearing of the motion. Upon filing a motion to intervene, a nonparty may intervene for the limited purpose of participating in the hearing on the motion to seal a court record. The court may inspect any court record in camera that the court determines necessary to inspect.

(d) Order. – The court's ruling on the motion to seal a court record shall be a written order and shall be open to the public. The order shall state: the type and number of the case; the findings of fact and the conclusions of law to support the order; the specific court records that are to be sealed and the time period for which the sealed court records are to be sealed. The order under this subsection is severed from the action, shall not be included in any judgment on the rights of the parties or any other order in the action, and shall be a separate order in the action. Failure to comply with this subsection does affect an appeal of the order on the motion to seal a court record.

(e) Appeal. – Any order under this section may be appealed before the judgment on the rights of the parties is entered and may be appealed by any party or intervener who participated in the hearing on the motion to seal a court record. Upon appeal, the court may order the trial court to give further public notice, hold further hearings, or make additional findings.

(f) Continuing Jurisdiction. – Any person may intervene as a matter of right at any time before or after the order on the motion to seal a court record is entered. A court that issues an order to seal court records retains continuing jurisdiction to enforce, alter, or vacate that order. An order on the motion to seal a court record shall not be reconsidered on the motion of any party or intervener who had actual notice of the hearing on the motion to seal a court record, unless the party or intervener is able to show changed circumstances that materially affect the order. Such changed circumstances need not be related to the action in which the order was issued.

(g) Definition. – As used in this section, 'court record' means:

(1) Any pleading, order of the court, or any other paper that is filed with the court under Rule 5.

(2) With the exception of references in a settlement agreement to money damages to be paid for personal injuries, settlement agreements not filed of record that concern actions alleging personal injury, wrongful death, monetary or property damages caused by a defective product, an environmental hazard, or a financial fraud."

SECTION 3. Article 8 of Chapter 1A of the General Statutes is amended by adding a new Rule to read:

"**Rule 85. Openness of court proceedings.**

(a) Standard. – Trials and court hearings are presumed to be open. The presumption under this section may be rebutted by the party seeking to have the trial or hearing conducted as a closed trial or hearing upon a showing of all of the following:

(1) A specific, serious, and substantial interest exists that outweighs any likely adverse effect that conducting a closed trial or hearing would have upon the public interest, public health, or public safety.

(2) There is no less restrictive means than conducting a closed trial or hearing to adequately and effectively protect the interest alleged under subdivision (1) of this subsection.

(b) Motion to Conduct a Closed Trial or Hearing. – Upon the written motion of a party, the court may order a trial or hearing to be conducted as a closed trial or hearing. The moving party shall post a public notice where notices for meetings of county government are required to be posted in the county in which the action was brought. This notice shall contain a statement that shall substantially comply with the following: 'A hearing will be held in open court on a motion to conduct a closed trial or hearing in (case name). Any person may intervene and be heard concerning whether to conduct a closed trial or hearing.' The notice also shall include the time and place of the hearing on the motion to conduct a closed trial or hearing, the type and number of the action, a brief description of both the nature of the case and the trial or hearing that the moving party seeks to have conducted as a closed trial or hearing, and the name of the moving party. The moving party shall also file a verified copy of the notice under this subsection under Rule 5 and with the Clerk of the North Carolina Supreme Court.

(c) Hearing on Motion. – A hearing shall be held in open court on the motion under subsection (b) of this section as soon as practicable, but not less than three days after the public notice was posted under subsection (b) of this section. Any party may participate in the hearing of the motion. Upon filing a motion to intervene, a nonparty may intervene for the limited purpose of participating in the hearing on the motion to conduct a closed trial or hearing.

(d) Order. – The court's ruling on the motion to conduct a closed trial or hearing shall be a written order and shall be open to the public. The order shall state: the type and number of the case; the findings of fact and the conclusions of law to support the order; the matters to be decided at the trial or hearing that the moving party seeks to have conducted as a closed trial or hearing. The order under this subsection is severed from the action and shall not be included in any judgment on the rights of the parties or

any other order in the action, but shall be a separate order in the action. The failure to comply with this subsection does affect the appeal of the order on the motion to conduct a closed trial or hearing.

(e) Appeal. – Any order under this section may be appealed before the judgment on the rights of the parties is entered and may be appealed by any party or intervener who participated in the hearing on the motion to conduct a closed trial or hearing. Upon appeal, the court may order the trial court to give further public notice, hold further hearings, or make additional findings.

(f) Continuing Jurisdiction. – Any person may intervene as a matter of right at any time before or after the order on the motion to conduct a closed trial or hearing. A court that issues an order to conduct a closed trial or hearing retains continuing jurisdiction to enforce, alter, or vacate that order. An order on the motion to conduct a closed trial or hearing shall not be reconsidered on the motion of any party or intervener who had actual notice of the hearing on the motion to conduct a closed trial or hearing, unless the party or intervener is able to show changed circumstances that materially affect the order. Such changed circumstances need not be related to the action in which the order was issued."

SECTION 4. G.S. 150B-25 is amended by adding a new subsection to read:

"(e) The hearing of a case under this section is subject to Rule 85 of the Rules of Civil Procedure."

SECTION 5. G.S. 150B-37 is amended by adding a new subsection to read:

"(d) The official record of a contested case is subject to Rule 5.1 of the Rules of Civil Procedure."

SECTION 6. Article 71 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1202. Jury trial presumed open; court records presumed open.**

(a) A trial under this Article is subject to Rule 85 of the Rules of Civil Procedure.

(b) All court records for a criminal case that are filed with the court are subject to Rule 5.1 of the Rules of Civil Procedure."

SECTION 7. This act becomes effective October 1, 2001, and applies to all court records subject to this act that are filed on or after that date, applies to all civil actions, contested administrative cases, and criminal cases commenced or pending on or after that date, and applies to all motions to alter or vacate a trial or hearing that is conducted as a closed trial or hearing on or after that date.

HOUSE BILL 1284

Short Title:	Openness of Court Records and Proceedings.	(Public)
Sponsors:	Representatives Weiss; and Luebke.	
Referred to:	Judiciary II.	

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PRESUMPTION THAT COURT RECORDS FOR CIVIL, ADMINISTRATIVE, AND CRIMINAL CASES ARE OPEN, TO PROVIDE THE PROCEDURE TO OBTAIN AN ORDER TO SEAL A COURT RECORD, TO ESTABLISH A PRESUMPTION THAT THE HEARINGS, PROCEEDINGS, AND TRIALS FOR CIVIL, ADMINISTRATIVE, AND CRIMINAL CASES ARE OPEN, AND TO PROVIDE THE PROCEDURE TO OBTAIN AN ORDER TO CONDUCT A CLOSED HEARING, PROCEEDING, OR TRIAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 5 is amended by adding a new subsection to read:

"(f) No pleadings and no other papers that must be filed with the court under this rule shall be removed from the court files unless specifically provided by statute or court rule."

SECTION 2. Article 2 of Chapter 1A of the General Statutes is amended by adding a new Rule to read:

"**Rule 5.1. Openness of court records.**

(a) Standard. – No court record shall be sealed except as provided in this section. Court records are presumed to be open. The presumption under this section may be rebutted by the party seeking to seal a court record upon a showing of all of the following:

(1) A specific, serious, and substantial interest exists that outweighs any likely adverse effect that sealing the record would have upon the public health or safety.

(2) There is no less restrictive means than sealing the court record to adequately and effectively protect the interest alleged under subdivision (1) of this subsection.

(b) Motion to Seal Court Record. – Upon the written motion of a party, the court may order a court record to be sealed. The moving party shall post a public notice where notices for meetings of county government are required to be posted in the county where the action was brought. This notice shall contain a statement that shall substantially comply with the following:

'A hearing will be held in open court on a motion to seal one or more court records in (case name). Any person may intervene and be heard concerning the sealing of the court records.' The notice also shall include the time and place of hearing the motion to seal the court records, the type and number of the action, a brief description of both the nature of the case and the court record that the moving party seeks to have sealed, and the name of the moving party. The moving party shall also file a verified copy of the notice under this subsection under Rule 5 and with the Clerk of the North Carolina Supreme Court.

(c) Hearing on Motion. – A hearing shall be held in open court on the motion under subsection (b) of this section as soon as practicable, but not less than 14 days after the public notice was posted under subsection (b) of this section. Any party may participate in the hearing of the motion. Upon filing a motion to intervene, a nonparty may intervene for the limited purpose of participating in the hearing on the motion to seal a court record. The court may inspect any court record in camera that the court determines necessary to inspect.

(d) Order. – The court's ruling on the motion to seal a court record shall be a written order and shall be open to the public. The order shall state: the type and number of the case; the findings of fact and the conclusions of law to support the order; the specific court records that are to be sealed and the time period for which the sealed court records are to be sealed. The order under this subsection is severed from the action, shall not be included in any judgment on the rights of the parties or any other order in the action, and shall be a separate order in the action. Failure to comply with this subsection does affect an appeal of the order on the motion to seal a court record.

(e) Appeal. – Any order under this section may be appealed before the judgment on the rights of the parties is entered and may be appealed by any party or intervener who participated in the hearing on the motion to seal a court record. Upon appeal, the court may order the trial court to give further public notice, hold further hearings, or make additional findings.

(f) Continuing Jurisdiction. – Any person may intervene as a matter of right at any time before or after the order on the motion to seal a court record is entered. A court that issues an order to seal court records retains continuing jurisdiction to enforce, alter, or vacate that order. An order on the motion to seal a court record shall not be reconsidered on the motion of any party or intervener who had actual notice of the hearing on the motion to seal a court record, unless the party or intervener is able to show changed circumstances that materially affect the order. Such changed circumstances need not be related to the action in which the order was issued.

(g) Definition. – As used in this section, 'court record' means any pleading, order of the court, or any other paper that is filed with the court under Rule 5."

SECTION 3. Article 8 of Chapter 1A of the General Statutes is amended by adding a new Rule to read:

"**Rule 85. Openness of court proceedings.**

(a) Standard. – Trials and court hearings are presumed to be open. The presumption under this section may be rebutted by the party seeking to have the trial or hearing conducted as a closed trial or hearing upon a showing of all of the following:

(1) A specific, serious, and substantial interest exists that outweighs any likely adverse effect that conducting a closed trial or hearing would have upon the public health or safety.

(2) There is no less restrictive means than conducting a closed trial or hearing to adequately and effectively protect the interest alleged under subdivision (1) of this subsection.

(b) Motion to Conduct a Closed Trial or Hearing. – Upon the written motion of a party, the court may order a trial or hearing to be conducted as a closed trial or hearing. The moving party shall post a public notice where notices for meetings of county government are required to be posted in the county in which the action was brought. This notice shall contain a statement that shall substantially comply with the following:

'A hearing will be held in open court on a motion to conduct a closed trial or hearing in (case name). Any person may intervene and be heard concerning whether to conduct a closed trial or hearing.' The notice also shall include the time and place of the hearing on the motion to conduct a closed trial or hearing, the type and number of the action, a brief description of both the nature of the case and the trial or hearing that the moving party seeks to have conducted as a closed trial or hearing, and the name of the moving party. The moving party shall also file a verified copy of the notice under this subsection under Rule 5 and with the Clerk of the North Carolina Supreme Court.

(c) Hearing on Motion. – A hearing shall be held in open court on the motion under subsection (b) of this section as soon as practicable, but not less than 14 days after the public notice was posted under subsection (b) of this section. Any party may participate in the hearing of the motion. Upon filing a motion to intervene, a nonparty may intervene for the limited purpose of participating in the hearing on the motion to conduct a closed trial or hearing.

(d) Order. – The court's ruling on the motion to conduct a closed trial or hearing shall be a written order and shall be open to the public. The order shall state: the type and number of the case; the findings of fact and the conclusions of law to support the order; the matters to be decided at the trial or hearing that the moving party seeks to have conducted as a closed trial or hearing. The order under this subsection is severed from the action and shall not be included in any judgment on the rights of the parties or any other order in the action, but shall be a separate order in the action. The failure to comply with this subsection does affect the appeal of the order on the motion to conduct a closed trial or hearing.

(e) Appeal. – Any order under this section may be appealed before the judgment on the rights of the parties is entered and may be appealed by any party or intervener who participated in the hearing on the motion to conduct a closed trial or hearing. Upon

appeal, the court may order the trial court to give further public notice, hold further hearings, or make additional findings.

(f) Continuing Jurisdiction. – Any person may intervene as a matter of right at any time before or after the order on the motion to conduct a closed trial or hearing. A court that issues an order to conduct a closed trial or hearing retains continuing jurisdiction to enforce, alter, or vacate that order. An order on the motion to conduct a closed trial or hearing shall not be reconsidered on the motion of any party or intervener who had actual notice of the hearing on the motion to conduct a closed trial or hearing, unless the party or intervener is able to show changed circumstances that materially affect the order. Such changed circumstances need not be related to the action in which the order was issued."

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SECTION 6. Article 71 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1202. Jury trial presumed open; court records presumed open.**

(a) A trial under this Article is subject to Rule 85 of the Rules of Civil Procedure.

(b) All court records for a criminal case that are filed with the court are subject to Rule 5.1 of the Rules of Civil Procedure."

SECTION 7. This act becomes effective October 1, 2001, and applies to all court records subject to this act that are filed on or after that date, applies to all civil actions, contested administrative cases, and criminal cases commenced or pending on or after that date, and applies to all motions to alter or vacate a trial or hearing that is conducted as a closed trial or hearing on or after that date.

VISITOR REGISTRATION SHEET

Judiciary II — 4-19-01
Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Peg Dorer	Conference of DAs
Jeff Hunt	Conf. of DAs
John McMillan	Gov. Office
Will Polk	Gov. Office
W.D. Kenerly	Conf of DAs
Rick Taylor	NCAOC
Charles Cromer	NCATL
Pat Farrell	AOC
[illegible]	NCAB
David Crabtree	WRSL-TV
John McMillan	MF&S P.A.
Michelle Frazier	NC Bar Assoc.
Steve Keene	NC Medical Society
Jack Betts	Charlotte Observer
Mark Johnson	Charlotte Observer
Ted Vaden	The Chapel Hill News / NC Press Assn
Jennie Buckner	The Charlotte Observer
John Bowman	NC Press Assn
Melissa Lowell	DOJ
Tim Hagler	NCHADA

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

April 23, 2001 – 4:00 p.m.

The House Committee on Judiciary II met on Monday, April 23, 2001, in Room 421 LOB at 4:00 p.m. The following members were present: Chairman Phil Baddour, Vice Chairman Phil Haire, Representatives Bowie, Culpepper, Gulley, Hall, Jeffus, Justus, Miller, Miner, Pope, Sherrill, and Weiss. Robin Johnson, Esther Manheimer, Jeff Hudson, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order, and then called for consideration of the following bills:

HB 1146 Presumptive Fines for Speeding. Rep. Baddour recognized Rep. Hurley, bill sponsor, to explain the bill. Tom Keith of the Conference of District Attorneys spoke against the bill. Mr. Keith cited that the bill would load up dockets, and under their current budget this was not something that they could handle. Ron Moore, District Attorney from Buncombe County, noted that this charge was not waiveable, and would result in every person coming to court. Rep. Hurley suggested that this change could have a financial impact on the speeder. Mr. Moore noted that the insurance companies would levy the impact. No action was taken on this bill.

HB 1284 Openness of Court Records & Proceedings. Rep. Sherrill moved that the proposed committee substitute be before the committee for purposes of discussion, and without objection, the PCS was before the committee. Rep. Weiss outlined the changes in the committee substitute, and noted that it addressed the concerns raised at the last meeting. Tom Keith added that the bill in its current form excluded access to criminal court records. Rep. Weiss offered a technical amendment to the bill, and the amendment was adopted. Rep. Weiss moved that the amendment be rolled into a new committee substitute bill, and that the committee substitute bill be given a favorable report, unfavorable as to the original bill. Motion passed.

HB 442 Concealed Handguns/Reciprocity. Rep. Haire moved that the proposed committee substitute be before the committee for purposes of discussion, and without objection, the PCS was before the committee. Rep. Haire moved the adoption of a technical amendment, and the motion passed. The chair recognized Rep. Gibson, bill sponsor, to explain the bill. Rep. Gibson noted that similar legislation passed the House last session, and he introduced it because of concern for border counties. Jim Metts of Grass Roots North Carolina spoke in support of the bill. Committee members questioned how this bill would apply to permits that have been revoked. Rep. Pope noted that if a permit had been revoked in one state, then it would also be revoked in North Carolina. Rep. Pope offered a perfecting amendment to the first amendment, and without objection, the amendment was adopted. Rep. Pope moved that the amendment be rolled into a new

committee substitute, and that the committee substitute be given a favorable report, unfavorable as to the original bill. Motion passed.

HB 1340 Post-Towing Procedures. Rep. Culpepper moved that the proposed committee substitute be before the committee for purposes of discussion, and without objection, the PCS was before the committee. Rep. Baddour recognized Rep. Mitchell, bill sponsor, to explain the bill. Rep. Culpepper moved that the committee substitute be given a favorable report, unfavorable as to original bill, and recommendation that the bill be re-referred to the Committee on Rules, Calendar, and Operations of the House. Motion passed unanimously.

HB 716 Estate Law Changes. Rep. Hall moved that the proposed committee substitute be before the committee for purposes of discussion, and without objection, the PCS was before the committee. The chair called on Rep. Haire, bill sponsor, to explain the bill. Bill Kraft, Chairman of the Estate Planning Section of the North Carolina Bar Association, gave a section by section review of the bill. Rep. Pope asked if it was a contested will would the executor be able to dispose of the property. Pete Powell of the Administrative Office of the Courts answered his question by saying that all actions except those to preserve the estate are suspended while the will is being contested. Rep. Bowie asked that be spelled out in the bill, and offered an amendment to that effect. Rep. Hall moved that the proposed committee substitute as amended be rolled in to a new committee substitute, and that the committee substitute be given a favorable report, unfavorable as to the original bill. Motion passed.

HB 1245 NCDL/Selective Service Registration. Rep. Jeffus moved that the proposed committee substitute be before the committee for purposes of discussion, and without objection, the PCS was before the committee. Rep. Haire presided while Rep. Baddour, bill sponsor, explained the bill. The chair then recognized Donald Shaw with the North Carolina Selective Service to speak on the bill. Wayne Hurder with the Division of Motor Vehicles said that the bill represented their interests. Rep. Sherrill questioned the cost of the bill, and Rep. Baddour noted that the bill would have to go to Appropriations. Rep. Bowie moved that the committee substitute be given a favorable report, unfavorable as to original bill, and recommendation that the bill be re-referred to the Committee on Appropriations. Motion passed.

The meeting adjourned at 5:30 p.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

HOUSE JUDICIARY II COMMITTEE
AGENDA

April 23, 2001
4:00 P.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Jeff Hudson
Elizabeth Kirkland (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDERED:

HB 1284	Openness of Court Records & Proceedings – Rep. Weiss
HB 1340	Post-Towing Procedures – Rep. Mitchell
HB 1146	Presumptive Fines for Speeding – Rep. Hurley
HB 442	Concealed Handguns/Reciprocity – Reps. Gibson & Decker
HB 716	Estate Law Changes – Rep. Haire
HB 1270	Eastern Band of Cherokees Full Faith & Credit – Rep. Haire
HB 1245	NCDL/ Selective Service Registration – Rep. Baddour

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

HOUSE BILL 1146

Short Title: Presumptive Fines for Speeding. (Public)

Sponsors: Representative Hurley.

Referred to: Judiciary II.

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO IMPOSE PRESUMPTIVE FINES FOR SPEEDING OFFENSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-141 is amended by adding a new subsection to read:

"(o) The following presumptive fines, in addition to any other penalties provided by law, shall apply to violations of this section:

(1) For a conviction of speeding 15 miles per hour but not more than 24 miles per hour over the posted speed limit, the fine shall be one hundred fifteen dollars ($115.00).

(2) For a conviction of speeding 25 miles per hour but not more than 34 miles per hour over the posted speed limit, the fine shall be three hundred fifteen dollars ($315.00).

(3) For a conviction of speeding 35 miles per hour but not more than 44 miles per hour over the posted speed limit, the fine shall be six hundred fifteen dollars ($615.00).

(4) For a conviction of speeding 45 miles per hour or more over the posted speed limit, the fine shall be one thousand fifteen dollars ($1015.00).

When the individual facts of the offense require otherwise, these fines may be increased or decreased at the discretion of the court's hearing the case."

SECTION 2. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

HOUSE BILL 1146:
Presumptive Fines for Speeding

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Hurley
Date:	April 23, 2001	**Summary by:**	Jeff Hudson
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1146 would provide presumptive fines for violations of speed limits.

CURRENT LAW: Under current law, a person who drives a vehicle on a highway at a speed that is either more than 15 miles per hour more than the speed limit established by law for the highway where the offense occurred or over 80 miles per hour is guilty of a Class 2 misdemeanor. Unless otherwise provided for a specific offense, the maximum fine that may be imposed for a Class 2 misdemeanor is a fine of one thousand dollars ($1,000).

BILL ANALYSIS: House Bill 1146 would provide the following presumptive fines for violations speed limits:

- Speeding 15 through 24 miles per hour over the posted speed limit $115.00
- Speeding 25 through 34 miles per hour over the posted speed limit $315.00
- Speeding 35 through 44 miles per hour over the posted speed limit $615.00
- Speeding 45 miles per hour or more over the posted speed limit $1,015.00

A court would have the discretion to vary from the amounts of these presumptive fines. These fines would be in addition to other penalties provided by law.

EFFECTIVE DATE: House Bill 1146 would become effective December 1, 2001, and would apply to offenses committed on or after that date.

H1146-SMSB-001

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1284 A BILL TO BE ENTITLED AN ACT TO ESTABLISH A PRESUMPTION THAT COURT RECORDS FOR CIVIL, ADMINISTRATIVE, AND CRIMINAL CASES ARE OPEN, TO PROVIDE THE PROCEDURE TO OBTAIN AN ORDER TO SEAL A COURT RECORD, TO ESTABLISH A PRESUMPTION THAT THE HEARINGS, PROCEEDINGS, AND TRIALS FOR CIVIL, ADMINISTRATIVE, AND CRIMINAL CASES ARE OPEN, AND TO PROVIDE THE PROCEDURE TO OBTAIN AN ORDER TO CONDUCT A CLOSED HEARING, PROCEEDING, OR TRIAL.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill, which changes the title, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1284
PROPOSED COMMITTEE SUBSTITUTE H1284-PCS1186-SK-24

Short Title: Openness of Court Records and Proceedings. (Public)

Sponsors:

Referred to:

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PRESUMPTION THAT COURT RECORDS FOR CIVIL AND ADMINISTRATIVE CASES ARE OPEN, TO PROVIDE THE PROCEDURE TO OBTAIN AN ORDER TO SEAL A COURT RECORD, TO ESTABLISH A PRESUMPTION THAT THE HEARINGS, PROCEEDINGS, AND TRIALS FOR CIVIL AND ADMINISTRATIVE CASES ARE OPEN, AND TO PROVIDE THE PROCEDURE TO OBTAIN AN ORDER TO CONDUCT A CLOSED HEARING, PROCEEDING, OR TRIAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 5 is amended by adding a new subsection to read:

"(f) No pleadings and no other papers filed with the court under this rule shall be removed from the court files unless specifically provided by statute or court rule."

SECTION 2. Article 2 of Chapter 1A of the General Statutes is amended by adding a new Rule to read:

"**Rule 5.1. Openness of court records.**

(a) Standard. – No court record shall be sealed except as provided in this section or otherwise provided by law. This section does not apply to the court records of juvenile proceedings held under Chapter 7B of the General Statutes. Court records are presumed to be open. The presumption under this section may be rebutted by the party seeking to seal a court record upon a showing of all of the following:

(1) A specific, serious, and substantial interest exists that outweighs any likely adverse effect that sealing the record would have upon the public interest, public health, or public safety.

(2) There is no less restrictive means than sealing the court record to adequately and effectively protect the interest alleged under subdivision (1) of this subsection.

(b) Motion to Seal Court Record. – Upon the written motion of a party, the court may order a court record to be sealed. The moving party shall post a public notice where

notices for meetings of county government are required to be posted in the county where the action was brought. This notice shall contain a statement that shall substantially comply with the following: 'A hearing will be held in open court on a motion to seal one or more court records in (case name). Any person may intervene and be heard concerning the sealing of the court records.' The notice also shall include the time and place of hearing the motion to seal the court records, the type and number of the action, a brief description of both the nature of the case and the court record that the moving party seeks to have sealed, and the name of the moving party. The moving party shall also file a verified copy of the notice under this subsection under Rule 5.

(c) Hearing on Motion. – A hearing shall be held in open court on the motion under subsection (b) of this section as soon as practicable, but not less than three days after the public notice was posted under subsection (b) of this section. Any party may participate in the hearing of the motion. Upon filing a motion to intervene, a nonparty may intervene for the limited purpose of participating in the hearing on the motion to seal a court record. The court may inspect any court record in camera that the court determines necessary to inspect.

(d) Order. – The court's ruling on the motion to seal a court record shall be a written order and shall be open to the public. The order shall state: the type and number of the case; the findings of fact and the conclusions of law to support the order; a reference to the specific court records that are to be sealed and the time period for which the sealed court records are to be sealed. The order under this subsection is severed from the action, shall not be included in any judgment on the rights of the parties or any other order in the action, and shall be a separate order in the action.

(e) Appeal. – Any order under this section may be appealed before the judgment on the rights of the parties is entered and may be appealed by any party or intervener who participated in the hearing on the motion to seal a court record.

(f) Continuing Jurisdiction. – A court that issues an order to seal court records retains continuing jurisdiction to enforce, alter, or vacate that order. An order on the motion to seal a court record shall not be reconsidered on the motion of any party or intervener who had actual notice of the hearing on the motion to seal a court record, unless the party or intervener is able to show changed circumstances that materially affect the order. Such changed circumstances need not be related to the action in which the order was issued.

(g) Definition. – As used in this section, 'court record' means:

(1) Any pleading, order of the court, or any other paper that is filed with the court under Rule 5 except documents that are reviewed by the court in camera and excluded from the trial or hearing.

(2) With the exception of references in a settlement agreement to money damages to be paid for personal injuries, settlement agreements not filed of record that concern actions alleging personal injury, wrongful death, monetary or property damages caused by a defective product, an environmental hazard, or a financial fraud."

SECTION 3. Article 8 of Chapter 1A of the General Statutes is amended by adding a new Rule to read:

"**Rule 85. Openness of court proceedings.**

(a) Standard. – Trials and court hearings are presumed to be open except as otherwise provided by law. This section does not apply to juvenile proceedings held under Chapter 7B of the General Statutes. The presumption under this section may be rebutted by the party seeking to have the trial or hearing conducted as a closed trial or hearing upon a showing of all of the following:

(1) A specific, serious, and substantial interest exists that outweighs any likely adverse effect that conducting a closed trial or hearing would have upon the public interest, public health, or public safety.

(2) There is no less restrictive means than conducting a closed trial or hearing to adequately and effectively protect the interest alleged under subdivision (1) of this subsection.

(b) Motion to Conduct a Closed Trial or Hearing. – Upon the written motion of a party, the court may order a trial or hearing to be conducted as a closed trial or hearing. The moving party shall post a public notice where notices for meetings of county government are required to be posted in the county in which the action was brought. This notice shall contain a statement that shall substantially comply with the following: 'A hearing will be held in open court on a motion to conduct a closed trial or hearing in (case name). Any person may intervene and be heard concerning whether to conduct a closed trial or hearing.' The notice also shall include the time and place of the hearing on the motion to conduct a closed trial or hearing, the type and number of the action, a brief description of both the nature of the case and the trial or hearing that the moving party seeks to have conducted as a closed trial or hearing, and the name of the moving party. The moving party shall also file a verified copy of the notice under this subsection under Rule 5.

(c) Hearing on Motion. – A hearing shall be held in open court on the motion under subsection (b) of this section as soon as practicable, but not less than three days after the public notice was posted under subsection (b) of this section. Any party may participate in the hearing of the motion. Upon filing a motion to intervene, a nonparty may intervene for the limited purpose of participating in the hearing on the motion to conduct a closed trial or hearing.

(d) Order. – The court's ruling on the motion to conduct a closed trial or hearing shall be a written order and shall be open to the public. The order shall state: the type and number of the case; the findings of fact and the conclusions of law to support the order; a reference to the matters to be decided at the trial or hearing that the moving party seeks to have conducted as a closed trial or hearing. The order under this subsection is severed from the action and shall not be included in any judgment on the rights of the parties or any other order in the action, but shall be a separate order in the action.

(e) Appeal. – Any order under this section may be appealed before the judgment on the rights of the parties is entered and may be appealed by any party or intervener who participated in the hearing on the motion to conduct a closed trial or hearing.

(f) Continuing Jurisdiction. – A court that issues an order to conduct a closed trial or hearing retains continuing jurisdiction to enforce, alter, or vacate that order. An order on the motion to conduct a closed trial or hearing shall not be reconsidered on the motion of any party or intervener who had actual notice of the hearing on the motion to conduct a closed trial or hearing, unless the party or intervener is able to show changed circumstances that materially affect the order. Such changed circumstances need not be related to the action in which the order was issued."

SECTION 4. G.S. 150B-25 is amended by adding a new subsection to read:

"(e) The hearing of a case under this section is subject to Rule 85 of the Rules of Civil Procedure."

SECTION 5. G.S. 150B-37 is amended by adding a new subsection to read:

"(d) The official record of a contested case is subject to Rule 5.1 of the Rules of Civil Procedure."

SECTION 6. This act becomes effective October 1, 2001, and applies to all court records subject to this act that are filed on or after that date, applies to all civil actions and contested administrative cases commenced or pending on or after that date, and applies to all motions to alter or vacate a trial or hearing that is conducted as a closed trial or hearing on or after that date.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 442 A BILL TO BE ENTITLED AN ACT TO PROVIDE RECIPROCAL CONCEALED HANDGUN RIGHTS TO CONCEALED HANDGUN PERMIT HOLDERS OF OTHER STATES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 442
PROPOSED COMMITTEE SUBSTITUTE H442-CSSB-25 [v.2]

4/22/2001 4:20:23 PM

Short Title: Concealed Handgun Permit Reciprocity. (Public)

Sponsors:

Referred to:

March 1, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE RECIPROCAL CONCEALED HANDGUN RIGHTS TO CONCEALED HANDGUN PERMIT HOLDERS OF OTHER STATES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 54B of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-415.24. Reciprocity; out-of-state handgun permits.**

(a) A valid concealed handgun permit or license issued by another state is valid in North Carolina if that state both:

(1) Requires appropriate background records checks.

(2) Grants the same right to residents of North Carolina who have valid concealed handgun permits issued pursuant to this Article in their possession while carrying concealed weapons in that state.

(b) The Attorney General shall determine which states meet the requirements of this section, maintain a registry of such states on the North Carolina Criminal Information Network, and make the registry available to law enforcement officers for investigative purposes.

(c) The provisions of G.S. 14-415.11(a) and (c) apply to a nonresident whose concealed handgun permit or license from another state is honored by North Carolina in accordance with the reciprocity provisions of this section."

SECTION 2. G.S. 14-415.24(b), as enacted by this act, is effective when this act becomes law. The Attorney General shall implement G.S. 14-415.24(b), as enacted by Section 1 of this act, within 60 days after this act becomes law. The remainder of this act becomes effective 60 days after this act becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 442

Short Title:	Concealed Handguns/Reciprocity.	(Public)
Sponsors:	Representatives Gibson, Decker; Allred, Arnold, Barbee, Barnhart, Bowie, Brubaker, Cansler, Capps, Clary, Cole, Cox, Creech, Culp, Daughtry, Davis, Decker, Dedmon, Dockham, Eddins, Edwards, Ellis, Esposito, Gillespie, Goodwin, Grady, Gulley, Harrington, Hill, Hilton, Holmes, Johnson, Justus, Kiser, McMahan, Mitchell, Morris, Nye, Pope, Preston, Rayfield, Setzer, Sexton, Sherrill, Shubert, Smith, Starnes, Teague, Thompson, Tucker, Walend, Walker, Warner, Warwick, C. Wilson, and G. Wilson.	
Referred to:	Judiciary II.	

March 1, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE RECIPROCAL CONCEALED HANDGUN RIGHTS TO CONCEALED HANDGUN PERMIT HOLDERS OF OTHER STATES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 54B of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-415.24. Reciprocity; out-of-state handgun permits.**

(a) A valid concealed handgun permit or license issued by another state is valid in North Carolina if:

(1) That state requires the appropriate background records checks; and

(2) A state meeting the requirements of this section grants the same right to residents of North Carolina who have valid concealed handgun permits in their possession while carrying concealed weapons in that state.

(b) The Attorney General shall determine which states meet the requirements of this section, maintain a registry of such states on the North Carolina Criminal Information Network, and make the registry available to law enforcement officers for investigative purposes.

(c) The provisions of G.S. 14-415.11(a) and (c) apply to a nonresident whose concealed handgun permit or license from another state is honored by North Carolina in accordance with the reciprocity provisions of this section."

SECTION 2. G.S. 14-415.24(b), as enacted by this act, is effective when this act becomes law. The Attorney General shall implement G.S. 14-415.24(b), as enacted by Section 1 of this act, within 60 days after this act becomes law. The remainder of this act becomes effective 60 days after this act becomes law.

GRASS ROOTS NORTH CAROLINA / FORUM FOR FIREARMS EDUCATION
P.O. BOX 10684, RALEIGH, NC 27605 (919) 664-8565, www.grnc.org

Talking Points:
HB 442: "Concealed Handguns/Reciprocity"

- A large number of North Carolinians who live here but work in Virginia, South Carolina and elsewhere need to be able to protect themselves with the concealed handgun permits they have earned.

- At present, they are unable to protect themselves in other states because most states (e.g. Virginia and South Carolina) require reciprocal arrangements, and North Carolina has no reciprocity provision in its concealed handgun statute.

- A concealed handgun reciprocity bill similar to HB 442 (HB 1065) passed overwhelmingly through the North Carolina House in the 1999-2000 session of the General Assembly. Similarly, 57 members of the North Carolina House have signed on as sponsors of HB 442.

- North Carolina's concealed handgun law works. **Only .4% of concealed handgun permits have been revoked for any reason**, and the vast majority of these were for offenses unrelated to firearms. A study of our law by Freedom Newspapers revealed only one case in which a permit-holder was arrested for gun-related crime. Even North Carolinians Against Gun Violence has repeatedly stated that their fears about the law have not been realized.

- This bill is non-controversial: it changes nothing in North Carolina law except to provide the same right-to-carry to residents of other states who have gone through similar background checks and training to obtain their concealed handgun permit.

- Thirty-two states have concealed handgun laws. In none of those states have traffic light shootings and crimes by concealed handgun permit-holders been a problem - despite doomsday predictions by gun control organizations.

- A controlled, multi-variate study of all 3,054 counties in the United States by John Lott of Yale University reveals that **concealed handgun laws deter rape, murder, and aggravated assault.** Indeed, states which have adopted such laws experience drops of 8.5% in homicide, 5% in rape, and 7% in aggravated assault.

Grass Roots North Carolina strongly urges you to support HB 442: "Concealed Handguns/Reciprocity."

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1340 A BILL TO BE ENTITLED AN ACT TO PROVIDE EXPEDITED POST-TOWING PROCEDURES WHEN VEHICLES ARE REMOVED FROM PRIVATE PROPERTY.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill, which changes the title, unfavorable as to original bill, and recommendation that the committee substitute bill be re-referred to the Committee on Rules, Calendar, and Operations of the House.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1340
PROPOSED COMMITTEE SUBSTITUTE H1340-CSLK-14 [v.1]

4/20/2001 12:41:03 PM

Short Title: LRC to Study Post Towing Procedures. (Public)

Sponsors:

Referred to:

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY EXPEDITED POST TOWING PROCEDURES WHEN VEHICLES ARE REMOVED FROM PRIVATE PROPERTY AND PROCEDURES FOR THE QUICK DISPOSAL OF VEHICLES ABANDONED ON NORTH CAROLINA HIGHWAYS.

The General Assembly of North Carolina enacts:

SECTION 1. The Legislative Research Commission may study how to provide expedited post towing procedures when vehicles are removed from private property at the request of the owner or lessee of the property, and especially when those vehicles are derelict or of little or no value, and may study providing an expedited procedure for the quick disposal of vehicles abandoned on North Carolina highways.

SECTION 2. The Legislative Research Commission may make an interim report to the 2002 Regular Session of the General Assembly and shall make a final report to the 2003 Regular Session of the General Assembly.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 1340

Short Title:	Post Towing Procedures.	(Public)
Sponsors:	Representative Mitchell.	
Referred to:	Judiciary II.	

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE EXPEDITED POST TOWING PROCEDURES WHEN VEHICLES ARE REMOVED FROM PRIVATE PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-219.4. Removal of unauthorized vehicles from private property.**

(a) No motor vehicle shall be left for more than 48 hours upon the premises of any private property without the consent of the owner or lessee of the private property.

(b) If the vehicle has a current North Carolina registration plate or registration, the registered owner of any motor vehicle left unattended upon the premises of a private property in violation of subsection (a) of this section shall be given notice within 24 hours by the owner or lessee of the private property or the person towing the vehicle from the private property upon the written request of the owner or lessee. If the vehicle does not have a current North Carolina registration plate or registration, notice shall be sent to the last known address of the owner of the vehicle in the records of the Division. If the vehicle is not registered in this State, but has a current registration from another State, the vehicle registration officials of that state shall be contacted and notice shall be given within 72 hours. Notice shall be given by telephone whenever feasible. The notice given shall be by certified mail return receipt requested addressed to the registered owner of the motor vehicle.

(c) The owner of the property or the tower may take the actions set forth in subsection (d) of this section upon the expiration of three days from any of the following:

(1) Receiving the return of the receipt showing that the addressee received the notice and no further action was taken by the addressee.

(2) Refusal of the addressee to accept the mailed notice.

(3) Receiving the return receipt showing that the current address on file with the Division or the vehicle registration agency of another state is a false address.

(d) After receiving any of the information set forth in subsection (c) of this section, the vehicle may be removed from the private property, or if the vehicle has already been towed to a place of storage, the registered owner of the vehicle shall become liable for the reasonable removal and storage charges and the vehicle subject to the storage lien created by G.S. 44A-1, et seq. In the alternative, the property owner or lessee or the tower may charge for storage, assert a lien, and dispose of the vehicle by public or private sale."

SECTION 2. This act becomes effective October 1, 2001.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 716 A BILL TO BE ENTITLED AN ACT TO MAKE VARIOUS CHANGES IN THE LAW OF FIDUCIARIES AND DECEDENTS' ESTATES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill unfavorable as to original bill

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 716
PROPOSED COMMITTEE SUBSTITUTE H716-CSSB-23 [v.3]

4/22/2001 2:02:06 PM

Short Title: Estate Law Changes. (Public)

Sponsors:

Referred to:

March 21, 2001

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES IN THE LAW OF FIDUCIARIES AND DECEDENTS' ESTATES.

The General Assembly of North Carolina enacts:

PART I. CLARIFY AUTHORITY OF PERSONAL REPRESENTATIVE TO TAKE POSSESSION OF AND SELL REAL PROPERTY OWNED BY DECEDENT

SECTION 1. G.S. 28A-13-3(a)(1) reads as rewritten:

"(1) To take possession, custody or control of the personal property of the decedent. If in the opinion of the personal representative his possession, custody or control of such property is not necessary for purposes of administration, such property may be left with or surrendered to the heir or devisee presumptively entitled thereto. He has the power to take possession, custody or control of the real property of the decedent if he determines such possession, custody or control is in the best interest of the administration of the estate. Prior to exercising such power over real property the procedure as set out in ~~subsection~~ G.S. 28A-13-3(c) shall be ~~followed.~~ followed unless the will of the decedent authorizes the personal representative to exercise the power without a court order. If the personal representative determines that such possession, custody or control is not in the best interest of the administration of the estate such property may be left with or surrendered to the heir or devisee presumptively entitled thereto."

SECTION 1.1. G.S. 28A-13-3(c), which is also amended by Section 2 of this act, reads as rewritten:

"(c) ~~Prior~~ Unless the will of the decedent authorizes the personal representative to take possession, custody, and control over real property of the decedent without a court order, prior to the personal representative exercising possession, custody or control over real property of the estate he shall petition the clerk of court to obtain an order authorizing such possession, custody or control. The petition shall include:

(1) A description of the real property ~~which~~ that is the subject of the petition;

(2) The names, ages, and addresses, if known, of the devisees and heirs of the decedent;

(3) A statement by the personal representative that he has determined that such possession, custody or control is in the best interest of the administration of the estate.

The devisees and heirs will be made parties to the proceeding by service of summons in the manner prescribed by law. If the clerk of court determines that it is in the best interest of the administration of the estate to authorize the personal representative to take possession, custody or control he shall grant an order authorizing that power."

SECTION 1.2. G.S. 28A-15-2 reads as rewritten:

"**§ 28A-15-2. Title and possession of property.**

(a) Personal Property. – Subsequent to the death of the decedent and prior to the appointment and qualification of the personal representative or collector, the title and the right of possession of personal property of the decedent is vested in his heirs; but upon the appointment and qualification of the personal representative or collector, the heirs shall be divested of such title and right of possession which shall be vested in the personal representative or collector relating back to the time of the decedent's death for purposes of administering the estate of the decedent. But, if in the opinion of the personal representative, his possession, custody and control of any item of personal property is not necessary for purposes of administration, such possession, custody and control may be left with or surrendered to the heir or devisee presumptively entitled thereto.

(b) Real Property. – The title to and right of possession of real property of a decedent is vested in his heirs as of the time of his ~~death;~~ death. ~~but~~ Except as provided in subsection (c) of this section, when title to real property is not devised to the personal representative, the title to and right of possession of real property of a decedent devised under a valid probated will becomes vested in the devisees and shall relate back to the decedent's death, subject to the provisions of G.S. 31-39.

(c) Notwithstanding subsection (b) of this section, the devisees shall be divested of title upon a sale of real property without a court order made pursuant to authority granted by the will as provided in G.S. 28A-17-8.1 and the personal representative may, without the joinder or consent of the devisees, execute a deed in favor of a purchaser for value who shall take title free of any rights of the devisees. The personal representative may take possession, custody, and control of real property without a court order

pursuant to authority granted by the will. Prior to taking possession, custody, and control of any real property and prior to conduction a sale under this subsection, the personal representative shall file with the clerk of superior court in the county where the estate administration is pending and with the clerk of any other county where any portion of the real property is located a notice of intent to take such action. The notice of intent shall describe the real property, state the basis and purpose for taking possession, custody, and control and conducting a sale, and shall list the names and addresses of the decedent, the devisees, and the personal representative. The notice of intent shall be served on all devisees of the real property in any manner prescribed in Rule 4 of the Rules of Civil Procedure. The personal representative shall be deemed to have taken possession, custody, and control of the real property on the date set for the in the notice of intent or the date of filing of the notice of intent, whichever occurs later. Proceeds of any sale conducted pursuant to this section shall be distributed in accordance with G.S. 28A-22-1. Upon receiving the affidavit or certification of the personal representative that the notice requirements set out in this subsection have been met, any third party dealing with the personal representative shall be entitled to act in all respects as though title is vested in the personal representative."

SECTION 1.3. G.S. 28A-17-8 is repealed.

SECTION 1.4. Article 17 of Chapter 28A of the General Statutes is amended by adding a new section to read:

"**§ 28A-17-8.1. Sale or other disposition pursuant to authority in will.**

(a) Subject to the provisions of subsection (d) of this section, a personal representative has the power to sell, lease, mortgage, exchange, partition, grant options with respect to, or otherwise dispose of the real property of a decedent without a court order if authorized to do so by the will of the decedent, regardless of whether title to the real property was devised to the personal representative.

(b) A personal representative who sells, leases, or mortgages real property of a decedent without a court order pursuant to authority granted by the will is not required to institute a proceeding under this Article or to follow any of the procedures set forth in Article 29A of Chapter 1 of the General Statutes, entitled "Judicial Sales", but shall include in the next account, whether annual or final, a record of any receipts and disbursements incident to any such transaction.

(c) A general provision in the will of a decedent granting authority to the personal representative to sell the decedent's real property without a court order, or the incorporation by reference of the provisions of G.S. 32-27(2) in the will, is sufficient to authorize the personal representative to sell that real property without a court order for any reason that the personal representative deems to be for the best interest of the estate, including the payment of debts and other claims against the decedent's estate, the payment of specific cash bequests to devisees, or the distribution of cash to residuary devisees.

(d) Notwithstanding the provisions of subsection (c) of this section, a general provision in the will of a decedent granting authority to the personal representative to

sell the decedent's property without a court order, or the incorporation by reference of the provisions of G.S. 32-27(2) in the will, shall not be deemed to authorize the personal representative to sell specifically devised property without the joinder or consent of the devisee of that real property.

(e) A personal representative authorized by the will of a decedent to sell or lease real property without a court order may request the clerk of superior court to issue an order to sell or lease real property of the decedent. Upon such a request the procedure for the sale shall be as provided in Article 29A of Chapter 1 of the General Statutes, entitled "Judicial Sales.""

SECTION 1.5. G.S. 28A-17-10 reads as rewritten:

"§ 28A-17-10. Title in personal representative for estate; he or successor to convey.

When real property is conveyed to a personal representative for the benefit of the estate he represents, he or any successor personal representative may sell and convey it upon such terms as he may deem just and for the advantage of the estate. ~~The~~ Unless the will of the decedent authorizes the personal representative to sell the real property without a court order, the procedure shall be as is provided in Article 29A of Chapter 1 of the General Statutes, entitled "Judicial Sales." If it is made to appear to the clerk of superior court by petition and by satisfactory proof that it will be for the best interest of the estate to sell by private sale, the clerk may authorize a private sale in accordance with the provisions of G.S. 1-339.33 through 1-339.40."

SECTION 1.6. G.S. 28A-22-1 reads as rewritten:

"§ 28A-22-1. Scheme of distribution; testate and intestate estates.

After the payment of costs of administration, taxes and other valid claims against the decedent's estate, the personal representative shall distribute the remaining assets of the estate in accordance with the terms of decedent's valid probated will or the provisions of Chapter 29 of the General Statutes or as otherwise lawfully authorized. Assets remaining from the sale of real property without court order as authorized by G.S. 28A-17-8.1 shall be distributed to the devisees of the real property."

SECTION 1.7. G.S. 32-27(8) reads as rewritten:

"(8) Manage Real Property. –

a. To take possession, custody, and control, improve, manage, protect, and subdivide any real property;

b. To dedicate or withdraw from dedication parks, streets, highways, or alleys;

c. To terminate any subdivision or part thereof;

d. To borrow money for the purposes authorized by this subdivision for such periods of time and upon such terms and conditions as to rates, maturities and renewals as the fiduciary shall deem advisable and to mortgage or otherwise encumber any such property or part thereof, whether in possession or reversion;

e. To lease any such property or part thereof to commence at the present or in the future, upon such terms and conditions, including options to renew or purchase, and for such period or periods of time as the fiduciary deems advisable although such period or periods may extend beyond the duration of the trust or the administration of the estate involved;

f. To make gravel, sand, oil, gas and other mineral leases, contracts, licenses, conveyances or grants of every nature and kind which are lawful in the jurisdiction in which such property lies;

g. To manage and improve timber and forests on such property, to sell the timber and forest products, and to make grants, leases, and contracts with respect thereto;

h. To modify, renew or extend leases;

i. To employ agents to rent and collect rents;

j. To create easements and release, convey, or assign any right, title, or interest with respect to any easement on such property or part thereof;

k. To erect, repair or renovate any building or other improvement on such property, and to remove or demolish any building or other improvement in whole or in part; and

l. To deal with any such property and every part thereof in all other ways and for such other purposes or considerations as it would be lawful for any person owning the same to deal with such property either in the same or in different ways from those specified elsewhere in this subdivision (8)."

PART II. AUTHORIZE COMBINATION OF HEARINGS FOR CONTROL OF REAL PROPERTY BY PERSONAL REPRESENTATIVE

SECTION 2. G.S. 28A-13-3(c) reads as rewritten:

"(c) Prior to the personal representative exercising possession, custody or control over real property of the estate he shall petition the clerk of court to obtain an order authorizing such possession, custody or control. The petition shall include:

(1) A description of the real property ~~which~~ that is the subject of the petition;

(2) The names, ages, and addresses, if known, of the devisees and heirs of the decedent;

(3) A statement by the personal representative that he has determined that such possession, custody or control is in the best interest of the administration of the estate.

The devisees and heirs will be made parties to the proceeding by service of summons in the manner prescribed by law. If the clerk of court determines that it is in the best interest of the administration of the estate to authorize the personal representative to take possession, custody or control he shall grant an order authorizing that power. If a special proceeding has been instituted by the personal representative pursuant to G.S. 28A-15-1(c), the personal representative may petition for possession, custody, or control of any real property as a part of that proceeding and is not required to institute a separate special proceeding."

SECTION 2.1. G.S. 28A-15-1(c), which is also amended by Section 1.1 of this act, reads as rewritten:

"(c) If it shall be determined by the personal representative that it is in the best interest of the administration of the estate to sell, lease, or mortgage any real estate or interest therein to obtain money for the payment of debts and other claims against the decedent's estate, the personal representative shall institute a special proceeding before the clerk of superior court for such purpose pursuant to Article 17 of this Chapter, except that no such proceeding shall be required for a sale made pursuant to authority given by will. A general provision granting authority to the personal representative to sell the testator's real property, or incorporation by reference of the provisions of G.S. 32-27(2) shall be sufficient to eliminate the necessity for a proceeding under Article 17. If a special proceeding has been instituted by the personal representative pursuant to G.S. 28A-13-3(c), the personal representative may petition for sale of any real property as a part of that proceeding and is not required to institute a separate special proceeding."

PART III. PROVIDE FOR DISTRIBUTION OF ASSETS OF INOPERATIVE TRUSTS

SECTION 3. Article 22 of Chapter 28A of the General Statutes is amended by adding a new section to read:

"**§ 28A-22-10. Distribution of assets of inoperative trust.**

When the facts at the time of distribution of property to a trust are such that the trust would be inoperative under the terms of the instrument creating the trust for any reason, including the death of a beneficiary, renunciation by a beneficiary, the exercise of a right to withdraw the property by a beneficiary, or the attainment of a stipulated age by a beneficiary, the personal representative or the trustee authorized or required to make the distribution of that property to the trust may distribute the property directly to the person or persons entitled to it under the terms of the instrument creating the trust without the interposition of the establishment of the trust. If only a portion of the trust would be inoperative, the property distributable to that portion of the trust may be distributed directly to the person or persons entitled to the property under the terms of the instrument creating the trust."

SECTION 3.1. Article 13 of Chapter 36A is amended by adding a new section to read:

"**§ 36A-141. Distribution of assets of inoperative trust.**

A trustee may distribute the assets of an inoperative trust consistent with the authority granted under the provisions of G.S. 28A-22-10."

PART IV. PROVIDE THAT A FIDUCIARY EXPRESSLY EXCLUDED FROM INVESTMENT DECISIONS IS NOT LIABLE FOR DECISIONS MADE BY THOSE AUTHORIZED TO MAKE INVESTMENT DECISIONS

SECTION 4. G.S. 36A-3 is amended by adding a new subsection to read:

"(d) Whenever an instrument reserves to the settlor or vests in any person, including an advisory or investment committee or one or more co-fiduciaries, the authority to direct the making or retention of any investment to the exclusion of the fiduciary or to the exclusion of one or more of several co-fiduciaries, the excluded fiduciary or co-fiduciary who has no discretion in selecting the person authorized to make or retain investments is not liable to the beneficiaries or to the trust for the decisions or actions of the settlor or other person authorized to direct the making or retention of investments. As used in this subsection, the term 'person' includes an individual, a corporation, or any legal or commercial entity authorized to hold property or do business in the State of North Carolina."

PART V. TECHNICAL CORRECTIONS TO REFERENCES TO THE INTERNAL REVENUE CODE

SECTION 5. G.S. 32-34(a) reads as rewritten:

"(a) For purposes of this section:

(1) "General power of appointment" means any power that would cause income to be taxed to the fiduciary in his individual capacity under section 678 of the Internal Revenue Code and any power that would be a general power of appointment, in whole or in part, under section 2041(b)(1) or 2514(c) of the Internal Revenue Code.

(2) "Internal Revenue Code" means the "Code" as defined in ~~G.S. 105-2.1.~~ G.S. 105-228.90.

(3) The term "fiduciary" has the meaning set forth in G.S. 32-25."

SECTION 5.1. G.S. 32A-2(14) reads as rewritten:

"(14) Gifts to Charities, and to Individuals Other Than the Attorney-In-Fact.

a. Except as provided in G.S. 32A-2(14)b., to make gifts of any of the principal's property to any individual other than the attorney-in-fact or to any organization described in sections 170(c) and 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both, in

accordance with the principal's personal history of making or joining in the making of lifetime gifts. As used in this subdivision "Internal Revenue Code" means the "Code" as defined in ~~G.S. 105-2.1.~~ G.S. 105-228.90.

b. Except as provided in G.S. 32A-2(14)c., or unless gifts are expressly authorized by the power of attorney under G.S. 32A-2(15), a power described in G.S. 32A-2(14)a. may not be exercised by the attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or creditors of the estate of the attorney-in-fact.

c. If the power described in G.S. 32A-2(14)a. is conferred upon two or more attorneys-in-fact, it may be exercised by the attorney-in-fact or attorneys-in-fact who are not disqualified by G.S. 32A-2(14)b. from exercising the power of appointment as if they were the only attorney-in-fact or attorneys-in-fact.

d. An attorney-in-fact expressly authorized by this section to make gifts of the principal's property may elect to request the clerk of the superior court to issue an order to make a gift of the property of the principal."

SECTION 5.2. G.S. 32A-14.1(a) reads as rewritten:

"(a) Except as provided in subsection (b) of this section, if any power of attorney authorizes an attorney-in-fact to do, execute, or perform any act that the principal might or could do or evidences the principal's intent to give the attorney-in-fact full power to handle the principal's affairs or deal with the principal's property, the attorney-in-fact shall have the power and authority to make gifts in any amount of any of the principal's property to any individual or to any organization described in sections 170(c) and 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both, in accordance with the principal's personal history of making or joining in the making of lifetime gifts. As used in this subsection, "Internal Revenue Code" means the "Code" as defined in ~~G.S. 105-2.1.~~ G.S. 105-228.90."

PART VI. EFFECTIVE DATES

SECTION 6. Parts I through IV of this act are effective when they become law and apply to actions by personal representatives on or after that date. The remainder of this act is effective when it becomes law.

H 1

HOUSE BILL 716

Short Title:	Estate Law Changes.	(Public)
Sponsors:	Representative Haire.	
Referred to:	Judiciary II.	

March 21, 2001

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES IN THE LAW OF FIDUCIARIES AND DECEDENTS' ESTATES.

The General Assembly of North Carolina enacts:

PART I. CLARIFY AUTHORITY OF PERSONAL REPRESENTATIVE TO TAKE POSSESSION OF AND SELL REAL PROPERTY OWNED BY DECEDENT

SECTION 1. G.S. 28A-13-3(a)(1) reads as rewritten:

"(1) To take possession, custody or control of the personal property of the decedent. If in the opinion of the personal representative his possession, custody or control of such property is not necessary for purposes of administration, such property may be left with or surrendered to the heir or devisee presumptively entitled thereto. He has the power to take possession, custody or control of the real property of the decedent if he determines such possession, custody or control is in the best interest of the administration of the estate. Prior to exercising such power over real property the procedure as set out in ~~subsection~~ G.S. 28A-13-3(c) shall be ~~followed.~~ followed unless the will of the decedent authorizes the personal representative to exercise the power without a court order. If the personal representative determines that such possession, custody or control is not in the best interest of the administration of the estate such property may be left with or surrendered to the heir or devisee presumptively entitled thereto."

SECTION 1.1. G.S. 28A-13-3(c) reads as rewritten:

"(c) ~~Prior~~ Unless the will of the decedent authorizes the personal representative to take possession, custody, and control over real property of the decedent without a court order, prior to the personal representative exercising possession, custody or control over real property of the estate he shall petition the clerk of court to obtain an order authorizing such possession, custody or control. The petition shall include:

(1) A description of the real property ~~which~~ that is the subject of the petition;

(2) The names, ages, and addresses, if known, of the devisees and heirs of the decedent;

(3) A statement by the personal representative that he has determined that such possession, custody or control is in the best interest of the administration of the estate.

The devisees and heirs will be made parties to the proceeding by service of summons in the manner prescribed by law. If the clerk of court determines that it is in the best interest of the administration of the estate to authorize the personal representative to take possession, custody or control he shall grant an order authorizing that power."

SECTION 1.2. G.S. 28A-15-2(b) reads as rewritten:

"(b) Real Property. – The title to and right of possession of real property of a decedent is vested in his heirs as of the time of his death; but when title to real property is not devised to the personal representative, the title to and right of possession of real property of a decedent devised under a valid probated will becomes vested in the devisees and shall relate back to the decedent's death, subject to the provisions of G.S. 31-39. However, notwithstanding the foregoing provision of this subsection:

(1) The devisees shall be divested of title upon a sale of real property without a court order made pursuant to authority granted by that will as provided in G.S. 28A-17-8, and the personal representative may, without the joinder or consent of the devisees, execute a deed in favor of a purchaser for value who shall take title free of any rights of the devisees.

(2) The personal representative may take possession, custody, and control of real property without a court order pursuant to authority granted by that will."

SECTION 1.3. G.S. 28A-17-8 is repealed.

SECTION 1.4. Article 17 of Chapter 28A of the General Statutes is amended by adding a new section to read:

"**§ 28A-17-8.1. Sale or other disposition pursuant to authority in will.**

(a) Subject to the provisions of subsection (d) of this section, a personal representative has the power to sell, lease, mortgage, exchange, partition, grant options with respect to, or otherwise dispose of the real property of a decedent without a court order if authorized to do so by the will of the decedent, regardless of whether title to the real property was devised to the personal representative.

(b) A personal representative who sells, leases, or mortgages real property of a decedent without a court order pursuant to authority granted by the will is not required

to institute a proceeding under this Article or to follow any of the procedures set forth in Article 29A of Chapter 1 of the General Statutes, entitled "Judicial Sales", but shall include in the next account, whether annual or final, a record of any receipts and disbursements incident to any such transaction.

(c) A general provision in the will of a decedent granting authority to the personal representative to sell the decedent's real property without a court order, or the incorporation by reference of the provisions of G.S. 332-27(2) in the will, is sufficient to authorize the personal representative to sell that real property without a court order for any reason that the personal representative deems to be for the best interest of the estate, including the payment of debts and other claims against the decedent's estate, the payment of specific cash bequests to devisees, or the distribution of cash to residuary devisees.

(d) Notwithstanding the provisions of subsection (c) of this section, a general provision in the will of a decedent granting authority to the personal representative to sell the decedent's property without a court order, or the incorporation by reference of the provisions of G.S. 32-27(2) in the will, shall not be deemed to authorize the personal representative to sell specifically devised property without the joinder or consent of the devisee of that real property.

(e) A personal representative authorized by the will of a decedent to sell or lease real property without a court order may request the clerk of superior court to issue an order to sell or lease real property of the decedent. Upon such a request the procedure for the sale shall be as provided in Article 29A of Chapter 1 of the General Statutes, entitled "Judicial Sales.""

SECTION 1.5. G.S. 28A-17-10 reads as rewritten:

"**§ 28A-17-10. Title in personal representative for estate; he or successor to convey.**

When real property is conveyed to a personal representative for the benefit of the estate he represents, he or any successor personal representative may sell and convey it upon such terms as he may deem just and for the advantage of the estate. ~~The~~ Unless the will of the decedent authorizes the personal representative to sell the real property without a court order, the procedure shall be as is provided in Article 29A of Chapter 1 of the General Statutes, entitled "Judicial Sales." If it is made to appear to the clerk of superior court by petition and by satisfactory proof that it will be for the best interest of the estate to sell by private sale, the clerk may authorize a private sale in accordance with the provisions of G.S. 1-339.33 through 1-339.40."

SECTION 1.6. G.S. 32-27(8) reads as rewritten:

"(8) Manage Real Property. –

a. To take possession, custody, and control, improve, manage, protect, and subdivide any real property;

b. To dedicate or withdraw from dedication parks, streets, highways, or alleys;

c. To terminate any subdivision or part thereof;

d. To borrow money for the purposes authorized by this subdivision for such periods of time and upon such terms and conditions as to rates, maturities and renewals as the fiduciary

shall deem advisable and to mortgage or otherwise encumber any such property or part thereof, whether in possession or reversion;

e. To lease any such property or part thereof to commence at the present or in the future, upon such terms and conditions, including options to renew or purchase, and for such period or periods of time as the fiduciary deems advisable although such period or periods may extend beyond the duration of the trust or the administration of the estate involved;

f. To make gravel, sand, oil, gas and other mineral leases, contracts, licenses, conveyances or grants of every nature and kind which are lawful in the jurisdiction in which such property lies;

g. To manage and improve timber and forests on such property, to sell the timber and forest products, and to make grants, leases, and contracts with respect thereto;

h. To modify, renew or extend leases;

i. To employ agents to rent and collect rents;

j. To create easements and release, convey, or assign any right, title, or interest with respect to any easement on such property or part thereof;

k. To erect, repair or renovate any building or other improvement on such property, and to remove or demolish any building or other improvement in whole or in part; and

l. To deal with any such property and every part thereof in all other ways and for such other purposes or considerations as it would be lawful for any person owning the same to deal with such property either in the same or in different ways from those specified elsewhere in this subdivision (8)."

PART II. AUTHORIZE COMBINATION OF HEARINGS FOR CONTROL OF REAL PROPERTY BY PERSONAL REPRESENTATIVE

SECTION 2. G.S. 28A-13-3(c) reads as rewritten:

"(c) Prior to the personal representative exercising possession, custody or control over real property of the estate he shall petition the clerk of court to obtain an order authorizing such possession, custody or control. The petition shall include:

(1) A description of the real property ~~which~~ that is the subject of the petition;

(2) The names, ages, and addresses, if known, of the devisees and heirs of the decedent;

(3) A statement by the personal representative that he has determined that such possession, custody or control is in the best interest of the administration of the estate.

The devisees and heirs will be made parties to the proceeding by service of summons in the manner prescribed by law. If the clerk of court determines that it is in the best interest of the administration of the estate to authorize the personal representative to take possession, custody or control he shall grant an order authorizing that power. If a special proceeding has been instituted by the personal representative pursuant to G.S. 28A-15-1(c), the personal representative may petition for possession, custody, or control of any real property as a part of that proceeding and is not required to institute a separate special proceeding."

SECTION 2.1. G.S. 28A-15-1(c) reads as rewritten:

"(c) If it shall be determined by the personal representative that it is in the best interest of the administration of the estate to sell, lease, or mortgage any real estate or interest therein to obtain money for the payment of debts and other claims against the decedent's estate, the personal representative shall institute a special proceeding before the clerk of superior court for such purpose pursuant to Article 17 of this Chapter, except that no such proceeding shall be required for a sale made pursuant to authority given by will. A general provision granting authority to the personal representative to sell the testator's real property, or incorporation by reference of the provisions of G.S. 32-27(2) shall be sufficient to eliminate the necessity for a proceeding under Article 17. If a special proceeding has been instituted by the personal representative pursuant to G.S. 28A-15-1(c), the personal representative may petition for possession, custody, or control of any real property as a part of that proceeding and is not required to institute a separate special proceeding."

PART III. PROVIDE FOR DISTRIBUTION OF ASSETS OF INOPERATIVE TRUSTS

SECTION 3. Article 22 of Chapter 28A of the General Statutes is amended by adding a new section to read:

"**§ 28A-22-10. Distribution of assets of inoperative trust.**

When the facts at the time of distribution of property to a trust are such that the trust would be inoperative under the terms of the instrument creating the trust for any reason, including the death of a beneficiary, renunciation by a beneficiary, the exercise of a right to withdraw the property by a beneficiary, or the attainment of a stipulated age by a beneficiary, the personal representative or the trustee authorized or required to make the distribution of that property to the trust may distribute the property directly to the person or persons entitled to it under the terms of the instrument creating the trust without the interposition of the establishment of the trust. If only a portion of the trust would be inoperative, the property distributable to that portion of the trust may be distributed directly to the person or persons entitled to the property under the terms of the instrument creating the trust."

SECTION 3.1. Article 13 of Chapter 36A is amended by adding a new section to read:

"**§ 36A-141. Distribution of assets of inoperative trust.**

A trustee may distribute the assets of an inoperative trust consistent with the authority granted under the provisions of G.S. 28A-22-10."

PART IV. PROVIDE THAT A FIDUCIARY EXPRESSLY EXCLUDED FROM INVESTMENT DECISIONS IS NOT LIABLE FOR DECISIONS MADE BY THOSE AUTHORIZED TO MAKE INVESTMENT DECISIONS

SECTION 4. G.S. 36A-3 is amended by adding a new subsection to read:

"(d) Whenever an instrument reserves to the settlor or vests in any person, including an advisory or investment committee or one or more co-fiduciaries, the authority to direct the making or retention of any investment to the exclusion of the fiduciary or to the exclusion of one or more of several co-fiduciaries, the excluded fiduciary or co-fiduciary who has no discretion in selecting the person authorized to make or retain investments is not liable to the beneficiaries or to the trust for the decisions or actions of the settlor or other person authorized to direct the making or retention of investments. As used in this subsection, the term 'person' includes an individual, a corporation, or any legal or commercial entity authorized to hold property or do business in the State of North Carolina."

PART V. TECHNICAL CORRECTIONS TO REFERENCES TO THE INTERNAL REVENUE CODE

SECTION 5. G.S. 32-34(a) reads as rewritten:

"(a) For purposes of this section:

(1) "General power of appointment" means any power that would cause income to be taxed to the fiduciary in his individual capacity under section 678 of the Internal Revenue Code and any power that would be a general power of appointment, in whole or in part, under section 2041(b)(1) or 2514(c) of the Internal Revenue Code.

(2) "Internal Revenue Code" means the "Code" as defined in ~~G.S. 105-2.1.~~ G.S. 105-228.90.

(3) The term "fiduciary" has the meaning set forth in G.S. 32-25."

SECTION 5.1. G.S. 32A-2(14) reads as rewritten:

"(14) Gifts to Charities, and to Individuals Other Than the Attorney-In-Fact.

a. Except as provided in G.S. 32A-2(14)b., to make gifts of any of the principal's property to any individual other than the attorney-in-fact or to any organization described in sections 170(c) and 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both, in accordance with the principal's personal history of making or joining in the making of lifetime gifts. As used in this subdivision "Internal Revenue Code" means the "Code" as defined in ~~G.S. 105-2.1.~~ G.S. 105-228.90.

b. Except as provided in G.S. 32A-2(14)c., or unless gifts are expressly authorized by the power of attorney under G.S. 32A-2(15), a power described in G.S. 32A-2(14)a. may not be exercised by the attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or creditors of the estate of the attorney-in-fact.

c. If the power described in G.S. 32A-2(14)a. is conferred upon two or more attorneys-in-fact, it may be exercised by the attorney-in-fact or attorneys-in-fact who are not disqualified by G.S. 32A-2(14)b. from exercising the power of appointment as if they were the only attorney-in-fact or attorneys-in-fact.

d. An attorney-in-fact expressly authorized by this section to make gifts of the principal's property may elect to request the clerk of the superior court to issue an order to make a gift of the property of the principal."

SECTION 5.2. G.S. 32A-14.1(a) reads as rewritten:

"(a) Except as provided in subsection (b) of this section, if any power of attorney authorizes an attorney-in-fact to do, execute, or perform any act that the principal might or could do or evidences the principal's intent to give the attorney-in-fact full power to handle the principal's affairs or deal with the principal's property, the attorney-in-fact shall have the power and authority to make gifts in any amount of any of the principal's property to any individual or to any organization described in sections 170(c) and 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both, in accordance with the principal's personal history of making or joining in the making of lifetime gifts. As used in this subsection, "Internal Revenue Code" means the "Code" as defined in ~~G.S. 105-2.1.~~ G.S. 105-228.90."

PART VI. EFFECTIVE DATES

SECTION 6. Parts I through IV of this act are effective when they become law and apply to actions by personal representatives on or after that date. The remainder of this act is effective when it becomes law.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1245 A BILL TO BE ENTITLED AN ACT TO REQUIRE THAT MALE RESIDENTS AGE 18 THROUGH 25 COMPLY WITH THE SELECTIVE SERVICE SYSTEM'S REGISTRATION REQUIREMENTS BEFORE A LICENSE OR IDENTIFICATION CARD MAY BE ISSUED BY THE DIVISION OF MOTOR VEHICLES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill, which changes the title, unfavorable as to original bill, and recommendation that the committee substitute bill be re-referred to the Committee on Appropriations.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1245
PROPOSED COMMITTEE SUBSTITUTE H1245-CSSB-26 [v.2]

4/23/2001 11:53:07 AM

Short Title: NCDL/Selective Service Registration. (Public)

Sponsors:

Referred to:

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT MALE RESIDENTS AGE 18 THROUGH 25 COMPLY WITH THE SELECTIVE SERVICE SYSTEM'S REGISTRATION REQUIREMENTS WHEN APPLYING FOR A DRIVERS LICENSE OR IDENTIFICATION CARD.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2 of Chapter 20 is amended by adding a new section to read:

"**§ 20-9.2. Selective service system registration requirements.**

(a) Any male United States citizen or immigrant who is at least 18 years of age but less than 26 years of age shall be registered in compliance with the requirements of the Military Selective Service Act, 50 U.S.C. § 453 (1948), when applying for the issuance, renewal, or duplication of a drivers license, commercial drivers license, or identification card.

(b) The Division shall forward in an electronic format the necessary personal information of the applicants identified in subsection (a) of this section required for registration to the Selective Service System. An application for the issuance, renewal, or duplication of a drivers license, commercial drivers license, or identification card indicates that the applicant has already registered with the Selective Service or that he authorizes the Division to forward the necessary information to the Selective Service for registration. The Division shall notify the applicant that his application for the issuance, renewal, or duplication of a drivers license, commercial drivers license, or identification card serves as his consent to be registered with the Selective Service System pursuant to this section.

SECTION 2. This act becomes effective October 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 1245

Short Title:	NCDL/Selective Service Registration.	(Public)
Sponsors:	Representatives Baddour; and Wainwright.	
Referred to:	Judiciary II.	

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT MALE RESIDENTS AGE 18 THROUGH 25 COMPLY WITH THE SELECTIVE SERVICE SYSTEM'S REGISTRATION REQUIREMENTS BEFORE A LICENSE OR IDENTIFICATION CARD MAY BE ISSUED BY THE DIVISION OF MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2 of Chapter 20 is amended by adding a new section to read:

"**§ 20-9.2. Selective service system registration requirements.**

(a) Any male United States citizen or immigrant who is at least 18 years of age but less than 26 years of age shall be registered in compliance with the requirements of Section 3 of the 'Military Selective Service Act', 50 U.S.C. App. 451, et seq., when applying for or renewing a drivers license or identification card.

(b) The Division shall forward in an electronic format the necessary personal information required for registration to the Selective Service System of the applicants identified in subsection (a) of this section. The applicant's submission of the application for a drivers license or identification card indicates that the applicant has already registered with the Selective Service or that he is authorizing the Division to forward the necessary information to the Selective Service for registration. The Division shall notify the applicant, on the application, that his submission of an application for a drivers license or identification card serves as his consent to be registered with the Selective Service System, if required by federal law.

(c) This section shall apply to male United States citizens or immigrants under age 26 who are applying for the issuance, renewal, or duplicate of a drivers license, a commercial drivers license, or an identification card."

SECTION 2. This act becomes effective October 1, 2001.

HOUSE BILL 1245:
NCDL/Selective Service Registration

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Baddour
Date:	April 23, 2001	**Summary by:**	Jeff Hudson
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1245 would provide that any male United States citizen or immigrant who is at least 18 years of age but less than 26 years of age must be registered with the Selective Service System when applying for the issuance, renewal, or duplication of a drivers license, a commercial drivers license, or an identification card.

CURRENT LAW: Under current federal law, it is the duty of every male citizen of and immigrant to the United States who is between the ages of eighteen and twenty-six to register with the Selective Service System. Also under federal law, failure to comply with this requirement may affect eligibility for federal student aid, job training, federal employment, and citizenship, if an immigrant.

Under current State law, there is no provision that links obtaining a drivers license or identification card with registration with the Selective Service System. However, under State law, failure to comply with the federal Selective Service System registration requirement may affect eligibility for State-supported scholarship and financial assistance programs for postsecondary education as well as employment by the State and its political subdivisions.

BILL ANALYSIS: House Bill 1245 would provide that any male United States citizen or immigrant who is at least 18 years of age but less than 26 years of age must be registered with the Selective Service System when applying for the issuance, renewal, or duplication of a drivers license, a commercial drivers license, or an identification card. House Bill 1245 would also provide that the Division of Motor Vehicles will electronically forward the personal information necessary to register with the Selective Service System when a person required to be registered applies for a license or identification card. Application for a license or identification card indicates that the applicant has already complied with the registration requirements or that he authorizes the Division to forward the necessary information to the Selective Service for registration. The Division must notify the applicant on the application that the submission of an application for a drivers license or identification card serves as his consent to be registered.

NOTE: The proposed committee substitute for House Bill 1245 would rewrite the notification provision so that it would not specify how the Division notifies an applicant that the application serves as consent to be registered.

EFFECTIVE DATE: House Bill 1245 would become effective October 1, 2001.

H1245-SMSB-001

VISITOR REGISTRATION SHEET

J. II
Name of Committee

4-23-01
Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
James Metts	GRNC - Durham, N.C.
Raymond Baiano	GRNC - Greensboro, N.C.
W F Daniel Jr	GRNC V.P. - Rose. NC
Cara Cooper	BPMHL
Doug Lassiter	Capitol Environ.
Jim Blackburn	N.C. Association of County Commissioners
Patrice Roesler	
Thomas McLean	WCL
Ann Bordas	WCL
Thomas S Rhodes	GRNC - Apex NC
Wayne Hurdle	DOT-DMV- Driver License

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

April 24, 2001 – 9:30 a.m.

The House Committee on Judiciary II met on Tuesday, April 24, 2001, in Room 421 LOB at 9:30 a.m. The following members were present: Chairman Phil Baddour, Vice Chairman Phil Haire, Representatives Bowie, Culpepper, Decker, Gulley, Hall, Jeffus, Justus, Miller, Pope, Sherrill, and Weiss. Robin Johnson, Esther Manheimer, Jeff Hudson, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

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

HB 1270 Eastern Band of Cherokees Full Faith & Credit. Rep. Baddour recognized Rep. Sherrill to present the bill in Rep. Haire's absence. Rep. Sherrill moved to adopt a technical amendment to the bill, motion passed. Robin Johnson explained the bill. Rep. Haire explained how the tribal court operates. After questions concerning how existing laws apply to Indian territories, Rep. Decker expressed his concern with regard to how punishments are levied on those who inhabit Indian territories. Rep. Hall moved that the amendment be rolled into a committee substitute bill, and that the committee substitute bill be given a favorable report, unfavorable as to original bill. Motion passed.

HB 1117 DA Discretion. Rep. Bowie moved that the proposed committee substitute be before the committee for purposes of discussion, and without objection, the PCS was before the committee. Rep. Haire presided while Rep. Baddour, bill sponsor, presented the bill. Rep. Baddour explained that the bill was supported by the North Carolina Academy of Trial Lawyers, the Appellate Defenders, the District Attorneys, and the Prosecutorial Defenders. The chair recognized Branny Vickory, District Attorney from the 8th Judicial District, to comment on the bill. Mr. Vickory explained that currently in a 1st degree murder case, the DA must seek the death penalty and allowing the DA discretion in these cases will save resources and manpower. Rep. Decker expressed his concern that dollars and cents were driving this bill. Colon Willoughby, District Attorney from Wake County, informed the committee that North Carolina is the only state with the death penalty that does not allow the DA discretion in these cases. Rep. Pope spoke in support of the bill, but wondered if it raised any constitutional questions. Mr. Willoughby said that the constitutional issues have been resolved. Michael Lands, District Attorney from Gastonia, noted that currently if a DA does not believe that they can obtain the death penalty, they have to drop down to 2nd degree murder. Rep. Sherrill spoke in support of the bill. Bill Ferrell of the Attorney General's Office believed that the bill would survive a constitutional challenge because the federal courts have ruled that it is not unconstitutional. Jim Ferguson, President of the North Carolina Academy of Trial Lawyers spoke in support of the bill, citing its fairness and rationality. Rep. Hall moved that the proposed committee substitute be given a favorable report, unfavorable as to the original bill. Motion passed.

The meeting adjourned at 10:45 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

HOUSE JUDICIARY II COMMITTEE
AGENDA

April 24, 2001
9:30 A.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Jeff Hudson
Elizabeth Kirkland (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDERED:

HB 1270	Eastern Band of Cherokees Full Faith & Credit – Rep. Haire
HB 1117	DA Discretion – Rep. Baddour

ADJOURNMENT

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1270 A BILL TO BE ENTITLED AN ACT TO PROVIDE FULL FAITH AND CREDIT TO JUDGEMENTS OF THE EASTERN BAND OF CHEROKEES' TRIBAL COURTS AS THOSE COURTS RECIPROCALLY PROVIDE JUDGEMENTS OF NORTH CAROLINA COURTS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 2

HOUSE BILL 1270

Committee Substitute Favorable 4/24/01

Short Title: East. Band of Cherokees' Full Faith and Credit. (Public)

Sponsors:

Referred to:

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FULL FAITH AND CREDIT TO JUDGMENTS OF THE EASTERN BAND OF CHEROKEES' TRIBAL COURTS AS THOSE COURTS RECIPROCALLY PROVIDE JUDGMENTS OF NORTH CAROLINA COURTS.

Whereas, the Eastern Band of Cherokees is a federally recognized Indian tribe; and

Whereas, the Eastern Band of Cherokees has established a system of tribal courts to deal with disputes between the parties under their jurisdiction; and

Whereas, the Eastern Band of Cherokees' Tribal Court accords full faith and credit to the judgments, decrees, and orders of the courts of this State; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 1E.

"Eastern Band of Cherokee Indians.

"Article 1.

"Full Faith and Credit.

"**§ 1E-1. Full faith and credit.**

The courts of this State shall give full faith and credit to a judgment, decree, or order signed by a judicial officer of the Eastern Band of Cherokee Indians and filed in the Cherokee Tribal Court to the same extent as is given a judgment, decree, or order of another state; provided that the judgments, decrees, and orders of the courts of this State are given full faith and credit by the Tribal Court of the Eastern Band of Cherokee Indians."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 1270

Short Title:	East. Band of Cherokees' Full Faith and Credit.	(Public)
Sponsors:	Representative Haire (By Request).	
Referred to:	Judiciary II.	

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FULL FAITH AND CREDIT TO JUDGMENTS OF THE EASTERN BAND OF CHEROKEES' TRIBAL COURTS AS THOSE COURTS RECIPROCALLY PROVIDE JUDGMENTS OF NORTH CAROLINA COURTS.

Whereas, the Eastern Band of Cherokees is a federally recognized Indian tribe; and

Whereas, the Eastern Band of Cherokees have established a system of tribal courts to deal with disputes between the parties under their jurisdiction; and

Whereas, the Eastern Band of Cherokees' Tribal Court accords full faith and credit to the judgments, decrees, and orders of the courts of this State; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 1E.

"Eastern Band of Cherokee Indians.

"Article 1.

"Full Faith and Credit.

"**§ 1E-1. Full faith and credit.**

The courts of this State shall give full faith and credit to a judgment, decree, or order signed by a judicial officer of the Eastern Band of Cherokee Indians and filed in the Cherokee Tribal Court to the same extent as is given a judgment, decree, or order of another state; provided that the judgments, decrees, and orders of the courts of this State are given full faith and credit by the Tribal Court of the Eastern Band of Cherokee Indians."

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

HOUSE BILL 1270:
East. Band of Cherokees' Full Faith & Credit.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Rep. Haire
Date:	April 23, 2001	**Summary by:**	Robin Johnson
Version:	First		Committee Counsel

SUMMARY: ***The bill would direct the State's courts to give full faith and credit to judgments, decrees, and orders of the Cherokee Tribal Court, so long as that Court gives full faith and credit to judgments, decrees, and orders of the State's courts.***

The bill would take effect when it becomes law.

BACKGROUND: The U.S. Constitution requires states to give full faith and credit to the laws, public records, and judicial decisions of other states. (Congress recently extended this to territories. There is a question as to whether territories include Indian tribes.) This means a law or judgment of record has the same faith, credit, conclusive effect, and obligatory force in other states as it has by law in the state from whence it comes.

The Eastern Band of Cherokees (Cherokees) has established a tribal court system and has adopted a Judicial Code under which it operates. There is one Supreme Court, one Trial Court, and other courts of special jurisdiction. All justices and judges must be licensed members in good standing of the North Carolina State Bar and the practicing bar of the Cherokees.

The Trial Court has original jurisdiction over all criminal and civil cases and controversies arising within its jurisdiction and under the Cherokees' Charter, laws, customs, and traditions. It does not have jurisdiction over matters where prohibited by a binding decision of the U.S. Supreme Court or the U.S. Court of Appeals for the Fourth Circuit, or by federal law. In deciding cases and controversies, the Court will first look to the Cherokees' law, customs, traditions, and precedents. If none, it will look next to federal law, then to NC law, and finally to the law of other jurisdictions. NC's Rules of Civil Procedure, Rules of Evidence, and Rules of Appellate Procedure govern the proceedings. The Judicial Code states that the Cherokees' courts will give full faith and credit to the judicial decisions of state and federal courts.

Other states have enacted legislation granting full faith and credit to acts and judgments of Indian tribes located in those states. Many of these laws have been enacted in the past decade. Some give full faith and credit (i.e., covering legislative acts, records, and judgments); others limit the full faith and credit to judicial decisions; and others limit the full faith and credit to particular judicial decisions –such as those involving children. It also appears as if federal law requires full faith and credit for certain decisions – primarily those involving children.

H1270-SMRH-001

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1117 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE DISTRICT ATTORNEY HAS DISCRETION AS TO WHETHER TO SEEK THE DEATH PENALTY FOR A CAPITAL CASE.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1117
PROPOSED COMMITTEE SUBSTITUTE H1117-PCS9153-RH-30

Short Title: D A Discretion. (Public)

Sponsors:

Referred to:

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE DISTRICT ATTORNEY HAS DISCRETION AS TO WHETHER TO SEEK THE DEATH PENALTY FOR A CAPITAL CASE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-2000(a) reads as rewritten:

"(a) Separate Proceedings on Issue of Penalty. –

(1) ~~Upon~~ Except as provided in G.S. 15A-2004, upon conviction or adjudication of guilt of a defendant of a capital ~~felony,~~ felony in which the State has given notice of its intent to seek the death penalty, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. A capital felony is one which may be punishable by death.

(2) The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable after the guilty verdict is returned. If prior to the time that the trial jury begins its deliberations on the issue of penalty, any juror dies, becomes incapacitated or disqualified, or is discharged for any reason, an alternate juror shall become a part of the jury and serve in all respects as those selected on the regular trial panel. An alternate juror shall become a part of the jury in the order in which he was selected. If the trial jury is unable to reconvene for a hearing on the issue of penalty after having determined the guilt of the accused, the trial judge shall impanel a new jury to determine the issue of the punishment. If the defendant pleads guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose. A jury selected for the purpose of determining punishment in a capital case shall be selected in the same manner as juries are selected for the trial of capital cases.

(3) In the proceeding there shall not be any requirement to resubmit evidence presented during the guilt determination phase of the case, unless a new jury is impaneled, but all such evidence is competent for the jury's consideration in passing on punishment. Evidence may be presented as to any matter that the court deems relevant to sentence, and may include matters relating to any of the aggravating or mitigating circumstances enumerated in subsections (e) and (f) of this section. Any evidence which the court deems to have probative value may be received.

(4) The State and the defendant or his counsel shall be permitted to present argument for or against sentence of death. The defendant or defendant's counsel shall have the right to the last argument."

SECTION 2. G.S. 15A-2001 reads as rewritten:

"**§ 15A-2001. Capital offenses; plea of guilty.**

(a) Any ~~person~~ defendant who has been indicted for an offense punishable by death may enter a plea of guilty at any time after ~~his indictment, and~~ the indictment.

(b) If the defendant enters a guilty plea to first degree murder and the State has not given notice of intent to seek the death penalty as provided in G.S. 15A-2004 or the State has agreed to accept a sentence of life imprisonment where it initially gave notice of intent to seek the death penalty, then the court shall sentence the person to life imprisonment. The defendant may plead guilty to first degree murder and the State may agree to accept a sentence of life imprisonment, even if evidence of an aggravating circumstance exists.

(c) If the defendant enters a guilty plea to first degree murder and the State has given notice of its intent to seek the death penalty, then the ~~judge of the superior~~ court ~~having jurisdiction~~ may sentence ~~such person~~ the defendant to life imprisonment or to death pursuant to the procedures of G.S. 15A-2000. Before sentencing the ~~defendant.~~ defendant in a case in which the State has given notice of its intent to seek the death penalty, the presiding judge shall impanel a jury for the limited purpose of hearing evidence and determining a sentence recommendation as to the appropriate sentence pursuant to G.S. 15A-2000. The jury's sentence recommendation in cases where the defendant pleads guilty and the State has given notice of its intent to seek the death penalty shall be determined under the same procedure of G.S. 15A-2000 applicable to defendants who have been tried and found guilty by a jury."

SECTION 3. Article 100 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-2004. Prosecutorial discretion.**

(a) The State, in its discretion, may elect to try a defendant capitally or noncapitally for first degree murder, even if evidence of an aggravating circumstance exists. The State may agree to accept a sentence of life imprisonment for a defendant at any point in the prosecution of a capital felony, even if evidence of an aggravating circumstance exists.

(b) A sentence of death may not be imposed upon a defendant convicted of a capital felony unless the State has given notice of its intent to seek the death penalty. Notice of intent to seek the death penalty shall be given to the defendant and filed with the court on or before the date of the pretrial conference in capital cases required by Rule 24 of the General Rules of Practice for the Superior and District Courts, or the arraignment, whichever is later.

(c) If the State has not given notice of its intent to seek the death penalty prior to trial, the trial shall be conducted as a noncapital proceeding, and the court, upon adjudication of the defendant's guilt of first degree murder, shall impose a sentence of life imprisonment.

(d) Notwithstanding any other provision of Article 100 of Chapter 15A of the General Statutes, the State may agree to accept a sentence of life imprisonment for a defendant upon remand from the Supreme Court of North Carolina of a capital case for resentencing or upon an order of resentencing by a court in a State or federal post-conviction proceeding. If the State exercises its discretion and does agree to accept a sentence of life imprisonment for the defendant, then the court shall impose a sentence of life imprisonment."

SECTION 4. This act becomes effective July 1, 2001, and applies to pending and future cases, except that the provisions of this act regarding the State's notice of intent to seek the death penalty do not apply to defendants indicted in capital cases before the effective date of this act.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 1117

Short Title: D A Discretion. (Public)

Sponsors: Representatives Baddour; Hackney, Sutton, and C. Wilson.

Referred to: Judiciary II.

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE DISTRICT ATTORNEY HAS DISCRETION AS TO WHETHER TO SEEK THE DEATH PENALTY FOR A CAPITAL CASE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 100 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-2004. Capital offenses: State has discretion as to whether to seek the death penalty.**

(a) The State may try a defendant capitally or noncapitally for first degree murder, even if evidence of an aggravating circumstance exists. If a defendant indicted for first degree murder pleads guilty to the offense, the State may choose not to seek the death penalty, even if evidence of an aggravating circumstance exists. The State may agree to accept a sentence of life imprisonment for a defendant at any point in the prosecution of a capital case, prior to adjudication by a jury.

(b) If, prior to trial, the State agrees to accept a sentence of life imprisonment if the defendant is adjudicated guilty, then the trial or hearing upon the defendant's plea of guilty shall be conducted as a noncapital proceeding, and the court, upon adjudication of the defendant's guilt of first degree murder, shall impose a sentence of life imprisonment.

(c) Notwithstanding any other provision of Article 100 of Chapter 15A of the General Statutes, the State may agree to accept a sentence of life imprisonment for a defendant upon remand of a capital case for resentencing. If the State exercises its discretion and does agree to accept a sentence of life imprisonment for the defendant, then the court shall impose a sentence of life imprisonment."

SECTION 2. G.S. 15A-2000(a) reads as rewritten:

"(a) Separate Proceedings on Issue of Penalty. –

(1) ~~Upon~~ Except as provided in G.S. 15A-2004, upon conviction or adjudication of guilt of a defendant of a capital felony, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. A capital felony is one which may be punishable by death.

(2) The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable after the guilty verdict is returned. If prior to the time that the trial jury begins its deliberations on the issue of penalty, any juror dies, becomes incapacitated or disqualified, or is discharged for any reason, an alternate juror shall become a part of the jury and serve in all respects as those selected on the regular trial panel. An alternate juror shall become a part of the jury in the order in which he was selected. If the trial jury is unable to reconvene for a hearing on the issue of penalty after having determined the guilt of the accused, the trial judge shall impanel a new jury to determine the issue of the punishment. If the defendant pleads guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose. A jury selected for the purpose of determining punishment in a capital case shall be selected in the same manner as juries are selected for the trial of capital cases.

(3) In the proceeding there shall not be any requirement to resubmit evidence presented during the guilt determination phase of the case, unless a new jury is impaneled, but all such evidence is competent for the jury's consideration in passing on punishment. Evidence may be presented as to any matter that the court deems relevant to sentence, and may include matters relating to any of the aggravating or mitigating circumstances enumerated in subsections (e) and (f). Any evidence which the court deems to have probative value may be received.

(4) The State and the defendant or his counsel shall be permitted to present argument for or against sentence of death. The defendant or defendant's counsel shall have the right to the last argument."

SECTION 3. G.S. 15A-2001 reads as rewritten:

"**§ 15A-2001. Capital offenses; plea of guilty.**

(a) Any person who has been indicted for an offense punishable by death may enter a plea of guilty at any time after ~~his indictment, and~~ the indictment.

(b) If the defendant enters a guilty plea to first degree murder and the State chooses not to seek the death penalty as provided in G.S. 15A-2004, then the judge of the superior court having jurisdiction shall sentence the person to life imprisonment.

(c) If the defendant enters a guilty plea to first degree murder and the State chooses to seek the death penalty, then the judge of the superior court having jurisdiction may sentence such person to life imprisonment or to death pursuant to the procedures of G.S. 15A-2000. Before sentencing the ~~defendant,~~ defendant in a case in which the State is seeking the death penalty, the presiding judge shall impanel a jury for

the limited purpose of hearing evidence and determining a sentence recommendation as to the appropriate sentence pursuant to G.S. 15A-2000. The jury's sentence recommendation in cases where the defendant pleads guilty and the State seeks the death penalty shall be determined under the same procedure of G.S. 15A-2000 applicable to defendants who have been tried and found guilty by a jury."

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

VISITOR REGISTRATION SHEET

J-II
Name of Committee

4-24-01
Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
PE Powell	AOC
Glon Willoughby	DA - 10th Dist.
Ray Bass	NC Conference of DAs
John Medlock	Gov. Office
Beth Bissell	Alley Associates
John Bowdish	Alley Associates
John Phelps	NCLM
James W. Kilbourne	Davis Kilbourne Flanagan & Smith
Michael Landis	District Attorney 27-A GASTON
Bill Farrell	NC DOJ
[illegible]	NC-NAA
Melissa Lovell	DOJ
Branny Vickory	DA - 8th District
Bill Wilson	NCATL
Staples Hughes	Appellate Defender
John May	NC CWA Council
Mike Obuchowski	NC State AFL-CIO
Amy Funderburk	Hunton & Williams
Charlie Shaber	NC OSP
James Fenton	NCATL

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

April 24, 2001 – 2:00 p.m.

The House Committee on Judiciary II met on Tuesday, April 24, 2001, in Room 421 LOB at 2:00 p.m. The following members were present: Chairman Phil Baddour, Vice Chairmen Phil Haire and Toby Fitch, Representatives Bowie, Culpepper, Decker, Gulley, Hall, Jeffus, Justus, Miller, Miner, Pope, Sherrill, and Weiss. Robin Johnson, Esther Manheimer, Jeff Hudson, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order, and recognized the Pages. He then called for consideration of the following bill:

HB 1129 Grandparent Visitation. Rep. Decker moved that the proposed committee substitute be before the committee for purposes of discussion, and without objection, the PCS was before the committee. Rep. Baddour recognized Rep. Decker, bill sponsor, to present the bill. Rep. Decker explained that this bill originated in a study committee, and that it follows an Alabama statute. Rep. Baddour noted that the main change would be to allow grandparents of intact families to come to court to gain visitation. Rep. Decker pointed out that if a spouse dies then this legislation would allow visitation to a grandparent. Louise McIntyre, a grandmother who has not seen her grandchildren since 1991, spoke in support of the bill. Kathy Hartkopf, a parent of an intact family, spoke in opposition to the bill and outlined a number of groups who were also opposed to the bill. Anne Winner of NC NOW stated her opposition to the bill, as did Bill Brooks of the North Carolina Family Policy Council. Speaking as a grandparent, Rep. Sherrill said that she believed that this bill would create division among families and that she could not support the bill. Rep. Bowie, a grandmother, believed that this was an issue that needed to be worked out between the family and that going to court could make the situation worse. Blandy Privette, a grandfather whose son passed away, spoke in support of the bill citing that everyone deserves their day in court. Rep. Gulley, a grandfather, argued that this issue should not be legislated. Rep. Decker moved that the committee substitute be given a favorable report, unfavorable as to the original bill. Motion failed.

The meeting adjourned at 2:45 p.m.

Phil Baddour
Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Elizabeth Kirkland
Committee Assistant

HOUSE JUDICIARY II COMMITTEE
AGENDA

April 24, 2001
1:00 P.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Jeff Hudson
Elizabeth Kirkland (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDERED:

HB 1129 Grandparent Visitation – Rep. Decker

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1129
PROPOSED COMMITTEE SUBSTITUTE H1129-CSSK-30 [v.1]

4/23/2001 10:08:36 PM

Short Title: Grandparent Visitation. (Public)

Sponsors:

Referred to:

April 12, 2001

A BILL TO BE ENTITLED

AN ACT CLARIFYING CERTAIN PROVISIONS UNDER THE LAWS RELATING TO GRANDPARENT VISITATION AND REQUIRING A COURT TO REVIEW SEVERAL FACTORS PRIOR TO AWARDING GRANDPARENT VISITATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-13.2A reads as rewritten:

"**§ 50-13.2A. Action for visitation ~~of an adopted grandchild.~~by grandparent.**

A biological grandparent may institute an action or proceeding for visitation rights with a ~~child adopted by a stepparent or a relative of the child where a substantial relationship exists between the grandparent and the child.~~child under the provisions of this section. Under no circumstances shall a biological grandparent of a child adopted by adoptive parents, neither of whom is related to the child and where parental rights of both biological parents have been terminated, be entitled to visitation rights. In awarding grandparent visitation, the court may determine the time, place, and circumstances of visitation. For purposes of this section, visitation shall not include custody. A court may award visitation rights only if it determines that visitation is in the best interest of the child. An order awarding visitation rights shall contain findings of fact ~~which~~that support the determination by the judge of the best interest of the child. In determining the best interest of the child, the court shall consider the following:

(1) Whether there is a preexisting relationship between the grandparent and the child, or the willingness of the grandparent to encourage a close relationship between the child and the parent.

(2) The willingness of the child to develop a relationship with the grandparent, if the court determines that the child is of sufficient maturity to make that decision.

(3) The reasonableness or lack of reasonableness of the custodial parent in allowing, restricting, or denying visitation to the grandparent in the past.

(4) The mental and physical health of the child.

(5) The mental and physical health of the grandparent.
(6) Whether the circumstances and amount of visitation will substantially interfere with the right of the parent to make decisions concerning the care, custody, and control of their children.
(7) Any other relevant factors the court deems necessary in determining the best interest of the child.

There is a rebuttable presumption that visitation by a grandparent is not in the best interest of the child if the child's biological parents agree that the grandparent should not be awarded visitation rights. Procedure, venue, and jurisdiction shall be the same as in an action for custody."

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

HOUSE BILL 1129

Short Title:	Grandparent Visitation.	(Public)
Sponsors:	Representatives Decker; J. Crawford, Culp, Culpepper, and Mitchell.	
Referred to:	Judiciary II.	

April 12, 2001

A BILL TO BE ENTITLED

AN ACT CLARIFYING CERTAIN PROVISIONS UNDER THE LAWS RELATING TO GRANDPARENT VISITATION AND REQUIRING A COURT TO REVIEW SEVERAL FACTORS PRIOR TO AWARDING GRANDPARENT VISITATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-13.2A reads as rewritten:

"**§ 50-13.2A. Action for visitation ~~of an adopted grandchild.~~by grandparent.**

A biological grandparent may institute an action or proceeding for visitation rights with a ~~child adopted by a stepparent or a relative of the child where a substantial relationship exists between the grandparent and the child.~~child under the provisions of this section. Under no circumstances shall a biological grandparent of a child adopted by adoptive parents, neither of whom is related to the child and where parental rights of both biological parents have been terminated, be entitled to visitation rights. In awarding grandparent visitation, the court may determine the time, place, and circumstances of visitation. For purposes of this section, visitation shall not include custody. A court may award visitation rights only if it determines that visitation is in the best interest of the child. An order awarding visitation rights shall contain findings of fact ~~which~~that support the determination by the judge of the best interest of the child. In determining the best interest of the child, the court shall consider the following:

(1) Whether there is a preexisting relationship between the grandparent and the child, or the willingness of the grandparent to encourage a close relationship between the child and the parent.

(2) The willingness of the child to develop a relationship with the grandparent, if the court determines that the child is of sufficient maturity to make that decision.

(3) The reasonableness or lack of reasonableness of the custodial parent in allowing, restricting, or denying visitation to the grandparent in the past.

(4) The mental and physical health of the child.
(5) The mental and physical health of the grandparent.
(6) Whether the circumstances and amount of visitation will substantially interfere with the right of the parent to exercise his or her parental authority.
(7) Any other relevant factors the court deems necessary in determining the best interest of the child.

Where the child's biological parents are married and living together, there is a rebuttable presumption that visitation by a grandparent is not in the best interest of the child if the child's biological parents agree that the grandparent should not be awarded visitation rights. Where the child's biological parents are neither married nor living together, there is no presumption on behalf of any party to the action. Procedure, venue, and jurisdiction shall be the same as in an action for custody."

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

HB 1129:
Grandparent Visitation.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Decker
Date:	April 24, 2001	**Summary by:**	Esther Manheimer
Version:	H1129-CSSK-30[v.1]		Committee Counsel

SUMMARY: ***This bill allows grandparents to bring an action for visitation rights with a grandchild if the court deems it to be in the best interest of the child. This act is effective when it becomes law.***

CURRENT LAW*:

The North Carolina General Statutes contain four separate causes of action, which a grandparent could utilize in a civil lawsuit for custody or visitation with their grandchild. The four statutes, and a brief description, are stated below.

1. G.S. 50-13.2(b1). This statute provides that a court order for visitation with a child may provide for visitation with the grandparents as the Court deems appropriate. This section would allow grandparents to intervene in an ongoing custody dispute and request visitations with the grandchild.
2. G.S. 50-13.5(j). This statute provides that any action where custody of a minor child has been determined, the grandparents are entitled to visitation, as the court deems appropriate, upon filing a motion in the cause AND proving changed circumstances. In other words, the grandparents can petition the court to amend the visitation due to changed circumstances when there has been a previous action to determine custody.
3. G.S. 50-13.2A. This statute allows a biological grandparent to petition for visitation when a stepparent or relative of the child has adopted the grandchild, where there is a substantial relationship between the grandparent and the grandchild.
4. G.S. 50-13.1(a). This statute permits any parent or relative claiming the right to custody of a minor child to institute a legal action for visitation or custody. Prior case law in North Carolina has fleshed this out, stating that grandparents do NOT have standing to sue for visitation when the natural parents have legal custody of the grandchild and are living with the minor child as an intact family. Further North Carolina case law has determined that a single parent residing with the child is an intact family.

*The above section was written by Erika Churchill, Attorney, Research Division.

BILL ANALYSIS: This would allow grandparents to institute an action for visitation rights of a child. Under current law, the court may only award visitation if it is the best interest of the child. This bill continues that requirement but provides the following factors to be considered by the court when determining the best interests of the child:

1. Whether there is a preexisting relationship with the child or the willingness of the grandparent to encourage a relationship with the child.
2. The willingness of the child to develop a relationship with the grandparent (if the court determines that the child is sufficiently mature to make this decision).
3. The reasonableness or lack of reasonableness of the parent in allowing, restricting, or denying visitation to the grandparent in the past.
4. The mental and physical health of the child and the grandparent.

5. Whether the circumstances and amount of visitation will substantially interfere with the right of the parent to make decisions concerning the care, custody, and control of their children.
6. And any other relevant factors necessary in determining the best interest of the child.

Finally, where the child's biological parents agree that the grandparent should not be awarded visitation rights there is a rebuttable presumption that grandparent visitation is not in the best interest of the child.

CONSTITUTIONAL ISSUES:

The Supreme Court of the United States recently held Washington state's third-party visitation statute unconstitutional in Troxel v. Granville, 530 U.S. ___ (2000). In Toxel, grandparents sought visitation of their grandchildren after one parent committed suicide. The parents had never married. In finding that the Washington statute was unconstitutional, the Court held that a parent has the fundamental right to "make decisions concerning the care, custody, and control of their children." Id. at p. 8. They took issue with the Washington statute in that it "contain[ed] no requirement that a court accord the parent's decision any presumption of validity or any weight whatsoever. Instead, the Washington statute plac[ed] the best-interest determination solely in the hands of the judge." Id. at p. 8. The Court was also concerned that: "The Superior Court's order was not founded on any special factors that might justify the State's interference with [the parent's] fundamental right to make decisions concerning the rearing of her two daughters." Id. at p. 9. Finally, the Court stated that "if a fit parent's decision [regarding third party visitation] becomes subject to judicial review, the court must accord at least some special weight to the parent's own determination." Id. at p. 12. The Court did not distinguish between the rights of single parents versus married parents.

As Troxel indicates a constitutional state statute must mandate, this bill does create presumption that visitation by a grandparent is not in the best interest of the child where the biological parents agree that the grandparents should not be awarded visitation rights. However, this bill seems to require both parents to agree regarding the grandparent's visitation. Since Troxel does not distinguish as to the parenting situation, this requirement may be contrary to the Court's decision in Troxel.

This bill also provides a number of factors a court must consider when determining the best interest of the child, and this too seems to be another requirement of the Troxel Court. However, it is unknown how the particular factors to be considered listed in this bill would stand up to a legal challenge.

West Virginia Code

Updated 4/17/2001

CHAPTER 48. DOMESTIC RELATIONS. Passed On March 13, 1998

ARTICLE 2B. GRANDPARENT VISITATION.

§48-2B-1. Legislative findings; intent.

The Legislature finds that circumstances arise where it is appropriate for circuit courts of this state to order that grandparents of minor children may exercise visitation with their grandchildren. The Legislature further finds that in such situations, as in all situations involving children, the best interests of the child or children are the paramount consideration. It is the express intent of the Legislature that the provisions for grandparent visitation that are set forth in this article are exclusive.

§48-2B-2. Definitions.

For purposes of this article:

(1) "Child" means a person under the age of eighteen years who has not been married or otherwise emancipated.

(2) "Grandparent" means a biological grandparent, a person married or previously married to a biological grandparent, or a person who has previously been granted custody of the parent of a minor child with whom visitation is sought.

§48-2B-3. Visitation for grandparents.

A grandparent of a child residing in this state may, by motion or petition, make application to the circuit court of the county in which that child resides for an order granting visitation with his or her grandchild.

§48-2B-4. Proceedings for visitation for grandparents.

(a) The provisions of this subsection apply to all proceedings for divorce, custody, legal separation, annulment or establishment of paternity. After the commencement of the proceeding, a grandparent seeking visitation with his or her grandchild may, by motion, apply to the circuit court for an order granting visitation. A grandparent moving for an order of visitation will not be afforded party status, but may be called as a witness by the court, and will be subject to cross-examination by the parties.

(b) The provisions of this subsection apply when no proceeding for divorce, custody, legal separation, annulment or establishment of paternity is pending. A grandparent may petition the circuit court for an order granting visitation with his or her grandchild, regardless of whether the parents of the child are married. If the grandparent filed a motion for visitation in a previous proceeding for divorce, custody, legal separation, annulment or establishment of paternity, and a decree or final order has issued in that earlier action, the grandparent may petition for visitation if the circumstances have materially changed since the entry of the earlier order or decree.

(c) When a petition under subsection (b) of this section is filed, the matter shall be styled "In re grandparent visitation of [petitioner's(s') name(s)]."

(d) The court, on its own motion or upon the motion of a party or grandparent, may appoint a guardian ad litem for the child to assist the court in determining the best interests of the child regarding grandparent visitation.

modify or terminate such rights as dictated by the best interests of the minor child.

(b) A circuit court shall, based upon a petition brought by an interested person, terminate any grant of the right of grandparent visitation upon presentation of a preponderance of the evidence that a grandparent granted visitation has materially violated the terms and conditions of the order of visitation.

§48-2B-11. Attorney's fees; reasonable costs.

In an action brought under the provisions of this article, a circuit court may order payment of reasonable attorney's fees and costs based upon the equities of the positions asserted by the parties to pay such fees and costs.

§48-2B-12. Penalties for violation of order of visitation.

Any grandparent who knowingly allows contact between the minor grandchild and a parent or other person who has been precluded visitation rights with the child by court order shall, in addition to any other remedy under section seven of this article, be guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county jail not more than thirty days or fined not less than one hundred dollars nor more than one thousand dollars.

Section 30-3-4.1

Grandparent visitation. THIS SECTION HAS BEEN ASSIGNED BY THE CODE COMMISSIONER. THIS SECTION HAS NOT BEEN CODIFIED BY THE LEGISLATURE OF ALABAMA.

(a) For the purposes of this section, the term "grandparent" means the parent of a parent of a minor child, the parent of a minor child's parent who has died, or the parent of a minor child's parent whose parental rights have been terminated when the child has been adopted pursuant to Section 26-10A-27, 26-10A-28, or 26-10A-30, dealing with stepparent and relative adoption.

(b) Except as otherwise provided in this section, any grandparent may file an original action for visitation rights to a minor child if it is in the best interest of the minor child and one of the following conditions exist:

(1) When one or both parents of the child are deceased.

(2) When the marriage of the parents of the child has been dissolved.

(3) When a parent of the child has abandoned the minor.

(4) When the child was born out of wedlock.

(5) When the child is living with both biological parents, who are still married to each other, whether or not there is a broken relationship between either or both parents of the minor, and the grandparent and either or both parents have used their parental authority to prohibit a relationship between the child and the grandparent.

(c) Any grandparent may intervene in and seek to obtain visitation rights in any action when any court in this state has before it any question concerning the custody of a minor child, a divorce proceeding of the parents or a parent of the minor child, or a termination of the parental rights proceeding of either parent of the minor child, provided the termination of parental rights is for the purpose of adoption pursuant to Sections 26-10A-27, 26-10A-28, or 26-10A-30, dealing with stepparent or relative adoption.

(d) Upon the filing of an original action or upon intervention in an existing proceeding pursuant to subsections (b) and (c), the court shall grant any grandparent of the child reasonable visitation rights if the court finds that the best interests of the child would be served by the visitation. In determining the best interest of the child, the court shall consider the following:

(1) The willingness of the grandparent or grandparents to encourage a close relationship between the child and the parent or parents.

(2) The preference of the child, if the child is determined to be of sufficient maturity to express a preference.

(3) The mental and physical health of the child.

(4) The mental and physical health of the grandparent or grandparents.

(5) Evidence of domestic violence inflicted by one parent upon the other parent or the child. If the court determines that evidence of domestic violence exists, visitation provisions shall be made in a manner protecting the child or children, parents, or grandparents from further abuse.

(6) Other relevant factors in the particular circumstances.

(e) The court shall make specific written findings of fact in support of its rulings. There shall be a rebuttable presumption in favor of visitation by any grandparent. An original action requesting visitation rights shall not be filed by any grandparent more than once during any two-year period and shall not be filed during any year in which another custody action has been filed concerning the child. After visitation rights have been granted to any grandparent, the legal custodian, guardian, or parent of the child may petition the court for revocation or amendment of the visitation rights, for good cause shown, which the court, in its discretion, may grant or deny. Unless evidence of abuse is alleged or other exceptional circumstances a petition shall not be filed more than once in any two-year period.

(f) If the court finds that the grandparent or grandparents can bear the cost without unreasonable financial hardship, the court, at the sole expense of the petitioning grandparent or grandparents, may appoint a guardian ad litem for the minor child.

(Act 99–436, §1.)

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Brooks	NCFPC
[illegible]	WC-NW
Kathy Hartkopf	Parent 2405 Uphill Ct Hilb.
Frank Lewis	OSBPM
John Phelps	NCLM
[illegible]	WCHCC
Vic McIntyre	GRANDparent Rights —
Bill Wilck	NCATL
Louise McIntyre	GP-GC Rights
Melissa Smith	2239 Rivet DR, 27406
Millard Brunette	PO Box 325, Clinton NC 27233
Blanche Brunette	PO Box 325, Clinton, NC 27233
MAURICE McROBERTS	GRANDPARENTS RIGHTS
Carol Mc Roberts	Grandchildren Grandparents Present
Debra L Massey	YWCA of Greensboro
Jo McCants	AOC
John Bourdeau	Alley Associates
Beth Bizzell	Alley Associates
Shawnee Robinson	NCBSS
Eddie Caldwell	HC+F, P.A.

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

May 1, 2001 – 10:00 a.m.

The House Committee on Judiciary II met on Tuesday, May 1, 2001, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairman Phil Haire, Representatives Bowie, Decker, Gulley, Hall, Jeffus, Justus, Miller, Pope, Sherrill, and Weiss. Robin Johnson, Esther Manheimer, Jeff Hudson, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

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

SB 257 UCC Article 9 Amendments. Rep. Weiss moved the adoption of a technical amendment, and that motion passed. Sen. Hartsell, bill sponsor was recognized to explain the bill. He noted that this bill was the recommendation of the Secretary of State and the General Statutes Commission. Rep. Baddour pointed out the purpose of the bill was to address bogus filings. Shelia Pope, from the Secretary of State's office, explained to the members of the committee the process that their office must go through. Rep. Justus asked what the consequence was for filing a bogus claim, and Sen. Hartsell noted that it was a Class 2 misdemeanor. Rep. Justus stated that he did not believe that punishment was stringent enough. Rep. Bowie asked who would be concerned about these filings, and Sen. Hartsell said that it would be those involved with the initial incarceration. Rep. Sherrill questioned whether or not this change would require additional staff, and Ms. Pope said that it would not. Rep. Decker moved that the amendment be rolled into a committee substitute, and Rep. Pope moved that the House committee substitute be given a favorable report, unfavorable as to Senate committee substitute. Motion passed unanimously.

SB 258 Rescission Offer Filing Procedure. Sen. Hartsell, bill sponsor, was recognized to present the bill. A bill summary is attached for the record. Perry Bozeman, from the Secretary of State's office, spoke briefly on the need for the bill. Rep. Sherrill asked what the Secretary of State's office would need to do differently. Mr. Bozeman noted that they would move the review period up. Rep. Pope moved that the bill receive a favorable report. Motion passed unanimously.

SB 259 Abolish Church Bond Dealer Restriction. Rep. Baddour recognized Sen. Hartsell, bill sponsor, to explain the bill. Mr. Bozeman spoke in support of the bill. Following brief comments from the members of the committee, Rep. Haire moved that the bill receive a favorable report. Motion passed.

SB 277 Community Development Exemption. Sen. Hartsell, bill sponsor, was recognized to explain the bill. Mr. Bozeman was recognized to discuss the need for the bill. The members of the committee commented briefly on the bill. Rep. Weiss moved that the bill receive a favorable report. Motion passed unanimously.

The meeting adjourned at 10:55 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

HOUSE JUDICIARY II COMMITTEE
AGENDA

May 1, 2001
10:00 A.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Jeff Hudson
Elizabeth Kirkland (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDERED:

SB 220 Define Time Stock Abandoned for Escheats – Sen. Hartsell
SB 257 UCC Article 9 Amendments – Sen. Hartsell
SB 258 Rescission Offer Filing Procedure – Sen. Hartsell
SB 259 Abolish Church Bond Dealer Restriction – Sen. Hartsell
SB 277 Community Development Exemption – Sen. Hartsell
SB 681 Judicial & Execution Sales/Revise Procedure – Sen. Hartsell

ADJOURNMENT

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 257 A BILL TO BE ENTITLED AN ACT TO AMEND ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE TO GIVE THE SECRETARY OF STATE THE AUTHORITY TO PREVENT FRAUDULENT FILINGS AND TO MAKE CLARIFYING CHANGES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ With a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 2

H. B. No. _____

S. B. No. 257

COMMITTEE ~~SUBSTITUTE~~ _____

(Rep.) Sen.) Weiss

DATE May 1, 2001

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

1 moves to amend the bill on page 3, line 14

2 ( ) WHICH CHANGES THE TITLE

3 by rewriting that line to read:

4 "record for ~~filing~~, filing or cancels a record

5 under G.S. 25-9-518(b1), it shall".

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SIGNED Jennifer Weiss

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 3

SENATE BILL 257

Judiciary I Committee Substitute Adopted 3/29/01
House Committee Substitute Favorable 5/29/01

Short Title: UCC Article 9 Amendments-AB. (Public)

Sponsors:

Referred to:

February 27, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE TO GIVE THE SECRETARY OF STATE THE AUTHORITY TO PREVENT FRAUDULENT FILINGS AND TO MAKE CLARIFYING CHANGES.

The General Assembly of North Carolina enacts:

PART I. PREVENT FRAUDULENT FILINGS.

SECTION 1. G.S. 25-9-516(b) reads as rewritten:

"(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).~~G.S. 25-9-515(d); or

(8) In the case of a record presented for filing at the Department of the Secretary of State, the Secretary of State determines that the record is not created pursuant to this Chapter or is otherwise intended for an improper purpose, such as to hinder, harass, or otherwise wrongfully interfere with any person."

SECTION 2. G.S. 25-9-518(b)(3) reads as rewritten:

"(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. A correction statement that is subject to the provisions of subsection (b1) of this section shall include a written certification, under oath, by the person that the contents of the correction statement are true and accurate to the best of the person's knowledge."

SECTION 3. G.S. 25-9-518 is amended by adding a new subsection to read:

"(b1) In the case of a correction statement alleging that a previously filed record was wrongfully filed and that it should have been rejected under G.S. 25-9-516(b)(8), the Secretary of State shall, without undue delay, determine whether the contested record was wrongfully filed and should have been rejected. In order to determine whether the record was wrongfully filed, the Secretary of State may require the person filing the correction statement and the secured party to provide any additional relevant information requested by the Secretary of State, including an original or a copy of any security agreement that is related to the record. If the Secretary of State finds that the record was wrongfully filed and should have been rejected under G.S. 25-9-516(b)(8), the Secretary of State shall cancel the record and it shall be void and of no effect."

SECTION 4. G.S. 25-9-520 reads as rewritten:

"**§ 25-9-520. ~~Acceptance and refusal to accept record.~~Acceptance, refusal to accept record, and cancellation of 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,~~ filing or cancels a record under G.S. 25-9-518(b1), it shall communicate to the person that presented the record the fact of and reason for the refusal or cancellation 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 or cancels 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.

(e) Appeal.

(1) If the Secretary of State refuses to accept a record for filing pursuant to G.S. 25-9-516(b)(8) or cancels a wrongfully filed record pursuant to G.S. 25-9-518(b1), the secured party may file an appeal within 30 days after the refusal or cancellation in the Superior Court of Wake County. Filing a petition requesting to be allowed to file the document commences the appeal. The petition shall be filed with the court and with the Secretary of State and shall have the record attached to it. Upon the commencement of an appeal, it shall be set for hearing at the earliest possible time and shall take precedence over all matters except older matters of the same character. The appeal to the Superior Court

is not governed by Article 3, 3A, or 4 of Chapter 150B of the General Statutes and shall be determined upon such further notice and opportunity to be heard, if any, as the court may deem appropriate under the circumstances. The court shall permit the joinder of any interested party that would be allowed under the Rules of Civil Procedure.

(2) Upon consideration of the petition and other appropriate pleadings, the court may order the Secretary of State to file the record or take other action the court considers appropriate, including the entry of orders affirming, reversing, or otherwise modifying the decision of the Secretary of State. The court may order any other relief, including equitable relief, as may be appropriate.

(3) The court's final decision may be appealed as in other civil proceedings."

SECTION 5. Article 52 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-401.19. Filing false security agreements.**

It shall be unlawful for any person, firm, corporation, or any other association of persons in this State, under whatever name styled, to present a record for filing under the provisions of Article 9 of Chapter 25 of the General Statutes with knowledge that the record is not related to a valid security agreement or with the intention that the record be filed for an improper purpose, such as to hinder, harass, or otherwise wrongfully interfere with any person. A violation of this section shall be a Class 2 misdemeanor."

PART II. CLARIFY PROVISIONS OF ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

SECTION 6. G.S. 25-9-707 reads as rewritten:

"**§ 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 July 1, 2001.

(b) Applicable law. – After July 1, 2001, 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 July 1, 2001 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) Method of amending: additional termination rule. – Whether or not the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this State may be terminated after July 1, 2001, by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies G.S. 25-9-706(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Part 3 of this Article as the office in which to file a financing statement. However, a termination statement shall not be filed under this section in the register of deeds office unless it is the office specified in G.S. 25-9-501.

(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 July 1, 2001 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.~~

No additional fee. – No separate fee shall be charged for the filing or indexing of a concurrently filed termination statement under subdivision (c)(2) of this section."

SECTION 7. G.S. 25-9-710 reads as rewritten:

"**§ 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. This subsection 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.

(c) Until July 1, 2008, each local-filing office must maintain all ~~former Article 9~~ former-Article-9 records in accordance with former Article 9. A ~~former Article 9~~ 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~~ 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.~~"

PART III. EFFECTIVE DATE.

SECTION 8. Section 5 of this act becomes effective December 1, 2001, and applies to documents presented for filing on or after that date. The remainder of this act becomes effective July 1, 2001. Sections 1 through 4 of this act apply to documents filed on or after July 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 2

SENATE BILL 257

Judiciary I Committee Substitute Adopted 3/29/01

Short Title: UCC Article 9 Amendments-AB. (Public)

Sponsors:

Referred to:

February 27, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE TO GIVE THE SECRETARY OF STATE THE AUTHORITY TO PREVENT FRAUDULENT FILINGS AND TO MAKE CLARIFYING CHANGES.

The General Assembly of North Carolina enacts:

PART I. PREVENT FRAUDULENT FILINGS.

SECTION 1. G.S. 25-9-516(b) reads as rewritten:

"(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;~~office.

(2) An amount equal to or greater than the applicable filing fee is not ~~tendered;~~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;~~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;~~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;~~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~~assignee.

(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).

(8) In the case of a record presented for filing at the Office of the Secretary of State, the Secretary of State determines that the record is not created pursuant to this Chapter or is otherwise intended for an improper purpose, such as to hinder, harass, or otherwise wrongfully interfere with any person."

SECTION 2. G.S. 25-9-518(b)(3) reads as rewritten:

"(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. A correction statement that is subject to the provisions of subsection (b1) of this section shall include a written certification, under oath, by the person that the contents of the correction statement are true and accurate to the best of the person's knowledge."

SECTION 3. G.S. 25-9-518 is amended by adding a new subsection to read:

"(b1) In the case of a correction statement alleging that a previously filed record was wrongfully filed and that it should have been rejected under G.S. 25-9-516(b)(8), the Secretary of State shall, without undue delay, determine whether the contested record was wrongfully filed and should have been rejected. In order to determine

whether the record was wrongfully filed, the Secretary of State may require the person filing the correction statement and the secured party to provide any additional relevant information requested by the Secretary of State, including an original or a copy of any security agreement that is related to the record. If the Secretary of State finds that the record was wrongfully filed and should have been rejected under G.S. 25-9-516(b)(8), the Secretary of State shall cancel the record and it shall be void and of no effect."

SECTION 4. G.S. 25-9-520 reads as rewritten:

"**§ 25-9-520. ~~Acceptance and refusal to accept record.~~Acceptance, refusal to accept record, and cancellation of 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,~~ filing or cancels a record under G.S. 25-9-518(b1) it shall communicate to the person that presented the record the fact of and reason for the refusal or cancellation 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 or cancels 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.

(e) Appeal.

(1) If the Secretary of State refuses to accept a record for filing pursuant to G.S. 25-9-516(b)(8) or cancels a wrongfully filed record pursuant to G.S. 25-9-518(b1), the secured party may file an appeal within 30 days after the refusal or cancellation in the Superior Court of Wake County. Filing a petition requesting to be allowed to file the document commences the appeal. The petition shall be filed with the court and with the Secretary of State and shall have the record attached to it. Upon the commencement of an appeal, it shall be set for hearing at the earliest possible time and shall take precedence over all matters except older matters of the same character. The appeal to the Superior Court is not governed by Article 3, 3A, or 4 of Chapter 150B of the General Statutes, and shall be determined upon such further notice and opportunity to be heard, if any, as the court may deem appropriate under the circumstances. The court shall permit the joinder of any interested party that would be allowed under the Rules of Civil Procedure.

(2) Upon consideration of the petition and other appropriate pleadings, the court may order the Secretary of State to file the record or take other action the court considers appropriate, including the entry of orders affirming, reversing, or otherwise modifying the decision of the Secretary of State. The court may order any other relief, including equitable relief, as may be appropriate.

(3) The court's final decision may be appealed as in other civil proceedings."

SECTION 5. Article 52 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-401.19. Filing false security agreements.**

It shall be unlawful for any person, firm, corporation, or any other association of persons in this State, under whatever name styled, to present a record for filing under the provisions of Article 9 of Chapter 25 of the General Statutes with knowledge that the record is not related to a valid security agreement or with the intention that the record be filed for an improper purpose, such as to hinder, harass, or otherwise wrongfully interfere with any person. A violation of this section shall be a Class 2 misdemeanor."

PART II. CLARIFY PROVISIONS OF ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

SECTION 6. G.S. 25-9-707 reads as rewritten:

"**§ 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 July 1, 2001.

(b) Applicable law. – After July 1, 2001, 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 July 1, 2001 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) Method of amending: additional termination rule. – Whether or not the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this State may be terminated after July 1, 2001, by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies G.S. 25-9-706(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Part 3 of this Article as the office in which to file a financing statement. However, a termination statement shall not be filed under this section in the register of deeds office unless it is the office specified in G.S. 25-9-501.

(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 statemer.t may be terminated after July 1, 2001 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.~~

No additional fee. – No separate fee shall be charged for the filing or indexing of a concurrently filed termination statement under subdivision (c)(2) of this section."

SECTION 7. G.S. 25-9-710 reads as rewritten:

"**§ 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. This subsection 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.

(c) Until July 1, 2008, each local-filing office must maintain all ~~former Article 9~~ former-Article-9 records in accordance with former Article 9. A ~~former Article 9~~ 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~~ 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.~~"

PART III. EFFECTIVE DATE.

SECTION 8. Section 5 of this act becomes effective December 1, 2001, and applies to documents presented for filing on or after that date. The remainder of this act becomes effective July 1, 2001. Sections 1 through 4 of this act apply to documents filed on or after July 1, 2001.

SENATE BILL 257:
UCC Article 9 Amendments.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Hartsell
Date:	May 1, 2001	**Summary by:**	Esther Manheimer
Version:	Second Edititon		Committee Co-Counsel

SUMMARY: ***Senate Bill 257 would authorize the Secretary of State to refuse to file, or remove from the public record, bogus UCC financing statements filed with the Secretary of State as recommended by the Secretary of State. This bill would also clarify the process for amending pre-effective-date financing statements and what financing statements can be filed with the registers of deeds after July 1, 2001, as recommended by the General Statutes Commission.***

CURRENT LAW: Under current law, the Secretary of State and the registers of deeds have the authority under certain circumstances to refuse to file certain UCC financing statements. Effective July 1, 2001, the Revised Article 9, as enacted in 2000, will become effective. The Revised Article 9 does not continue the existing authority to refuse to file these financing statements. Additionally, the Revised Article 9 is not clear as to where amendments to financing statements filed prior to July 1, 2001 are to be filed after July 1, and to what financing statements still need to be filed with the registers of deeds.

BILL ANALYSIS: Part I of the bill, Sections 1 through 4, is recommended by the Secretary of State. **Section 1** provides that a UCC financing statement is not to be filed by the Secretary of State where the Secretary determines that the filing is not created pursuant to the provisions of the UCC or is intended only to hinder, harass, or interfere with any person. **Section 2** provides a method for the filing to be put on record when the Secretary believes it to be bogus by a sworn statement by the debtor that the filing is accurate. **Section 3** provides a method to remove from the public record a bogus filing that should have never been permitted to be filed. **Section 4** establishes a process to appeal the refusal to file by the Secretary by permitting a direct appeal to Superior Court in Wake County for immediate hearing without having to otherwise comply with the administrative procedures hearing process under the Administrative Procedures Act in Chapter 150 of the General Statutes. **Section 5** makes it a Class 2 misdemeanor to file a bogus UCC financing statement.

Part II of the bill. See General Statutes Commission's attached summary.

EFFECTIVE DATE: The bill would become effective July 1, 2001, the same date that the remainder of Revised Article 9 becomes effective. Section 5 becomes effective December 1, 2001, and applies to documents presented for filing on or after that date. The bogus filing provisions, Sections 1-4 apply to documents filed on or after July 1, 2001.

*Walker Reagan, Attorney, Research Division, substantially contributed to this summary.

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

MEMORANDUM

TO: House Judiciary II Committee

FROM: General Statutes Commission

DATE: April 30, 2001

RE: Part II of Senate Bill 257 (UCC Article 9 Amendments)

Part II of Senate Bill 257 amends two transitional provisions in Revised Article 9 of the Uniform Commercial Code (Secured Transactions). Revised Article 9, which becomes effective July 1, 2001, provides a comprehensive scheme for the regulation of security interests in personal property and fixtures.

G.S. 25-9-707 addresses post-effective-date amendments to pre-effective-date financing statements. The amendment to this section avoids potential conflict of law issues.

G.S. 25-9-710 is a special transitional provision for maintaining and searching records relating to financing statements that were filed in a register of deeds' office before July 1, 2001. The amendment to this section clarifies that the register of deeds' office must continue to accept fixture filings and other land-related filings after June 30, 2001. Otherwise, the register of deeds' office need not continue to accept UCC filings after that date. Other provisions of G.S. 25-9-710 requiring maintenance of records and responses to requests and allowing purging of files apply equally to all filings.

The amendments are to become effective July 1, 2001, the effective date of Revised Article 9.

§ 25-9-518. (Effective July 1, 2001) 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.

(2000-169, s. 1.)

OFFICIAL COMMENT

1. **Source.** New.

2. **Correction Statements.** Former article 9 did not afford a nonjudicial means for a debtor to correct a financing statement or other record that was inaccurate or wrongfully filed. Subsection (a) affords the debtor the right to file a correction statement. Among other requirements, the correction statement must provide the basis for the debtor's belief that the public record should be corrected. See subsection (b). These provisions, which resemble the analogous remedy in the Fair Credit Reporting Act, 15 U.S.C. section 1681i, afford an aggrieved person the opportunity to state its position on the public record. They do not permit an aggrieved person to change the legal effect of the public record. Thus, although a filed correction statement becomes part of the "financing statement," as defined in section 9-102, the filing does not affect the effectiveness of the initial financing statement or any other filed record. See subsection (c).

This section does not displace other provisions of this article that impose liability for making unauthorized filings or failing to file or send a termination statement (see section 9-625(e)), nor does it displace any available judicial remedies.

3. **Resort to Other Law.** This article cannot provide a satisfactory or complete solution to problems caused by misuse of the public records. The problem of "bogus" filings is not limited to the UCC filing system but extends to the real property records, as well. A summary judicial procedure for correcting the public record and criminal penalties for those who misuse the filing and recording systems are likely to be more effective and put less strain on the filing system than provisions authorizing or requiring action by filing and recording offices.

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§ 25-9-516. (Effective July 1, 2001) 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:

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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.

(1866-7, c. 1, s. 1; 1872-3, c. 133, s. 1; Code, s. 1799; 1893, c. 9; Rev., s. 2052; C.S., s. 2480; 1925, c. 302, s. 1; 1927, c. 22; 1935, c. 205; 1945, c. 182, ss. 2, 4; c. 196, s. 2; 1955, c. 386, ss. 1, 2; c. 816; 1957, cc. 564, 999; 1961, c. 574; 1965, c. 700, s. 1; 1967, c. 562, s. 1; 1969, c. 1115, s. 1; 1971, c. 1170; 1973, c. 1316, s. 1; 1975, c. 862, s. 7; 1977, cc. 156, 295; 1983, c. 713, s. 23; 1987, c. 792, s. 6; 1989, c. 523, s. 4; 1991, c. 164, s. 1; 1997-456, s. 55.3; 1997-475, s. 5.4; 2000-169, s. 1.)

OFFICIAL COMMENT

1. **Source.** Subsection (a): Former section 9-403(1); the remainder is new.

2. **What Constitutes Filing.** Subsection (a) deals generically with what constitutes filing of a record, including an initial financing statement and amendments of all kinds (e.g., assignments, termination statements, and continuation statements). It follows former section 9-403(1), under which either acceptance of a record by the filing office or presentation of the record and tender of the filing fee constitutes filing.

3. **Effectiveness of Rejected Record.** Subsection (b) provides an exclusive list of grounds upon which the filing office may reject a record. See section 9-520(a). Although some of these grounds would also be grounds for rendering a filed record ineffective (e.g., an initial financing statement does not provide

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a name for the debtor), many others would not be (e.g., an initial financing statement does not provide a mailing address for the debtor or secured party of record). Neither this section nor section 9-520 requires or authorizes the filing office to determine, or even consider, the accuracy of information provided in a record. For example, the State A filing office may not reject under subsection (b)(5)(C) an initial financing statement indicating that the debtor is a State A corporation and providing a three-digit organizational identification number, even if all State A organizational identification numbers contain at least five digits and two letters.

A financing statement or other record that is communicated to the filing office but which the filing office refuses to accept provides no public notice, regardless of the reason for the rejection. However, this section distinguishes between records that the filing office rightfully rejects and those that it wrongfully rejects. A filer is able to prevent a rightful rejection by complying with the requirements of subsection (b). No purpose is served by giving effect to records that justifiably never find their way into the system, and subsection (b) so provides.

Subsection (d) deals with the filing office's unjustified refusal to accept a record. Here, the filer is in no position to prevent the rejection and as a general matter should not be prejudiced by it. Although wrongfully rejected records generally are effective, subsection (d) contains a special rule to protect a third-party purchaser of the collateral (e.g., a buyer or competing secured party) who gives value in reliance upon the apparent absence of the record from the files. As against a person who searches the public record and reasonably relies on what the public record shows, subsection (d) imposes upon the filer the risk that a record failed to make its way into the filing system because of the filing office's wrongful rejection of it. (Compare section 9-517, under which a mis-indexed financing statement is fully effective.) This risk is likely to be small, particularly when a record is presented electronically, and the filer can guard against this risk by conducting a post-filing search of the records. Moreover, section 9-520(b) requires the filing office to give prompt notice of its refusal to accept a record for filing.

4. **Method or Medium of Communication.** Rejection pursuant to subsection (b)(1) for failure to communicate a record properly should be understood to mean noncompliance with procedures relating to security, authentication, or other communication-related requirements that the filing office may impose. Subsection (b)(1) does not authorize a filing office to impose additional substantive requirements. See section 9-520, comment 2.

5. **Address for Secured Party of Record.** Under subsection (b)(4) and section 9-520(a), the lack of a mailing address for the secured party of record requires the filing office to reject an initial financing statement. The failure to include an address for the secured party of record no longer renders a financing statement ineffective. See section 9-502(a). The function of the address is not to identify the secured party of record but rather to provide an address to which others can send required notifications, e.g., of a purchase-money security interest in inventory or of the disposition of collateral. Inasmuch as the address shown on a filed financing statement is an "address that is reasonable under the circumstances," a person required to send a notification to the secured party may satisfy the requirement by sending a notification to that address, even if the address is or becomes incorrect. See section 9-102 (definition of "send"). Similarly, because the address is "held out by (the secured party) as the place for receipt of such communications (i.e., communications relating to security interests)," the secured party is deemed to have received a notification delivered to that address. See section 1-201(26).

6. **Uncertainty Concerning Individual Debtor's Last Name.** Subsection (b)(3)(C) requires the filing office to reject an initial financing statement or amendment adding an individual debtor if the office cannot index the record because it does not identify the debtor's last name (e.g., it is unclear whether the debtor's name is Elton John or John Elton).

7. **Inability of Filing Office to Read or Decipher Information.** Under subsection (c)(1), if the filing office cannot read or decipher information, the information is not provided by a record for purposes of subsection (b).

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8. **Classification of Records.** For purposes of subsection (b), a record that does not indicate it is an amendment or identify an initial financing statement to which it relates is deemed to be an initial financing statement. See subsection (c)(2).

9. **Effectiveness of Rejectable But Unrejected Record.** Section 9-520(a) requires the filing office to refuse to accept an initial financing statement for a reason set forth in subsection (b). However, if the filing office accepts such a financing statement nevertheless, the financing statement generally is effective if it complies with the requirements of section 9-502(a) and (b). See section 9-520(c). Similarly, an otherwise effective financing statement generally remains so even though the information in the financing statement becomes incorrect. See section 9-507(b). (Note that if the information required by subsection (b)(5) is incorrect when the financing statement is filed, section 9-338 applies.)

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2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
S.B. 258 A BILL TO BE ENTITLED AN ACT TO REQUIRE RESCISSION OFFERS TO BE FILED WITH THE SECRETARY OF STATE.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 1

SENATE BILL 258

Short Title:	Rescission Offer Filing Procedure-AB.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary I.	

February 27, 2001

A BILL TO BE ENTITLED

AN ACT TO REQUIRE RESCISSION OFFERS TO BE FILED WITH THE SECRETARY OF STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 78A-56(g)(3) reads as rewritten:

"(3) Offers shall be in the form and contain the information the Administrator by rule prescribes. Every offer under subsection (g) of this section shall be delivered to the offeree or sent by certified mail addressed to ~~him~~ the offeree at ~~his~~the offeree's last known address. The person making the offer shall file a copy of the rescission offer with the Administrator at least 10 days before delivering the offer to the offeree. If an offer is not performed in accordance with its terms, suit by the offeree under this section shall be permitted without regard to this subsection."

SECTION 2. This act becomes effective October 1, 2001, and applies to rescission offers made on or after that date.

SENATE BILL 258:
Rescission Offer Filing Procedure.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Hartsell
Date:	May 1, 2001	**Summary by:**	Jeff Hudson, Committee Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 258 would require a person seeking to avoid civil liability for untrue statements made in connection with the sale of securities by offering a rescission of the sale and a repurchase or refund of the consideration paid plus interest to file a copy of the rescission offer with the Secretary of State at least 10 days prior to the time the offer is extended. This bill was requested by the Secretary of State's Office.***

CURRENT LAW: G.S. 78A-56(g) (copy attached) prohibits a person from suing the other party to a securities transaction based on untrue statements or the failure to make the proper disclosures where, prior to suit, the offending party offers to buy back the securities purchased at the price paid plus interest at the lawful rate (currently 8% as set forth in G.S. 24-1) or offers to return the securities plus any earnings or offers to pay damages, in the form of a written rescission offer and the offeree fails to accept the offer within 30 days. These rescission offers must be in the form and contain the information required by the Secretary of State's Office.

BILL ANALYSIS: Senate Bill 258 would add to the requirement of complying with the form and content requirements of the Secretary of State's Office a requirement that the offeror of the rescission file a copy of the proposed rescission offer with the Secretary of State at least 10 days prior to the date the rescission offer is made to the offeree. These types of filings with the Secretary of State's Office are matters of public record.

EFFECTIVE DATE: The bill would become effective on October 1, 2001 and would apply to rescission offers made on or after that date.

Note: Walker Reagan, Committee Counsel for the Senate Judiciary I Committee, contributed to the preparation of this summary.

§ 78A-56. Civil liabilities.

(a) Any person who:

(1) Offers or sells a security in violation of G.S. 78A-8(1), 78A-8(3), 78A-10(b), 78A-12, 78A-24, or 78A-36(a), or of any rule or order under G.S. 78A-49(d) which requires the affirmative approval of sales literature before it is used, or of any condition imposed under G.S. 78A-27(d) or 78A-28(g), or

(2) Offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of the untruth or omission), and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission,

is liable to the person purchasing the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at the legal rate from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it and interest at the legal rate as provided by G.S. 24-1 from the date of disposition.

(b) Any person who purchases a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading (the seller not knowing of the untruth or omission), and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission, shall be liable to the person selling the security to him, who may sue either at law or in equity to recover the security, plus any income received by the purchaser thereon, upon tender of the consideration received, or for damages if the purchaser no longer owns the security. Damages are the excess of the value of the security when the purchaser disposed of it, plus interest at the legal rate from the date of disposition, over the consideration paid for the security.

(c) Every person who directly or indirectly controls a person liable under subsection (a) or (b), every partner, officer, or director of such a person, every person occupying a similar status or performing similar functions, every employee of such a person who materially aids in the act or transaction, and every dealer or salesman who materially aids in the sale are also liable jointly and severally with and to the same extent as such person, unless the person who is so liable sustains the burden of proof that he did not know, and in the exercise of reasonable care should not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

(d) Any tender specified in this section may be made at any time before entry of judgment. Tender shall require only notice of willingness to exchange the security for the amount specified. Any notice may be given by service as in civil actions or by certified mail addressed to the last known address of the person liable.

(e) Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant.

(f) No person may sue under this section more than two years after the sale or contract of sale.

(g) (1) No purchaser may sue under this section if, before suit is commenced, the purchaser has received a written offer stating the respect in which liability under this section may have arisen and fairly advising the purchaser of his rights; offering to repurchase the security for cash payable on delivery of the security equal to the consideration paid, together with interest at the legal rate as provided by G.S. 24-1 from the date of payment, less the amount of any income received on the security or, if the purchaser no longer owns the security, offering to pay the purchaser upon acceptance of the offer an amount in cash equal to the damages computed in accordance with subsection (a); and stating that the offer may be accepted by the purchaser at any time within 30 days of its receipt; and the purchaser has failed to accept such offer in writing within the specified period.

(2) No seller may sue under this section if, before suit is commenced, the seller has received a written offer stating the respect in which liability under this section may have arisen and fairly advising the seller of his rights; offering to return the security plus the amount of any income received thereon upon payment of the consideration received, or, if the purchaser no longer owns the security, offering to pay the seller upon acceptance of the offer an amount in cash equal to the damages computed in accordance with subsection (b); and providing that the offer may be accepted by the seller at any time within 30 days of its receipt; and the seller has failed to accept such offer in writing within the specified period.

(3) Offers shall be in the form and contain the information the Administrator by rule prescribes. Every offer under subsection (g) shall be delivered to the offeree or sent by certified mail addressed to him at his last known address. If an offer is not performed in accordance with its terms, suit by the offeree under this section shall be permitted without regard to this subsection.

(h) No person who has made or engaged in the performance of any contract in violation of any provision of this Chapter or any rule or order hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract.

(i) Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this Chapter or any rule or order hereunder is void.

(j) The rights and remedies provided by this Chapter are in addition to any other rights or remedies that may exist at law or in equity, but this Chapter does not create any cause of action not specified in this section or G.S. 78A-37(d).

(1925, c. 190, s. 23; 1927, c. 149, s. 23; 1955, c. 436, s. 10; 1971, c. 572, s. 2; 1973, c. 1380; 1975, c. 19, s. 22; c. 144, s. 3; 1977, c. 781, s. 2; 1983, c. 817, ss. 20, 21; 1987, c. 282, s. 9; 1991, c. 456, s. 5.)

Annotations

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
S.B. 259 A BILL TO BE ENTITLED AN ACT TO AMEND THE SECURITIES DEALER REGISTRATION STATUTES TO ABOLISH THE CHURCH BOND DEALER RESTRICTION.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 1

SENATE BILL 259

Short Title:	Abolish Church Bond Dealer Restriction-AB.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary I.	

February 27, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE SECURITIES DEALER REGISTRATION STATUTES TO ABOLISH THE CHURCH BOND DEALER RESTRICTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 78A-36(a) reads as rewritten:

"(a) It is unlawful for any person to transact business in this State as a dealer or salesman unless he is registered under this Chapter. No dealer shall be eligible for registration under this Chapter, or for renewal of registration hereunder, unless such dealer is at the time registered as a dealer with the Securities and Exchange Commission under the Securities Exchange Act of ~~1934; any dealer specializing in church securities may be registered to offer or sell only those securities which are issued by churches located within this State.~~ 1934."

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

SENATE BILL 259:
Abolish Church Bond Dealer Restriction.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Hartsell
Date:	May 1, 2001	**Summary by:**	Robin Johnson
Version:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 259 would eliminate the restrictions on registered securities dealers who specialize in church securities from only offering for sale securities of churches located in North Carolina.***

This bill was requested by the Secretary of State's Office.

The bill would take effect when it becomes law.

CURRENT LAW: Current law provides that any securities dealer specializing in church securities (such as church bonds) may be registered to sell only securities issued by churches located in the State. Securities dealers of church securities have to be registered and meet all the qualifications of any securities dealer, and securities dealers of church securities are not restricted in other types of securities they can sell.

BILL ANALYSIS: This bill would amend G.S. 78A-36, which requires persons to register as a securities dealer or salesman. It would eliminate the distinction in the statute between securities dealers specializing in church securities and other securities dealers, and would eliminate any question as to whether a North Carolina securities dealer is permitted by NC law to legally sell church securities in another state, if permitted to do so under the other state's law.

BACKGROUND: The Secretary of State's office does not keep any separate records to identify securities dealers that specialize in church securities.

S259-SMRH-001: O. Walker Reagan, Committee Counsel for Senate Judiciary I, substantially contributed to this summary.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 277 A BILL TO BE ENTITLED AN ACT TO CLARIFY THAT THE EXEMPTION FOR THE OFFER AND SALE OF STOCK IS ALLOWED ONLY FOR CORPORATIONS THAT ARE ORGANIZED AND THAT OPERATE TO CONFER A PUBLIC BENEFIT.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 2

SENATE BILL 277

Judiciary I Committee Substitute Adopted 3/15/01

Short Title: Community Development Exemption-AB. (Public)

Sponsors:

Referred to:

March 1, 2001

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT THE EXEMPTION FOR THE OFFER AND SALE OF STOCK IS ALLOWED ONLY FOR CORPORATIONS THAT ARE ORGANIZED AND THAT OPERATE TO CONFER A PUBLIC BENEFIT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 78A-17(13) reads as rewritten:

"(13) Any offer or sale by a domestic corporation of its own securities if (i) the corporation was organized for the purpose of promoting community, agricultural or industrial development of the area in which the principal office is located, (ii) the offer or sale has been approved by resolution of the county commissioners of the county in which its principal office is located, and, if located in a municipality or within two miles of the boundaries thereof, by resolution of the governing body of such municipality, ~~and~~ (iii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this ~~State;~~State, and (iv) the corporation is both organized and operated principally to promote some community, industrial, or agricultural development that confers a public benefit rather than organized and operated principally to generate a pecuniary profit;".

SECTION 2. This act becomes effective October 1, 2001, and applies to offers or sales of securities occurring on or after that date.

SENATE BILL 277:
Community Development Exemption - AB.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Hartsell
Date:	May 1, 2001	**Summary by:**	Robin Johnson
Version:	Second		Committee Counsel

SUMMARY: ***In order to qualify for an exemption from securities registration for the sale of stock by a community development corporation, Senate Bill 277 would add a requirement that the corporation must be organized and operated primarily to promote some community, industrial, or agricultural development that confers a public benefit.***

The Secretary of State's Office requested this bill.

CURRENT LAW: Currently in NC, G.S. 78A-24 (attached) requires that all sales of securities in the State must be registered and the prospectus of the sale filed in accordance with NC law unless the transaction is exempt from State law or the security is covered by federal law. Current law exempts the sale of a corporation's own securities if (i) the corporation is organized to promote community, agricultural, or industrial development in the area where the principal office of the corporation is located; (ii) the county commissioners and the governing body of the municipality, if applicable, have approved the sale of the securities; and (iii) no commission is paid directly or indirectly for soliciting prospective buyers of the security.

BILL ANALYSIS: Senate Bill 277 would add to the conditions necessary to qualify for the exemption as a community development corporation that the corporation be both organized and operated in a way that principally promotes community, industrial, or agricultural development that confers a public benefit and that the corporation not be organized and operated principally to generate a profit.

EFFECTIVE DATE: The bill would become effective October 1, 2001 and apply to the sale of securities on or after that date.

S277-SMRH-001: O. Walker Reagan, Counsel for Senate Judiciary I, contributed to this summary.

§ 78A-24. Registration requirement.

It is unlawful for any person to offer or sell any security in this State unless (i) it is registered under this Chapter, (ii) the security or transaction is exempted under G.S. 78A-16 or 78A-17 and such exemption has not been denied or revoked under G.S. 78A-18, or (iii) it is a security covered under federal law.
(1925, c. 190, s. 6; 1927, c. 149, s. 6; 1955, c. 436, s. 4; 1973, c. 1380; 1997-419, ss. 6, 7.)

§ 78A-49. Rules, forms, orders, and hearings.

(a) The Administrator may from time to time make, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this Chapter, including rules and forms governing registration statements, applications, and reports, and defining any terms, whether or not used in this Chapter, insofar as the definitions are not inconsistent with the provisions of this Chapter. For the purpose of rules and forms the Administrator may classify securities, persons, and matters within his jurisdiction, and prescribe different requirements for different classes.

(b) No rule, form, or order may be made, amended, or rescinded unless the Administrator finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this Chapter. In prescribing rules and forms the Administrator may cooperate with the securities administrators of the other states and the Securities and Exchange Commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable.

(c) The Administrator may by rule or order prescribe (i) the form and content of financial statements required under this Chapter, (ii) the circumstances under which consolidated financial statements shall be filed, and (iii) whether any required financial statements shall be certified by independent or certified public accountants. All financial statements shall be prepared in accordance with generally accepted accounting practices.

(d) The Administrator may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, unless the security or transaction is exempted by G.S. 78A-16 or 78A-17 (except 78A-17(9), (17)) and such exemption has not been denied or revoked under G.S. 78A-18 or the security is a security covered under federal law or the transaction is with respect to a security covered under federal law.

(e) All rules and forms of the Administrator shall be published.

(f) No provision of this Chapter imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the Administrator, notwithstanding that the rule, form, or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(g) Every hearing in an administrative proceeding shall be public unless the Administrator in his discretion grants a request joined in by all the respondents that the hearing be conducted privately.
(1925, c. 190, s. 11; 1927, c. 149, s. 11; 1973, c. 1380; 1987, c. 849, s. 6; 1997-419, s. 11.)

VISITOR REGISTRATION SHEET

House Committee on Judiciary II — 05-01-01

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
John Rust	NCFPC
[illegible]	AOC
[illegible]	NMFDS P.A
Robert Wilson	Sec of State
[illegible]	SOS
[illegible]	SOS
Floyd Lewis	General Statutes Commission
Bill Scoggin	Kennedy Covington
Patrice Roulhac	NAACP
Michelle Frazier	NC Bar Assoc.
Steve Shaber	Poyner & Spruill
Kaz Sawicki	NC CCL
Joanne Winne	NCSBA
Richard W Watch	AARP

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

May 8, 2001 – 10:00 a.m.

The House Committee on Judiciary II met on Tuesday, May 8, 2001, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairman Phil Haire, Representatives Bowie, Decker, Gulley, Hall, Jeffus, Justus, Miller, Pope, Sherrill, and Weiss. Robin Johnson, Esther Manheimer, Jeff Hudson, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order, and called for consideration of the following bill:

SB 499 Amend Adoption Laws. Rep. Hall moved that the proposed committee substitute be before the committee for the purposes of discussion, and without objection, the PCS was before the committee. Sen. Hartsell, bill sponsor, was recognized to present the bill. He pointed out that this bill was the product of those involved in adoptions on a practical basis. Sen. Hartsell noted that the major change to current law was the length of the revocation period for consent or relinquishment, presently it is 21 days and this bill would change that to 7 days. Steve Shaber, Chairman of the General Statutes Commission that made changes to the state's adoption laws in 1995, presented the problems that have come to light since 1995. Rep. Decker stated that he believed that this bill represented a step in the right direction. Rep. Miller asked for the percentage of parents who change their mind after they decide to give their child up for adoption. Mr. Shaber noted that it was less than 10%. Esther High with the Division of Social Services said that they have mothers who often change their mind, approximately ¼. The committee raised some concerns with regard to the sharing of information between the parties involved, Rep. Earle told the committee that she would not like to see substantive changes made to the bill in its current form. Rep. Hall voiced his concern with the limitation that the bill placed on advertising. Mr. Shaber and Sharnese Ransom, DSS, said that since advertising was something new, they made the decision not to open it up to broadcast. Parker Herring, Friends of Adoption, advised that advertising has a positive impact on adoptions as a whole. There being further questions and concerns to come before the committee, no action was taken.

The meeting adjourned at 10:55 a.m.

Phil Baddour
Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

HOUSE JUDICIARY II COMMITTEE
AGENDA

May 8, 2001
10:00 A.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Jeff Hudson
Elizabeth Kirkland (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDERED:

SB 499 Amend Adoption Laws – Sen. Hartsell
HB 1402 Address Confidentiality Program Funds – Rep. Jeffus

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 499*

Judiciary I Committee Substitute Adopted 4/24/01

PROPOSED COMMITTEE SUBSTITUTE S499-CSRH-35 [v.5]

5/7/2001 10:30:21 AM

Short Title: Amend Adoption Laws. (Public)

Sponsors:

Referred to:

March 19, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS RELATING TO ADOPTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 48-1-101 reads as rewritten:

"**§ 48-1-101. Definitions.**

In this Chapter, the following definitions apply:

(1) "Adoptee" means an individual who is adopted, is placed for adoption, or is the subject of a petition for adoption properly filed with the court.

(2) "Adoption" means the creation by law of the relationship of parent and child between two individuals.

(3) "Adult" means an individual who has attained 18 years of age, or if under the age of 18, is either married or has been emancipated under the applicable State law.

(3a) "Adoption facilitator" means an individual or a nonprofit entity that assists biological parents in locating and evaluating prospective adoptive parents without charge.

(4) "Agency" means a public or private association, corporation, institution, or other person or entity that is licensed or otherwise authorized by the law of the jurisdiction where it operates to place minors for adoption. "Agency" also means a county department of social services in this State.

(4a) <u>"Agency identified adoption" means a placement where an agency has agreed to place the minor with a prospective adoptive parent selected by the parent or guardian.</u>

(5) "Child" means a son or daughter, whether by birth or adoption.

(5a) "Criminal history" means a county, State, or federal criminal history of conviction or a pending indictment of a crime, whether a misdemeanor or a felony, that bears upon an individual's fitness to have

responsibility for the safety and well-being of children, including the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication. Such 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. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(6) "Department" means the North Carolina Department of Health and Human Services.

(7) "Division" means the Division of Social Services of the Department.

(8) "Guardian" means an individual, other than a parent, appointed by a clerk of court in North Carolina to exercise all of the powers conferred by G.S. 35A-1241, including a standby guardian appointed under Article 21 of Chapter 35A of the General Statutes whose authority has actually commenced; and also means an individual, other than a parent, appointed in another jurisdiction according to the law of that jurisdiction who has the power to consent to adoption under the law of that jurisdiction.

(9) "Legal custody" of an individual means the general right to exercise continuing care of and control over the individual as authorized by law, with or without a court order, and:

a. Includes the right and the duty to protect, care for, educate, and discipline the individual;

b. Includes the right and the duty to provide the individual with food, shelter, clothing, and medical care; and

c. May include the right to have physical custody of the individual.

(10) "Minor" means an individual under 18 years of age who is not an adult.

(11) "Party" means a petitioner, adoptee, or any person whose consent to an adoption is necessary under this Chapter but has not been obtained.

(12) "Physical custody" means the physical care of and control over an individual.

(13) "Placement" means transfer of physical custody of a minor to the selected prospective adoptive parent. Placement may be either:
a. Direct placement by a parent or the guardian of the minor; or
b. Placement by an agency.

(14) "Preplacement assessment" means a document, whether prepared before or after placement, that contains the information required by G.S. 48-3-303 and any rules adopted by the Social Services Commission.

(15) "Relinquishment" means the voluntary surrender of a minor to an agency for the purpose of adoption.

(16) "Report to the court" means a document prepared in accordance with G.S. 48-2-501, et seq.

(17) "State" means a state as defined in G.S. 12-3(11).

(18) "Stepparent" means an individual who is the spouse of a parent of a child, but who is not a legal parent of the child."

SECTION 2. G.S. 48-2-304(b) reads as rewritten:

"(b) Any petition to adopt a minor shall also state:

(1) The length of time the adoptee has been in the physical custody of the ~~petitioner;~~petitioner.

(2) If the adoptee is not in the physical custody of the petitioner, the reason why the petitioner does not have physical custody and the date and manner in which the petitioner intends to acquire ~~custody;~~custody.

(3) That the petitioner has the resources, including those available under a subsidy for an adoptee with special needs, to provide for the care and support of the ~~adoptee;~~adoptee.

(4) Any information required by the Uniform Child-Custody Jurisdiction and Enforcement Act, Article 2 of Chapter 50A of the General Statutes, which is known to the ~~petitioner;~~petitioner.

(5) That any required assessment has been completed or updated within the ~~12~~18 months before the ~~placement; and~~placement.

(6) That all necessary consents, relinquishments, or terminations of parental rights have been obtained and will be filed as additional documents with the petition; or that the necessary consents, relinquishments, and terminations of parental rights that have been obtained will be filed as additional documents with the petition, along with the document listing the names of any other individuals whose consent, relinquishment, or termination of rights may be necessary but has not been obtained."

SECTION 3. G.S. 48-2-305 reads as rewritten:

"**§ 48-2-305. Petition for adoption; additional documents.**

At the time the petition is filed, the petitioner shall file or cause to be filed the following documents:

(1) Any required affidavit of parentage executed ~~pursuant to G.S. 48-3-206;~~ under G.S. 48-3-206.

(2) Any required consent or relinquishment that has been ~~executed;~~executed.

(3) A certified copy of any court order terminating the rights and duties of a parent or a guardian of the ~~adoptee;~~adoptee.

(4) A certified copy of any court order or pleading in a pending proceeding concerning custody of or visitation with the ~~adoptee;~~adoptee.

(5) A copy of any required preplacement assessment certified by the agency that prepared it and any certificate of service required by G.S. 48-3-307or an affidavit from the petitioner stating why the assessment is not ~~available;~~available.

(6) A copy of any document containing the information required under G.S. 48-3-205 concerning the health, social, educational, and genetic history of the adoptee and the adoptee's original family which the petitioner received before the placement or at any later time, certified by the person who prepared it, or if this document is not available, an affidavit stating the reason why it is not ~~available;~~available.

(7) Any signed copy of the form required by the Interstate Compact on the Placement of Children, Article 38 of Chapter 7B of the General Statutes, authorizing a minor to come into this ~~State;~~State.

(8) A writing that states the name of any individual whose consent is or may be required, but who has not executed a consent or a relinquishment or whose parental rights have not been legally terminated, and any fact or circumstance that may excuse the lack of consent or ~~relinquishment; and~~relinquishment.

(9) In an adoption pursuant to Article 4 of this Chapter, a copy of any agreement to release past-due child support payments.

(10) Any consent to an agency by a placing parent and adopting parents to release identifying information under G.S. 48-9-109.

The petitioner may also file any other document necessary or helpful to the court's determination."

SECTION 4. G.S. 48-2-402(c) reads as rewritten:

"(c) In an agency placement under Article 3 of this Chapter, the agency or other proper person shall file a petition to terminate the parental rights of an unknown parent or possible parent instead of serving notice under ~~this subsection,~~subsection (b) of this section, and the court shall stay any adoption proceeding already ~~filed.~~filed, except that nothing in this subsection shall require that the agency or other proper person file a petition to terminate the parental rights of any known or possible parent who has been served notice by personal delivery or by registered or certified mail."

SECTION 5. G.S. 48-2-603(a) reads as rewritten:

"(a) At the hearing on, or disposition of, a petition to adopt a minor, the court shall grant the petition upon finding by a preponderance of the evidence that the adoption will serve the best interest of the adoptee, and ~~that:~~ upon finding the following:

(1) At least 90 days have elapsed since the filing of the petition for adoption, unless the court for cause waives this ~~requirement;~~ requirement.

(2) The adoptee has been in the physical custody of the petitioner for at least 90 days, unless the court for cause waives this ~~requirement;~~requirement.

(3) Notice of the filing of the petition has been served on any person entitled to receive notice under Part 4 of this ~~Article;~~Article.

(4) Each necessary consent, relinquishment, waiver, or judicial order terminating parental rights, has been obtained and filed with the court and the time for revocation has ~~expired;~~expired.

(5) Any assessment required by this Chapter has been filed with and considered by the ~~court;~~court.

(6) If applicable, the requirements of the Interstate Compact on the Placement of Children, Article 38 of Chapter 7B of the General Statutes, have been ~~met;~~met.

(7) Any motion to dismiss the proceeding has been ~~denied;~~denied.

(8) Each petitioner is a suitable adoptive ~~parent;~~parent.

(9) Any accounting and affidavit required under G.S. 48-2-602 has been reviewed by the court, and the court has denied, modified, or ordered reimbursement of any payment or disbursement that violates Article 10 or is unreasonable when compared with the expenses customarily incurred in connection with an ~~adoption;~~adoption.

(10) The petitioner has received information about the adoptee and the adoptee's biological family if required by ~~G.S. 48-3-205; and~~ G.S. 48-3-205.

(10a) Any certificate of service required by G.S. 48-3-307 has been filed.

(11) There has been substantial compliance with the provisions of this Chapter."

SECTION 6. G.S. 48-3-202(b) reads as rewritten:

"(b) Information about a prospective adoptive parent ~~must~~shall be provided to a parent or guardian by the prospective adoptive parent, the prospective adoptive parent's attorney, or a person or entity assisting the parent or guardian. ~~This~~ Except as otherwise provided in this subsection, this information ~~must~~shall include the preplacement assessment ~~or assessments~~ prepared pursuant to Part 3 of this Article, and may include additional information requested by the parent or guardian. The agency preparing the preplacement assessment may redact from the preplacement assessment provided to a placing parent or guardian detailed information reflecting the prospective adoptive parent's financial account balances and detailed information about the prospective

adoptive parent's extended family members, including surnames, names of employers, names of schools attended, social security numbers, telephone numbers and addresses, and other similarly detailed information about extended family members obtained under G.S. 48-3-303."

SECTION 7. G.S. 48-3-203 reads as rewritten:

"**§ 48-3-203. Agency placement adoption.**

(a) An agency may acquire legal and physical custody of a minor for purposes of adoptive placement only by means of a relinquishment pursuant to Part 7 of this Article or by a court order terminating the rights and duties of a parent or guardian of the minor.

(b) An agency shall give any ~~individual~~individual, upon ~~request~~request, a written statement of the services it ~~provides and of~~provides, its procedure for selecting a prospective adoptive parent for a minor, including the role of the minor's parent or guardian in the selection ~~process.~~process, and the procedure for an agency identified adoption and the disclosures permitted under G.S. 48-9-109. This statement ~~must~~shall include a schedule of any fee or expenses charged or required to be paid by the agency and a summary of the provisions of this Chapter that pertain to the requirements and consequences of a relinquishment and to the selection of a prospective adoptive parent.

(c) An agency may notify the parent when a placement has occurred and when an adoption decree is issued.

(d) ~~The selection of a prospective adoptive parent for a minor shall be made by the agency on the basis of a preplacement assessment.~~ An agency may place a minor for adoption only with an individual for whom a favorable preplacement assessment has been prepared. Placement shall be made as follows:

(1) If the agency has agreed to place the minor with the prospective adoptive parent selected by the parent or guardian, the minor shall be placed with the individual selected by the parent or guardian.

(2) If the agency has not agreed to place the minor with the prospective adoptive parent selected by the parent or guardian, the minor shall be placed with the prospective adoptive parent selected by the agency on the basis of the preplacement assessment. The selection may not be delegated, but may be based on criteria requested by a parent who relinquishes the child to the agency.

(d1) A minor who is in the custody or placement responsibility of a county department of social services shall not be placed with a selected prospective adoptive parent prior to the completion of an investigation of the individual's criminal history pursuant to G.S. 48-3-309 or G.S. 131D-10.3A and, based on the criminal history, a determination as to the individual's fitness to have responsibility for the safety and well-being of children.

(e) In addition to the authority granted in G.S. 131D-10.5, the Social Services Commission may adopt rules for placements by agencies consistent with the purposes of this Chapter.

(f) An agency may release identifying information as provided in G.S. 48-9-104."

SECTION 8. G.S. 48-3-303(c) is amended by adding a new subdivision to read:

"(c) The preplacement assessment ~~must,~~shall, after a reasonable investigation, report on the following about the individual being assessed:

...

(12) The agency preparing the preplacement assessment may redact from the preplacement assessment provided to a placing parent or guardian detailed information reflecting the prospective adoptive parent's financial account balances and detailed information about the prospective adoptive parent's extended family members, including surnames, names of employers, names of schools attended, social security numbers, telephone numbers and addresses, and other similarly detailed information about extended family members obtained under subsections (b) and (c) of this section."

SECTION 9. G.S. 48-3-307 is amended by adding a new subsection to read:

"(c) A prospective adoptive parent shall file or cause to be filed a certificate indicating that the prospective adoptive parent has delivered a copy of the assessment to the parent or guardian who placed the minor for adoption."

SECTION 10. G.S. 48-3-608 reads as rewritten:

"**§ 48-3-608. Revocation of consent.**

(a) ~~A consent to the adoption of an infant who is in utero or is three months old or less at the time the consent is given may be revoked within 21 days following the day on which it is executed, inclusive of weekends and holidays.~~A consent to the adoption of any ~~other~~infant who is in utero or any minor may be revoked within seven days following the day on which it is executed, inclusive of weekends and holidays. If the final day of the revocation period falls on a weekend or North Carolina or federal holiday, then the revocation period extends to the next business day. The individual who gave the consent may revoke by giving written notice to the person specified in the consent. Notice may be given by personal delivery, overnight delivery service, or registered or certified mail, return receipt requested. If notice is given by mail, notice is deemed complete when it is deposited in the United States mail, postage prepaid, addressed to the person to whom consent was given at the address specified in the consent. If notice is given by overnight delivery service, notice is deemed complete on the date it is deposited with the service as shown by the receipt from the service, with delivery charges paid by the sender, addressed to the person to whom consent was given at the address specified in the consent.

(b) In a direct placement, if:

(1) A preplacement assessment is required, and

(2) Placement occurs before the preplacement assessment is given to the parent or guardian who is placing the minor,

then that individual's time under subsection (a) of this section to revoke any consent previously given shall be either five business days after the date the individual receives the preplacement assessment or the remainder of the time provided in subsection (a) of this section, whichever is longer. The date of receipt is the earlier of the date of actual receipt or the date established pursuant to G.S. 48-3-307.

(c) If a person who has physical custody places the minor with the prospective adoptive parent and thereafter revokes a consent pursuant to this section, the prospective adoptive parent shall, immediately upon request, return the minor to that person. The revocation restores the right to physical custody and any right to legal custody to the person who placed the minor and divests the prospective adoptive parent of any right to legal or physical custody and any further responsibility for the care and support of the minor. In any subsequent proceeding, the court shall award reasonable attorneys' fees to the person who revoked if the prospective adoptive parent fails upon request to return the minor.

(d) If a person other than a person described in subsection (c) of this section revokes a consent pursuant to this section and this person's consent is required, the adoption cannot proceed until another consent is obtained or the person's parental rights are terminated. The person who revoked consent is not thereby entitled to physical custody of the minor. If the minor whose consent is required revokes consent, the county department of social services shall be notified for appropriate action.

(e) A second consent to adoption by the same adoptive parents is irrevocable."

SECTION 11. G.S. 48-3-706 reads as rewritten:

"**§ 48-3-706. Revocation of relinquishments.**

(a) ~~A relinquishment of an infant who is in utero or is three months old or less at the time the relinquishment is executed may be revoked within 21 days following the day on which it is executed, inclusive of weekends and holidays.~~ A relinquishment of any ~~other~~infant who is in utero or any minor may be revoked within seven days following the day on which it is executed, inclusive of weekends and holidays. If the final day of the period falls on a weekend or a North Carolina or federal holiday, then the revocation period extends to the next business day. The individual who gave the relinquishment may revoke by giving written notice to the agency to which the relinquishment was given. Notice may be given by personal delivery, overnight delivery service, or registered or certified mail, return receipt requested. If notice is given by mail, notice is deemed complete when it is deposited in the United States mail, postage prepaid, addressed to the agency at the agency's address as given in the relinquishment. If notice is given by overnight delivery service, notice is deemed complete on the date it is deposited with the service as shown by the receipt from the service, with delivery charges paid by the sender, addressed to the agency at the agency's address as given in the relinquishment.

(b) If a person who has physical custody relinquishes a minor and thereafter revokes a relinquishment pursuant to this section, the agency shall upon request return the minor to that person. The revocation restores the right to physical custody and any

right to legal custody to the person who relinquished the minor and divests the agency of any right to legal or physical custody and any further responsibility for the care and support of the minor. In any subsequent proceeding, the court may award the person who revoked reasonable attorneys' fees from a prospective adoptive parent with whom the minor was placed who refuses to return the minor and from the agency if the agency fails to cooperate in securing the minor's return.

(c) If a person other than a person described in subsection (b) of this section revokes a relinquishment pursuant to this section and this person's consent is required, the agency may not give consent for the adoption and the adoption cannot proceed until another relinquishment or a consent is obtained or parental rights are terminated. The person who revoked the relinquishment is not thereby entitled to physical custody of the minor.

(d) A second relinquishment for placement with the same adoptive parent selected by the agency and agreed upon by the person executing the relinquishment, or a second general relinquishment for placement by the agency with any adoptive parent selected by the agency, is irrevocable."

SECTION 12. G.S. 48-9-104 reads as rewritten:

"**§ 48-9-104. Release of identifying information.**

~~No~~Except as provided in G.S. 48-9-109(2), no person or entity shall release from any records retained and sealed under this Article the name, address, or other information that reasonably could be expected to lead directly to the identity of an adoptee, an adoptive parent of an adoptee, an adoptee's parent at birth, or an individual who, but for the adoption, would be the adoptee's sibling or grandparent, except upon order of the court for cause pursuant to G.S. 48-9-105."

SECTION 13. G.S. 48-9-109 reads as rewritten:

"**§ 48-9-109. Certain disclosures authorized.**

Nothing in this Article shall be interpreted or construed to ~~prevent~~prevent:

(1) ~~an~~An employee of a court, agency, or any other person from:

~~(1)~~ a. Inspecting permanent, confidential, or sealed records, other than records maintained by the State Registrar, for the purpose of discharging any obligation under this ~~Chapter;~~Chapter.

~~(2)~~ b. Disclosing the name of the court where a proceeding for adoption occurred, or the name of an agency that placed an adoptee, to an individual described in G.S. 48-9-104 who can verify his or her ~~identity; or~~identity.

~~(3)~~ c. Disclosing or using information contained in permanent and sealed records, other than records maintained by the State Registrar, for statistical or other research purposes as long as the disclosure will not result in identification of a person who is the subject of the information and subject to any further conditions the Department may reasonably impose.

(2) In agency placements, a parent or guardian placing a child for adoption and the adopting parents from authorizing an agency to release information or from releasing information to each other that could reasonably be expected to lead directly to the identity of an adoptee, an adoptive parent of an adoptee, or an adoptee's placing parent or guardian. The consent to the release of identifying information shall be in writing and signed prior to the adoption by any placing parent or guardian and the adopting parents and acknowledged under oath in the presence of an individual authorized to administer oaths or take acknowledgments. Any consent to release identifying information shall be filed under G.S. 48-2-305."

SECTION 14. G.S. 48-10-101 reads as rewritten:

"**§ 48-10-101. Prohibited activities in placement.**

(a) No one other than a person or entity specified in G.S. 48-3-201 may place a minor for adoption. No one other than a person or entity specified in G.S. 48-3-201, or an adoption facilitator, may solicit potential adoptive parents for children in need of adoption. No one other than an agency or an adoption facilitator, or an individual with a completed preplacement assessment that contains a finding that the individual is suitable to be an adoptive parent or that individual's immediate family, may solicit for adoption a potential adoptee.

(b) No one other than a county department of social services, an adoption facilitator, or an agency licensed by the Department in this State may advertise in any periodical or newspaper, or by radio, television, or other public medium, that any person or entity will place or accept a child for adoption.

(b1) Notwithstanding subsections (a) and (b) of this section, this Article shall not prohibit a person with a current completed preplacement assessment finding the person suitable to be an adoptive parent from advertising in a periodical or newspaper, or on the Internet, that the person desires to adopt. This advertisement shall contain either a statement of the person's willingness to provide lawful expenses as permitted by G.S. 48-10-103 or a statement of the manner in which the person may be contacted, or both statements. Before this advertisement is published in a periodical or newspaper, the person shall provide the publisher with a copy of a statement from the agency that prepared the preplacement assessment confirming that the person has been found suitable to be an adoptive parent and identifying the date the preplacement assessment was completed. An advertisement posted on the Internet shall include a statement that the person has a completed preplacement assessment, the person has been found suitable to be an adoptive parent, and identifies the name of the agency and date the preplacement assessment was completed.

(c) A person who violates ~~subsection (a) or (b)~~subsection (a), (b), or (b1) of this section is guilty of a Class 1 misdemeanor.

(d) The district court may enjoin any person from violating this section."

SECTION 15. This act becomes effective November 1, 2001. Section 4 applies to adoptions in which the petition is pending or filed on or after that date. Sections 3, 5, 7, 9, 12, and 13 apply to adoptions in which the petition is filed on or after that date. Sections 6 and 8 apply to preplacement assessments prepared on or after that date. Section 10 applies to consents executed on or after that date. Section 11 applies to relinquishments executed on or after that date. Section 14 applies to advertising published on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 2

SENATE BILL 499*

Judiciary I Committee Substitute Adopted 4/24/01

Short Title: Amend Adoption Laws. (Public)

Sponsors:

Referred to:

March 19, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS RELATING TO ADOPTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 48-1-101 reads as rewritten:

"**§ 48-1-101. Definitions.**

In this Chapter, the following definitions apply:

(1) "Adoptee" means an individual who is adopted, is placed for adoption, or is the subject of a petition for adoption properly filed with the court.

(2) "Adoption" means the creation by law of the relationship of parent and child between two individuals.

(3) "Adult" means an individual who has attained 18 years of age, or if under the age of 18, is either married or has been emancipated under the applicable State law.

(3a) "Adoption facilitator" means an individual or a nonprofit entity that assists biological parents in locating and evaluating prospective adoptive parents without charge.

(4) "Agency" means a public or private association, corporation, institution, or other person or entity that is licensed or otherwise authorized by the law of the jurisdiction where it operates to place minors for adoption. "Agency" also means a county department of social services in this State.

(4a) "Agency identified adoption" means a placement where an agency has agreed to place the minor with a prospective adoptive parent selected by the parent or guardian.

(5) "Child" means a son or daughter, whether by birth or adoption.

(5a) "Criminal history" means a county, State, or federal criminal history of conviction or a pending indictment of a crime, whether a misdemeanor or a felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of children, including the

following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication. Such 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. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(6) "Department" means the North Carolina Department of Health and Human Services.

(7) "Division" means the Division of Social Services of the Department.

(8) "Guardian" means an individual, other than a parent, appointed by a clerk of court in North Carolina to exercise all of the powers conferred by G.S. 35A-1241, including a standby guardian appointed under Article 21 of Chapter 35A of the General Statutes whose authority has actually commenced; and also means an individual, other than a parent, appointed in another jurisdiction according to the law of that jurisdiction who has the power to consent to adoption under the law of that jurisdiction.

(9) "Legal custody" of an individual means the general right to exercise continuing care of and control over the individual as authorized by law, with or without a court order, and:

a. Includes the right and the duty to protect, care for, educate, and discipline the individual;

b. Includes the right and the duty to provide the individual with food, shelter, clothing, and medical care; and

c. May include the right to have physical custody of the individual.

(10) "Minor" means an individual under 18 years of age who is not an adult.

(11) "Party" means a petitioner, adoptee, or any person whose consent to an adoption is necessary under this Chapter but has not been obtained.

(12) "Physical custody" means the physical care of and control over an individual.

(13) "Placement" means transfer of physical custody of a minor to the selected prospective adoptive parent. Placement may be either:
a. Direct placement by a parent or the guardian of the minor; or
b. Placement by an agency.

(14) "Preplacement assessment" means a document, whether prepared before or after placement, that contains the information required by G.S. 48-3-303 and any rules adopted by the Social Services Commission.

(15) "Relinquishment" means the voluntary surrender of a minor to an agency for the purpose of adoption.

(16) "Report to the court" means a document prepared in accordance with G.S. 48-2-501, et seq.

(17) "State" means a state as defined in G.S. 12-3(11).

(18) "Stepparent" means an individual who is the spouse of a parent of a child, but who is not a legal parent of the child."

SECTION 2. G.S. 48-2-304(b) reads as rewritten:

"(b) Any petition to adopt a minor shall also state:

(1) The length of time the adoptee has been in the physical custody of the ~~petitioner;~~petitioner.

(2) If the adoptee is not in the physical custody of the petitioner, the reason why the petitioner does not have physical custody and the date and manner in which the petitioner intends to acquire ~~custody;~~custody.

(3) That the petitioner has the resources, including those available under a subsidy for an adoptee with special needs, to provide for the care and support of the ~~adoptee;~~adoptee.

(4) Any information required by the Uniform Child-Custody Jurisdiction and Enforcement Act, Article 2 of Chapter 50A of the General Statutes, which is known to the ~~petitioner;~~petitioner.

(5) That any required assessment has been completed or updated within the ~~12~~18 months before the ~~placement; and~~placement.

(6) That all necessary consents, relinquishments, or terminations of parental rights have been obtained and will be filed as additional documents with the petition; or that the necessary consents, relinquishments, and terminations of parental rights that have been obtained will be filed as additional documents with the petition, along with the document listing the names of any other individuals whose consent, relinquishment, or termination of rights may be necessary but has not been obtained."

SECTION 3. G.S. 48-2-305 reads as rewritten:

"**§ 48-2-305. Petition for adoption; additional documents.**

At the time the petition is filed, the petitioner shall file or cause to be filed the following documents:

(1) Any required affidavit of parentage executed pursuant to ~~G.S. 48-3-206;~~ G.S. 48-3-206.

(2) Any required consent or relinquishment that has been ~~executed;~~executed.

(3) A certified copy of any court order terminating the rights and duties of a parent or a guardian of the ~~adoptee;~~adoptee.

(4) A certified copy of any court order or pleading in a pending proceeding concerning custody of or visitation with the ~~adoptee;~~adoptee.

(5) A copy of any required preplacement assessment certified by the agency that prepared it and any certificate of service required by G.S. 48-3-307or an affidavit from the petitioner stating why the assessment is not ~~available;~~available.

(6) A copy of any document containing the information required under G.S. 48-3-205 concerning the health, social, educational, and genetic history of the adoptee and the adoptee's original family which the petitioner received before the placement or at any later time, certified by the person who prepared it, or if this document is not available, an affidavit stating the reason why it is not ~~available;~~available.

(7) Any signed copy of the form required by the Interstate Compact on the Placement of Children, Article 38 of Chapter 7B of the General Statutes, authorizing a minor to come into this ~~State;~~State.

(8) A writing that states the name of any individual whose consent is or may be required, but who has not executed a consent or a relinquishment or whose parental rights have not been legally terminated, and any fact or circumstance that may excuse the lack of consent or ~~relinquishment; and~~relinquishment.

(9) In an adoption pursuant to Article 4 of this Chapter, a copy of any agreement to release past-due child support payments.

(10) Any consent to an agency by a placing parent and adopting parents to release identifying information pursuant to G.S. 48-9-109.

The petitioner may also file any other document necessary or helpful to the court's determination."

SECTION 4. G.S. 48-2-402(c) reads as rewritten:

"(c) In an agency placement under Article 3, the agency or other proper person shall file a petition to terminate the parental rights of an unknown parent or possible parent instead of serving notice under ~~this subsection,~~subsection (b) of this section, and the court shall stay any adoption proceeding already ~~filed.~~filed, except that nothing in this subsection shall require that the agency or other proper person file a termination of parental rights action in lieu of giving notice of the adoption proceedings to a known parent or possible parent."

SECTION 5. G.S. 48-2-603(a) reads as rewritten:

"**§ 48-2-603. Hearing on, or disposition of, petition to adopt a minor.**

(a) At the hearing on, or disposition of, a petition to adopt a minor, the court shall grant the petition upon finding by a preponderance of the evidence that the adoption will serve the best interest of the adoptee, and ~~that:~~ upon finding the following:

(1) At least 90 days have elapsed since the filing of the petition for adoption, unless the court for cause waives this ~~requirement;~~ requirement.

(2) The adoptee has been in the physical custody of the petitioner for at least 90 days, unless the court for cause waives this ~~requirement;~~requirement.

(3) Notice of the filing of the petition has been served on any person entitled to receive notice under Part 4 of this ~~Article;~~Article.

(4) Each necessary consent, relinquishment, waiver, or judicial order terminating parental rights, has been obtained and filed with the court and the time for revocation has ~~expired;~~expired.

(5) Any assessment required by this Chapter has been filed with and considered by the ~~court;~~court.

(6) If applicable, the requirements of the Interstate Compact on the Placement of Children, Article 38 of Chapter 7B of the General Statutes, have been ~~met;~~met.

(7) Any motion to dismiss the proceeding has been ~~denied;~~denied.

(8) Each petitioner is a suitable adoptive ~~parent;~~parent.

(9) Any accounting and affidavit required under G.S. 48-2-602 has been reviewed by the court, and the court has denied, modified, or ordered reimbursement of any payment or disbursement that violates Article 10 or is unreasonable when compared with the expenses customarily incurred in connection with an ~~adoption;~~adoption.

(10) The petitioner has received information about the adoptee and the adoptee's biological family if required by ~~G.S. 48-3-205; and~~ G.S. 48-3-205.

(10a) Any certificate of service required by G.S. 48-3-307 has been filed.

(11) There has been substantial compliance with the provisions of this Chapter."

SECTION 6. G.S. 48-3-202(b) reads as rewritten:

"(b) Information about a prospective adoptive parent ~~must~~shall be provided to a parent or guardian by the prospective adoptive parent, the prospective adoptive parent's attorney, or a person or entity assisting the parent or guardian. ~~This~~ Except as otherwise provided in this subsection, this information ~~must~~shall include the preplacement assessment ~~or assessments~~ prepared pursuant to Part 3 of this Article, and may include additional information requested by the parent or guardian. The agency preparing the preplacement assessment may redact from the placement assessment provided to a placing parent or guardian detailed information reflecting prospective adoptive parent's

financial account balances and detailed information about the prospective adoptive parent's extended family members, including surnames, names of employers, names of schools attended, social security numbers, telephone numbers and addresses, and other similarly detailed information about extended family members obtained pursuant to G.S. 48-3-303."

SECTION 7. G.S. 48-3-203 reads as rewritten:

"**§ 48-3-203. Agency placement adoption.**

(a) An agency may acquire legal and physical custody of a minor for purposes of adoptive placement only by means of a relinquishment pursuant to Part 7 of this Article or by a court order terminating the rights and duties of a parent or guardian of the minor.

(b) An agency shall give any ~~individual~~individual, upon ~~request~~request, a written statement of the services it ~~provides and of~~provides, its procedure for selecting a prospective adoptive parent for a minor, including the role of the minor's parent or guardian in the selection ~~process.~~process, and the procedure for an agency identified adoption and the disclosures permitted pursuant to G.S. 48-9-109. This statement ~~must~~shall include a schedule of any fee or expenses charged or required to be paid by the agency and a summary of the provisions of this Chapter that pertain to the requirements and consequences of a relinquishment and to the selection of a prospective adoptive parent.

(c) An agency may notify the parent when a placement has occurred and when an adoption decree is issued.

(d) ~~The selection of a prospective adoptive parent for a minor shall be made by the agency on the basis of a preplacement assessment.~~ An agency may place a minor for adoption only with an individual for whom a favorable preplacement assessment has been prepared. Placement shall be made as follows:

(1) If the agency has agreed to place the minor with the prospective adoptive parent selected by the parent or guardian, the minor shall be placed with the individual selected by the parent or guardian.

(2) If the agency has not agreed to place the minor with the prospective adoptive parent selected by the parent or guardian, the minor shall be placed with the prospective adoptive parent selected by the agency on the basis of the preplacement assessment. The selection may not be delegated, but may be based on criteria requested by a parent who relinquishes the child to the agency.

(d1) A minor who is in the custody or placement responsibility of a county department of social services shall not be placed with a selected prospective adoptive parent prior to the completion of an investigation of the individual's criminal history pursuant to G.S. 48-3-309 or G.S. 131D-10.3A and, based on the criminal history, a determination as to the individual's fitness to have responsibility for the safety and well-being of children.

(e) In addition to the authority granted in G.S. 131D-10.5, the Social Services Commission may adopt rules for placements by agencies consistent with the purposes of this Chapter.

(f) An agency may release identifying information as provided in G.S. 48-9-104."

SECTION 8. G.S. 48-3-303(c) is amended by adding a new subdivision to read:

"(c) The preplacement assessment ~~must~~shall, after a reasonable investigation, report on the following about the individual being assessed:

...

(12) The agency preparing the preplacement assessment may redact from the preplacement assessment provided to a placing parent or guardian detailed information reflecting prospective adoptive parent's financial account balances and detailed information about the prospective adoptive parent's extended family members, including surnames, names of employers, names of schools attended, social security numbers, telephone numbers and addresses, and other similarly detailed information about extended family members obtained pursuant to subsections (b) and (c) of this section."

SECTION 9. G.S. 48-3-307 is amended by adding a new subsection to read:

"(c) A prospective adoptive parent shall file or cause to be filed a certificate indicating that the prospective adoptive parent has delivered a copy of the assessment to the parent or guardian who placed the minor for adoption."

SECTION 10. G.S. 48-3-608 reads as rewritten:

"**§ 48-3-608. Revocation of consent.**

(a) ~~A consent to the adoption of an infant who is in utero or is three months old or less at the time the consent is given may be revoked within 21 days following the day on which it is executed, inclusive of weekends and holidays.~~A consent to the adoption of any ~~other~~minor may be revoked within seven days following the day on which it is executed, inclusive of weekends and holidays. If the final day of the revocation period falls on a weekend or North Carolina or federal holiday, then the revocation period extends to the next business day. The individual who gave the consent may revoke by giving written notice to the person specified in the consent. Notice may be given by personal delivery, overnight delivery service, or registered or certified mail, return receipt requested. If notice is given by mail, notice is deemed complete when it is deposited in the United States mail, postage prepaid, addressed to the person to whom consent was given at the address specified in the consent. If notice is given by overnight delivery service, notice is deemed complete on the date it is deposited with the service as shown by the receipt from the service, with delivery charges paid by the sender, addressed to the person to whom consent was given at the address specified in the consent.

(b) In a direct placement, if:

(1) A preplacement assessment is required, and
(2) Placement occurs before the preplacement assessment is given to the parent or guardian who is placing the minor,

then that individual's time under subsection (a) of this section to revoke any consent previously given shall be either five business days after the date the individual receives the preplacement assessment or the remainder of the time provided in subsection (a) of this section, whichever is longer. The date of receipt is the earlier of the date of actual receipt or the date established pursuant to G.S. 48-3-307.

(c) If a person who has physical custody places the minor with the prospective adoptive parent and thereafter revokes a consent pursuant to this section, the prospective adoptive parent shall, immediately upon request, return the minor to that person. The revocation restores the right to physical custody and any right to legal custody to the person who placed the minor and divests the prospective adoptive parent of any right to legal or physical custody and any further responsibility for the care and support of the minor. In any subsequent proceeding, the court shall award reasonable attorneys' fees to the person who revoked if the prospective adoptive parent fails upon request to return the minor.

(d) If a person other than a person described in subsection (c) of this section revokes a consent pursuant to this section and this person's consent is required, the adoption cannot proceed until another consent is obtained or the person's parental rights are terminated. The person who revoked consent is not thereby entitled to physical custody of the minor. If the minor whose consent is required revokes consent, the county department of social services shall be notified for appropriate action.

(e) A second consent to adoption by the same adoptive parents is irrevocable."

SECTION 11. G.S. 48-3-706 reads as rewritten:

"**§ 48-3-706. Revocation of relinquishments.**

(a) ~~A relinquishment of an infant who is in utero or is three months old or less at the time the relinquishment is executed may be revoked within 21 days following the day on which it is executed, inclusive of weekends and holidays.~~ A relinquishment of any ~~other~~minor may be revoked within seven days following the day on which it is executed, inclusive of weekends and holidays. If the final day of the period falls on a weekend or a North Carolina or federal holiday, then the revocation period extends to the next business day. The individual who gave the relinquishment may revoke by giving written notice to the agency to which the relinquishment was given. Notice may be given by personal delivery, overnight delivery service, or registered or certified mail, return receipt requested. If notice is given by mail, notice is deemed complete when it is deposited in the United States mail, postage prepaid, addressed to the agency at the agency's address as given in the relinquishment. If notice is given by overnight delivery service, notice is deemed complete on the date it is deposited with the service as shown by the receipt from the service, with delivery charges paid by the sender, addressed to the agency at the agency's address as given in the relinquishment.

(b) If a person who has physical custody relinquishes a minor and thereafter revokes a relinquishment pursuant to this section, the agency shall upon request return the minor to that person. The revocation restores the right to physical custody and any right to legal custody to the person who relinquished the minor and divests the agency of any right to legal or physical custody and any further responsibility for the care and support of the minor. In any subsequent proceeding, the court may award the person who revoked reasonable attorneys' fees from a prospective adoptive parent with whom the minor was placed who refuses to return the minor and from the agency if the agency fails to cooperate in securing the minor's return.

(c) If a person other than a person described in subsection (b) of this section revokes a relinquishment pursuant to this section and this person's consent is required, the agency may not give consent for the adoption and the adoption cannot proceed until another relinquishment or a consent is obtained or parental rights are terminated. The person who revoked the relinquishment is not thereby entitled to physical custody of the minor.

(d) A second relinquishment for placement with the same adoptive parent selected by the agency and agreed upon by the person executing the relinquishment, or a second general relinquishment for placement by the agency with any adoptive parent selected by the agency, is irrevocable."

SECTION 12. G.S. 48-9-104 reads as rewritten:

"**§ 48-9-104. Release of identifying information.**

~~No~~Except as provided in G.S. 48-9-109(a)(2), no person or entity shall release from any records retained and sealed under this Article the name, address, or other information that reasonably could be expected to lead directly to the identity of an adoptee, an adoptive parent of an adoptee, an adoptee's parent at birth, or an individual who, but for the adoption, would be the adoptee's sibling or grandparent, except upon order of the court for cause pursuant to G.S. 48-9-105."

SECTION 13. G.S. 48-9-109 reads as rewritten:

"**§ 48-9-109. Certain disclosures authorized.**

Nothing in this Article shall be interpreted or construed to prevent the following:

(a) ~~an~~An employee of a court, agency, or any other person from:

(1) Inspecting permanent, confidential, or sealed records, other than records maintained by the State Registrar, for the purpose of discharging any obligation under this ~~Chapter;~~Chapter.

(2) Disclosing the name of the court where a proceeding for adoption occurred, or the name of an agency that placed an adoptee, to an individual described in G.S. 48-9-104 who can verify his or her ~~identity; or~~identity.

(3) Disclosing or using information contained in permanent and sealed records, other than records maintained by the State Registrar, for statistical or other research purposes as long as the disclosure will not result in identification of a person who is the subject of the information

and subject to any further conditions the Department may reasonably impose.

(b) In agency placements, a parent or guardian placing a child for adoption and the adopting parents from authorizing an agency to release information or from releasing information to each other that could reasonably be expected to lead directly to the identity of an adoptee, an adoptive parent of an adoptee, or an adoptee's placing parent or guardian. The consent to the release of identifying information shall be in writing and signed prior to the adoption by any placing parent or guardian and the adopting parents and acknowledged under oath in the presence of an individual authorized to administer oaths or take acknowledgments. Any consent to release identifying information shall be filed pursuant to G.S. 48-2-305."

SECTION 14. G.S. 48-10-101 reads as rewritten:

"**§ 48-10-101. Prohibited activities in placement.**

(a) No one other than a person or entity specified in G.S. 48-3-201 may place a minor for adoption. No one other than a person or entity specified in G.S. 48-3-201, or an adoption facilitator, may solicit potential adoptive parents for children in need of adoption. No one other than an agency or an adoption facilitator, or an individual with a completed preplacement assessment that contains a finding that the individual is suitable to be an adoptive parent or that individual's immediate family, may solicit for adoption a potential adoptee.

(b) No one other than a county department of social services, an adoption facilitator, or an agency licensed by the Department in this State may advertise in any periodical or newspaper, or by radio, television, or other public medium, that any person or entity will place or accept a child for adoption.

(b1) Notwithstanding subsections (a) and (b) of this section, this Article shall not prohibit a person with a current completed preplacement assessment finding the person suitable to be an adoptive parent, from advertising in a periodical or newspaper that the person desires to adopt. Such an advertisement shall contain either or both of the following: (i) a statement of the person's willingness to provide lawful expenses as permitted by G.S. 48-10-103, (ii) the manner in which the person may be contacted. Prior to such an advertisement being published, the person shall provide the publisher with a copy of a statement from the agency that prepared the preplacement assessment that contains a finding that the person is suitable to be an adoptive parent.

(c) A person who violates ~~subsection (a) or (b)~~subsection (a), (b), or (b1) of this section is guilty of a Class 1 misdemeanor.

(d) The district court may enjoin any person from violating this section."

SECTION 15. This act is effective when it becomes law.

SENATE BILL 499:
Amend Adoption Laws

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Sens. Hartsell & Soles
Date:	May 8, 2001	**Summary by:**	Robin Johnson
Version:	S499-CSRH-35[v.5]		Committee Counsel

PCS CHANGES: The PCS inserts "infant who is in utero" in Sections 10 & 11, changes the effective date and its applicability, extends the provision dealing with advertising to advertising on the Internet, and makes a few technical or clarifying changes.

SUMMARY: Senate Bill 499 would: (1) shorten from 21 days to seven days for birth parents of children no older than three months to revoke their "consent" to the direct adoption of their child or to revoke the "relinquishment" of their child to an adoption agency; (2) permit, but not require, birth parents and adopting parents who use an adoption agency to share information among themselves to the same extent they could do so in a private adoption without an agency; (3) permit prospective adoptive parents who have a favorable home study ("preplacement assessment") to publish this fact in newspapers and periodicals or on the Internet; (4) explicitly permit adoption agencies to notify known birth parents and known possible birth parents of pending adoption proceedings so that they can, if they wish, appear at the adoption proceeding to protect their paternal rights instead of requiring agencies to file separate termination of parental rights cases against such known parents; and (5) make other technical and stylistic changes.

CURRENT LAW: Current law provides that: (1) birth parents of children three months of age and younger have 21 days to revoke their consent to adopt or relinquishment to an agency, while parents of children older than three months have seven days; (2) in private adoptions where there is no adoption agency, the birth parents and adopting parents *must* exchange identifying information (birth parents receive the adopting parents' preplacement assessment and adopting parents receive the birth parents' consent), but in agency adoptions the birth parents and adopting parents cannot learn each other's identities even if they all want to do so; (3) no one except adoption agencies may advertise in public media in any way; and (4) before an adoption can proceed the agencies must file separate termination of parental rights actions in cases of *unknown* parents and *unknown* possible parents, and it is commonly interpreted that agencies are to do likewise as to *known* parents and possible parents.

SECTION-BY-SECTION ANALYSIS: This bill addresses issues that have arisen since the adoption law was completely revised in 1995.

Section 1 defines an "agency identified adoption". The term is used in Section 7 to amend G.S. 48-3-203 to allow, not require, agencies to give birth parents greater say in selecting adopting parents from among potential adopting parents approved by the agency.

Section 2 corrects the number of months required for the completion or updating of a required preplacement assessment.

Section 3 amends G.S. 48-2-305, which specifies the documents that are to be attached to an adoption petition and filed with the court. The change will require that the petition have attached to it a "certificate of service" proving that the birth parents received a copy of the preplacement assessment in a private adoption (see Sections 5 & 9), and proof of the consent to release identifying information prior to an agency adoption (see Section 7, 12 & 13). Other changes affect punctuation.

Section 4 amends G.S. 48-2-402, which governs the service of the notice that an adoption petition has been filed. Existing law says that in agency adoptions, where there is an "unknown parent or possible parent," the agency must take the extra step of terminating that person's parental rights in a separate court proceeding before the adoption can proceed. The point of the law is to be especially cautious in cases where a parent's identity is allegedly not known. The amendment clarifies existing law, making it clear that where the parent or possible parent is actually known, that known parent or possible parent can be given notice of the adoption and required to defend his or her parental rights, if there are any, directly in the adoption proceeding itself.

Section 5 corrects punctuation, and requires the court to find in its adoption order that a certificate of service has been filed in the case proving that, in a private adoption, the adopting parents gave the birth parents a copy of the preplacement assessment.

Sections 6 & 8 allow, but do not require, the agency preparing a preplacement assessment to delete from the assessment detailed financial information and private information concerning extended family members.

Section 7 requires adoption agencies to explain to birth parents and adopting parents agency procedures, if any, for sharing information between adopting parents and birth parents and for giving birth parents a voice in selecting adopting parents. This section also requires agencies, which have agreed to place the child with prospective adoptive parents selected by the birth parents, to place the child with those adoptive parents when a favorable preplacement assessment has been prepared.

Section 9 requires the adopting parents to file with the court a certificate of service certifying that they gave the birth parents a preplacement assessment.

Section 10 makes the period to revoke consent to adoption seven days in all cases.

Section 11 changes the period to seven days in all cases for revoking a relinquishment to an adoption agency.

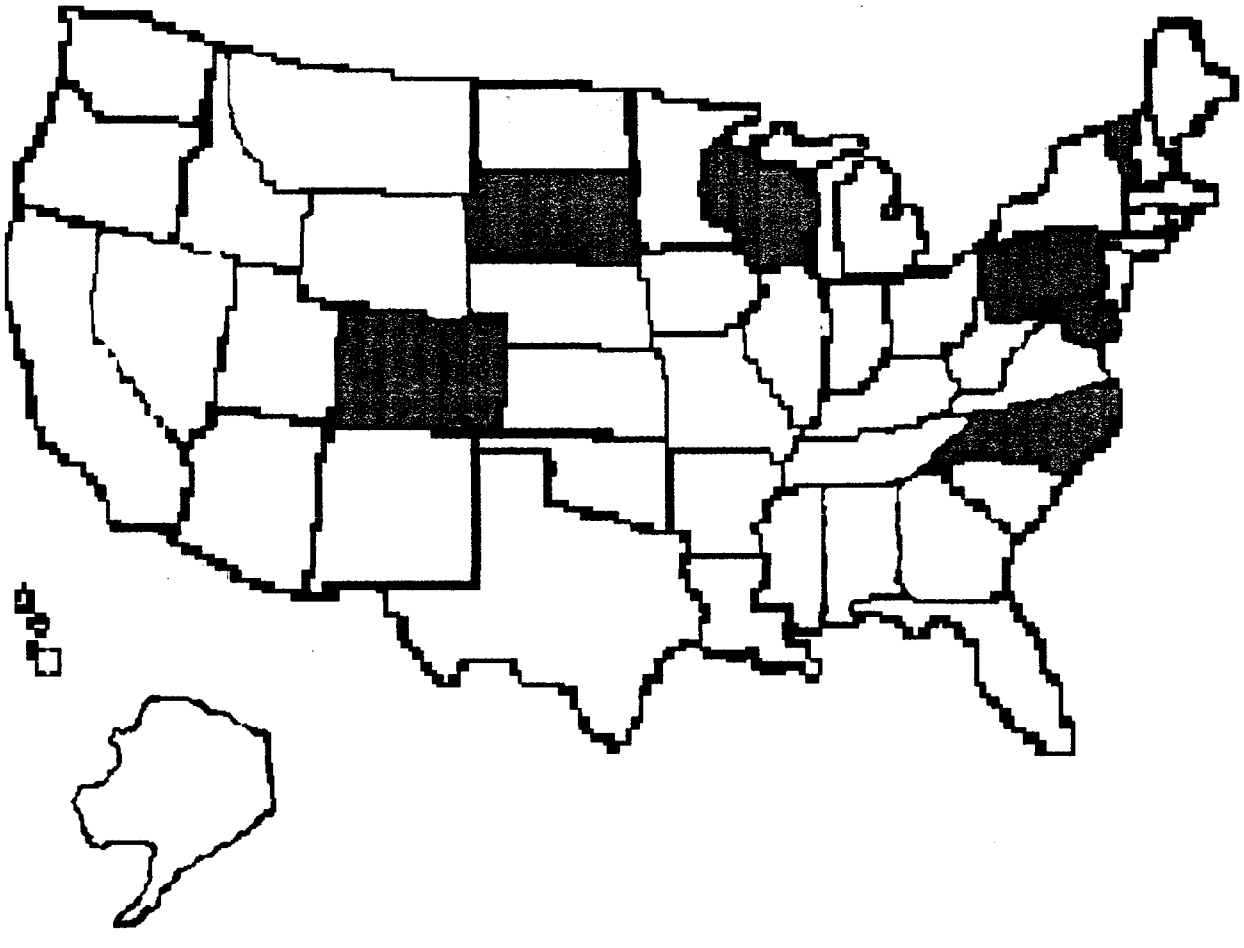
Sections 12 & 13 would allow for the release of identifying information between birth parents and adopting parents in an agency adoption. This is comparable to what is currently allowed in a private adoption. Note that Section 12 keeps all other adoption records sealed, including specifically all government records. The information can ***ONLY*** be shared if the parties agree to do so before the adoption.

Section 14 allows a prospective adopting parent to advertise in a periodical or newspaper, or on the Internet, the fact that the person desires to adopt. This section applies only to persons who received favorable preplacement assessments. Currently, this is punishable as a Class 1 misdemeanor.

EFFECTIVE DATE: The bill would take effect November 1, 2001. Section 4 would apply to adoptions in which the petition is pending or filed on or after that date. Sections 3, 5, 7, 9, 12, and 13 would apply to adoptions in which the petition is filed on or after that date. Sections 6 and 8 would apply to preplacement assessments prepared on or after that date. Sections 10 & 11 would apply to consents and relinquishments executed on or after that date. Section 14 would apply to advertising published on or after that date.

*S499-SMRH-002: *Steve Shaber, Esq. (Poyner & Spruill, L.L.P.), and Al Andrews, Counsel to Senate Judiciary I, contributed to this summary.*

REVOCATION PERIODS BY STATES



Color Key:

	States With Irrevocable Upon Signing (31)
	States With Less than 21-Day Revocation Periods (10)
	States With More than 21-Day Revocation Periods (8)
	States With No Defined Revocation Period (1)

Elaine Waters

From: Haley beth H
Sent: Thursday, April 12, 2001 7:06 AM
To: Elaine Waters
Subject: Birth mothers

To whom it may concern,
My name is Haley . On March 19, 2001 I gave birth to a beautiful little boy. As I am typing I can imagine him in the arms of his new mom and dad and the wonderful life he will receive from them. You see, I chose a better lifestyle for him than I could provide. He now has a mom and a dad who can care for him physically, emotionally, and financially. Although this decision was not an easy one, I knew that it was what was right, as well as, best for me and the baby. I think that every mother wants what is best for their child. In cases like mine it was the realization that I was not the best thing for him that was difficult. However, this realization was made early on and only reaffirmed throughout the pregnancy. I moved here, to North Carolina, to provide this baby a better life. My family members, other than my mom, are not aware of this pregnancy. I knew that adoption was what I wanted as well as needed to do. I moved eleven hours away from family and friends to carry this decision out. One of the reasons I was so sure was that on March 19,1998 I gave birth to a beautiful girl. She was also placed for adoption. During that pregnancy I received counseling and went through many workbooks helping me to make the choice that was best for me concerning this child. Although the two adoptions were completely different, the first through an agency (closed adoption) in Mississippi and the second through a facilitator (open adoption) in North Carolina, I was very grateful for both, It was the foundation laid by the workers and agency in Mississippi that allowed me to follow through with this second placement with such certainty. One of the main differences between these two adoptions was the revocation periods. In Mississippi the law gives you five days and in North Carolina it gives you 21. Five days was a perfect amount of time for me to realize that I had in fact made the right decision. I returned home from the hospital and had some time to think about the decision that I had made as well as those papers that I was going to be signing that would make this plan irreversible. As scared as I was that I could be making a mistake, I chose to take an extra day before signing those forms and walked out of the office with no regrets.
I knew what I was doing this second time. I knew what was best. I

had
no doubts or fears about the decision I was making. (especially after meeting the couple) All this to say that I knew what I wanted. However, 21
days is a long time to think about "what ifs". No matter how certain you
are of your decision, the 21 days is too long to wait to have closure and
begin to take charge of a new beginning. It is for this reason that I believe that girls who are of sound mind should have the right to waive their 21 days. I do believe that this should apply to those who are 18 or
older and have received counseling from an adoption counselor either throughout the pregnancy or before signing any legal documentation. For some
of these girls, a new beginning is what they are hoping to gain after a situation such as placing their child for adoption. I think that prolonging
that opportunity for 21 days is very difficult for any birth mother to wait
for. Please consider reducing the revocation period or at least letting the
birth mother decide to waive her waiting 21 days to have closure and begin a
fresh beginning. Thank you,

Haley

Elaine Waters

From: Glenda K.
Sent: Thursday, April 12, 2001 10:52 AM
To: Elaine Waters
Subject: Re: Proposed Changes to NC Adoption Law

It would have made it easier for me if the period was 7 days. I wanted everyone to be able to get on with their new lives after the birth of "our" daughter. It was, to me, an unnecessary burden for them financially and for me mentally knowing that I had given birth to this beautiful human being and she was being cramped in a hotel room for 21 days. I would of rather them been able to leave after 7 days to get used to the new parenthood aspect of life and that's hard to do being 17 hours away from home. I'm sure that my reasoning for this may differ from alot because I knew that my adoptive parents were very open with my having a relationship with my daughter and set no boundaries for me. I knew that I could call them, write them, etc. to see how my daughter was and how she was growing, etc. My adoptive parents were advised not to be there for the birth and I would like to see that changed. Had they listened they would have missed out on the greatest experience of their lives. But fortunately they didn't and we were all together when our daughter was born. They have pics from the very beginning until now (there is no end) as I do. They send me photos and videos about once a month and we still talk daily via email. Okay I'm blabbing now but I hope I answered your question. So I would vote for the 7 days instead of 21. Feel free to contact me anytime. Thanks, Glenda

April 11, 2001

Dear Sirs:

I gave birth to a baby boy in June 2000 and made an adoption plan for my son. I chose a couple to adopt my son and we have an open adoption. I receive pictures of my son and periodic updates on how he's doing. Although it is difficult and not a day goes by that I don't think about him, I realize that I made the right decision. I am glad that I chose an open adoption rather than going through an agency. I would hate to have all communication between me and my son's parents go through an adoption agency and to not know where my son was.

I also support changing the revocation period to seven days. That shorter period time gives birthmothers time to consider their decision and change their minds if they want to. The longer period gives too much time. That time was very difficult for me. I knew I had made the right choice, but I still had periods of doubt that caused me a lot emotional pain. Knowing that I could still change my mind made it worse. I would have preferred to have a shorter time and have been able to let go and begin healing sooner.

Another reason I support the shorter time is because the adoptive parents chose to place the baby in foster care during the 21 days in case I changed my mind. Although I understood and supported that decision, I hated knowing that they were not able to take him home from the hospital and that they lost that time with the baby.

Sincerely,

Courtney T.

Courtney T.

Elaine Waters

From: Cheryl Ta
Sent: Friday, April 06, 2001 5:22 PM
To: Elaine Waters
Subject: Birth mothers

To Whom It May Concern:

I agree with the proposed bill. I think that 7 days is long enough, because the longer you have to sit and think about your decision the harder it becomes.
The 7 days would help bring immediate closure to the situation. In my case, the only thing I wish I had done differently is to arrange for a more open adoption. At the time, I needed to have some distance at first in order to deal with the whole situation, but now I wish I knew more about my child's parents.
I haven't for one day regretted my decision of adoption but I have regretted some of the options I chose. I firmly believe that 7 days is long enough and that in situations when counseling is readily available, the mother should be able to make a decision that is irrevocable after she signs. If the mother is not certain and has concerns the seven days are there for her protection.
Adoption should involve the birth mother and the adoptive parents. So many times people forget that the adoptive family has also made a conscious decision to raise a child and their rights are not as flexible. The birth mother has the option to change her mind and the adoptive parents are left to deal with it.
I can't imagine the horror of bonding with a child and welcoming it home to only have the child taken from you with no form of recourse. I know the emotions that I felt, but I can't imagine if I had taken Hannah home and then had her taken from me. I hope my opinion has helped or will be helpful. Please let me know if there is anything else I can do, because I strongly believe in this bill. Thank you for everything you do for children

Cheryl T

Elaine Waters

From: Chrissy Sr
Sent: Friday, April 06, 2001 5:22 PM
To: Elaine Waters
Subject: Proposed Change to Adoption Law

Elaine, I hope this helps.

To Whom It May Concern:

I am a birthmother who placed my son for adoption in November, 2000. I am writing this letter in support of the proposed changes to adoption laws in North Carolina.

I was lucky enough to be able to choose adoptive parents for my son and to have a completely open adoption. I am able to call and visit my son and his parents and to be a part of his extended family. I was completely comfortable with my decision and would have gladly chosen to waive the revocation period and sign an irrevocable consent.

I believe that the current 21-day revocation period is not fair to either the birthmother or the adoptive parents. The birthmother should be able to make her decision, sign the necessary papers, and then move on with her life and begin the healing process. The adoptive parents should be able to carry their baby home and be secure with the situation so they can begin to bond with their child, rather than spending that precious time in fear that the birthmother might change her mind.

I believe that more girls would choose adoption over abortion or over raising the child themselves if they knew they could meet the adoptive parents and develop a relationship with them and be able to see first hand that their child is being loved and cherished, rather than having to rely on pictures and letters screened by an adoption agency.

Chrissy S

VISITOR REGISTRATION SHEET

J II
Name of Committee

05/08/01
Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cam Cowen	BPMHL
Sandra Deutsch	Lutheran Family Services
Steve Shaber	Poyner & Spruill
PARKER HERRING	Herring McBennett
Alicia Gruenebaum	VAIO
Esther Haigh	NCDSS
Sandy Dixon	Gov.'s Crime Commission
Mark Ezzell	GLC
Cathy Hall	Coalition for Family Peace
Anne Winick	NCCADV
Chuck Lopp	SOS
Elaine F. Marshall	SOS
Pamela Peet	ARC
George Jeter	NC SOS
Douglas Hunt	NCPMA
Ed Harris	11

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

May 10, 2001 – 10:00 a.m.

The House Committee on Judiciary II met on Thursday, May 10, 2001, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Representatives Bowie, Decker, Gulley, Hall, Justus, Miller, Miner, Pope, Sherrill, and Weiss. Robin Johnson, Esther Manheimer, Jeff Hudson, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

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

SB 499 Amend Adoption Laws. Rep. Hall moved that the new proposed committee substitute be before the committee for the purposes of discussion, and without objection, the PCS was before the committee. Rep. Baddour explained that the change in the proposed committee substitute dealt with advertising. Rep. Hall was recognized to send forth an amendment. He explained that he did not want to limit the types of advertising and that was the reasoning behind his amendment. Wade Hargrove, North Carolina Association of Broadcasters, explained that he supported the amendment. Sharnese Ransom, Division of Social Services, spoke in opposition to the amendment. Reps. Pope, Justus, Miller, and Bowie all spoke in support of the amendment. The amendment was adopted. Sen. Hartsell noted that the fundamental question is whether or not to permit advertising, not what forms of advertising to permit. Rep. Haire sent forth an amendment to address the issue of service of notice. The amendment was adopted. Rep. Hall moved that the amendments be rolled into a new committee substitute, and that the House committee substitute be given a favorable report, unfavorable as to Senate committee substitute. Motion passed unanimously.

SB 370 State MH Joint Security Force Jurisd.-AB. Rep. Haire presided while Rep. Baddour explained the bill in the absence of Sen. Kerr, bill sponsor. Michelle Cotton, Division of Mental Health, outlined the need for the bill. Chief Greenfield of Cherry Hospital and Chief Newsome of Dix Hospital were on hand to answer questions from the committee. Rep. Hall moved that the bill be given a favorable report. Motion passed unanimously.

The meeting adjourned at 10:40 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

HOUSE JUDICIARY II COMMITTEE AGENDA

May 10, 2001
10:00 A.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Jeff Hudson
Elizabeth Kirkland (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDERED:

SB 499 Amend Adoption Laws – Sen. Hartsell
SB 370 State MH Joint Security Force Jurisd.-AB – Sen. Kerr

ADJOURNMENT

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 499 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAWS RELATING TO ADOPTION.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ With a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 3

SENATE BILL 499*

Judiciary I Committee Substitute Adopted 4/24/01
House Committee Substitute Favorable 5/14/01

Short Title: Amend Adoption Laws. (Public)

Sponsors:

Referred to:

March 19, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS RELATING TO ADOPTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 48-1-101 reads as rewritten:

"**§ 48-1-101. Definitions.**

In this Chapter, the following definitions apply:

(1) "Adoptee" means an individual who is adopted, is placed for adoption, or is the subject of a petition for adoption properly filed with the court.

(2) "Adoption" means the creation by law of the relationship of parent and child between two individuals.

(3) "Adult" means an individual who has attained 18 years of age, or if under the age of 18, is either married or has been emancipated under the applicable State law.

(3a) "Adoption facilitator" means an individual or a nonprofit entity that assists biological parents in locating and evaluating prospective adoptive parents without charge.

(4) "Agency" means a public or private association, corporation, institution, or other person or entity that is licensed or otherwise authorized by the law of the jurisdiction where it operates to place minors for adoption. "Agency" also means a county department of social services in this State.

(4a) <u>"Agency identified adoption" means a placement where an agency has agreed to place the minor with a prospective adoptive parent selected by the parent or guardian.</u>

(5) "Child" means a son or daughter, whether by birth or adoption.

(5a) "Criminal history" means a county, State, or federal criminal history of conviction or a pending indictment of a crime, whether a misdemeanor or a felony, that bears upon an individual's fitness to have

responsibility for the safety and well-being of children, including the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication. Such 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. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(6) "Department" means the North Carolina Department of Health and Human Services.

(7) "Division" means the Division of Social Services of the Department.

(8) "Guardian" means an individual, other than a parent, appointed by a clerk of court in North Carolina to exercise all of the powers conferred by G.S. 35A-1241, including a standby guardian appointed under Article 21 of Chapter 35A of the General Statutes whose authority has actually commenced; and also means an individual, other than a parent, appointed in another jurisdiction according to the law of that jurisdiction who has the power to consent to adoption under the law of that jurisdiction.

(9) "Legal custody" of an individual means the general right to exercise continuing care of and control over the individual as authorized by law, with or without a court order, and:

a. Includes the right and the duty to protect, care for, educate, and discipline the individual;

b. Includes the right and the duty to provide the individual with food, shelter, clothing, and medical care; and

c. May include the right to have physical custody of the individual.

(10) "Minor" means an individual under 18 years of age who is not an adult.

(11) "Party" means a petitioner, adoptee, or any person whose consent to an adoption is necessary under this Chapter but has not been obtained.

(12) "Physical custody" means the physical care of and control over an individual.

(13) "Placement" means transfer of physical custody of a minor to the selected prospective adoptive parent. Placement may be either:
a. Direct placement by a parent or the guardian of the minor; or
b. Placement by an agency.

(14) "Preplacement assessment" means a document, whether prepared before or after placement, that contains the information required by G.S. 48-3-303 and any rules adopted by the Social Services Commission.

(15) "Relinquishment" means the voluntary surrender of a minor to an agency for the purpose of adoption.

(16) "Report to the court" means a document prepared in accordance with G.S. 48-2-501, et seq.

(17) "State" means a state as defined in G.S. 12-3(11).

(18) "Stepparent" means an individual who is the spouse of a parent of a child, but who is not a legal parent of the child."

SECTION 2. G.S. 48-2-304(b) reads as rewritten:

"(b) Any petition to adopt a minor shall also state:

(1) The length of time the adoptee has been in the physical custody of the ~~petitioner;~~petitioner.

(2) If the adoptee is not in the physical custody of the petitioner, the reason why the petitioner does not have physical custody and the date and manner in which the petitioner intends to acquire ~~custody;~~custody.

(3) That the petitioner has the resources, including those available under a subsidy for an adoptee with special needs, to provide for the care and support of the ~~adoptee;~~adoptee.

(4) Any information required by the Uniform Child-Custody Jurisdiction and Enforcement Act, Article 2 of Chapter 50A of the General Statutes, which is known to the ~~petitioner;~~petitioner.

(5) That any required assessment has been completed or updated within the ~~12~~18 months before the ~~placement; and~~placement.

(6) That all necessary consents, relinquishments, or terminations of parental rights have been obtained and will be filed as additional documents with the petition; or that the necessary consents, relinquishments, and terminations of parental rights that have been obtained will be filed as additional documents with the petition, along with the document listing the names of any other individuals whose consent, relinquishment, or termination of rights may be necessary but has not been obtained."

SECTION 3. G.S. 48-2-305 reads as rewritten:

"**§ 48-2-305. Petition for adoption; additional documents.**

At the time the petition is filed, the petitioner shall file or cause to be filed the following documents:

(1) Any required affidavit of parentage executed ~~pursuant to G.S. 48-3-206;~~under G.S. 48-3-206.

(2) Any required consent or relinquishment that has been ~~executed;~~executed.

(3) A certified copy of any court order terminating the rights and duties of a parent or a guardian of the ~~adoptee;~~adoptee.

(4) A certified copy of any court order or pleading in a pending proceeding concerning custody of or visitation with the ~~adoptee;~~adoptee.

(5) A copy of any required preplacement assessment certified by the agency that prepared it and any certificate of service required by G.S. 48-3-307or an affidavit from the petitioner stating why the assessment is not ~~available;~~available.

(6) A copy of any document containing the information required under G.S. 48-3-205 concerning the health, social, educational, and genetic history of the adoptee and the adoptee's original family which the petitioner received before the placement or at any later time, certified by the person who prepared it, or if this document is not available, an affidavit stating the reason why it is not ~~available;~~available.

(7) Any signed copy of the form required by the Interstate Compact on the Placement of Children, Article 38 of Chapter 7B of the General Statutes, authorizing a minor to come into this ~~State;~~State.

(8) A writing that states the name of any individual whose consent is or may be required, but who has not executed a consent or a relinquishment or whose parental rights have not been legally terminated, and any fact or circumstance that may excuse the lack of consent or ~~relinquishment; and~~relinquishment.

(9) In an adoption pursuant to Article 4 of this Chapter, a copy of any agreement to release past-due child support payments.

(10) Any consent to an agency by a placing parent and adopting parents to release identifying information under G.S. 48-9-109.

The petitioner may also file any other document necessary or helpful to the court's determination."

SECTION 4. G.S. 48-2-402(c) reads as rewritten:

"(c) In an agency placement under Article 3 of this Chapter, the agency or other proper person shall file a petition to terminate the parental rights of an unknown parent or possible parent instead of serving notice under ~~this subsection,~~subsection (b) of this section, and the court shall stay any adoption proceeding already ~~filed.~~filed, except that nothing in this subsection shall require that the agency or other proper person file a petition to terminate the parental rights of any known or possible parent who has been served notice as provided under G.S. 1A-1, Rule 4(j)(1) of the Rules of Civil Procedure."

SECTION 5. G.S. 48-2-603(a) reads as rewritten:

"(a) At the hearing on, or disposition of, a petition to adopt a minor, the court shall grant the petition upon finding by a preponderance of the evidence that the adoption will serve the best interest of the adoptee, and ~~that:~~upon finding the following:

(1) At least 90 days have elapsed since the filing of the petition for adoption, unless the court for cause waives this ~~requirement;~~ requirement.

(2) The adoptee has been in the physical custody of the petitioner for at least 90 days, unless the court for cause waives this ~~requirement;~~requirement.

(3) Notice of the filing of the petition has been served on any person entitled to receive notice under Part 4 of this ~~Article;~~Article.

(4) Each necessary consent, relinquishment, waiver, or judicial order terminating parental rights, has been obtained and filed with the court and the time for revocation has ~~expired;~~expired.

(5) Any assessment required by this Chapter has been filed with and considered by the ~~court;~~court.

(6) If applicable, the requirements of the Interstate Compact on the Placement of Children, Article 38 of Chapter 7B of the General Statutes, have been ~~met;~~met.

(7) Any motion to dismiss the proceeding has been ~~denied;~~denied.

(8) Each petitioner is a suitable adoptive ~~parent;~~parent.

(9) Any accounting and affidavit required under G.S. 48-2-602 has been reviewed by the court, and the court has denied, modified, or ordered reimbursement of any payment or disbursement that violates Article 10 or is unreasonable when compared with the expenses customarily incurred in connection with an ~~adoption;~~adoption.

(10) The petitioner has received information about the adoptee and the adoptee's biological family if required by ~~G.S. 48-3-205; and~~G.S. 48-3-205.

(10a) Any certificate of service required by G.S. 48-3-307 has been filed.

(11) There has been substantial compliance with the provisions of this Chapter."

SECTION 6. G.S. 48-3-202(b) reads as rewritten:

"(b) Information about a prospective adoptive parent ~~must~~shall be provided to a parent or guardian by the prospective adoptive parent, the prospective adoptive parent's attorney, or a person or entity assisting the parent or guardian. ~~This~~Except as otherwise provided in this subsection, this information ~~must~~shall include the preplacement assessment ~~or assessments~~ prepared pursuant to Part 3 of this Article, and may include additional information requested by the parent or guardian. The agency preparing the preplacement assessment may redact from the preplacement assessment provided to a placing parent or guardian detailed information reflecting the prospective adoptive

parent's financial account balances and detailed information about the prospective adoptive parent's extended family members, including surnames, names of employers, names of schools attended, social security numbers, telephone numbers and addresses, and other similarly detailed information about extended family members obtained under G.S. 48-3-303."

SECTION 7. G.S. 48-3-203 reads as rewritten:

"**§ 48-3-203. Agency placement adoption.**

(a) An agency may acquire legal and physical custody of a minor for purposes of adoptive placement only by means of a relinquishment pursuant to Part 7 of this Article or by a court order terminating the rights and duties of a parent or guardian of the minor.

(b) An agency shall give any ~~individual~~individual, upon ~~request~~request, a written statement of the services it ~~provides and of~~provides, its procedure for selecting a prospective adoptive parent for a minor, including the role of the minor's parent or guardian in the selection ~~process.~~process, and the procedure for an agency identified adoption and the disclosures permitted under G.S. 48-9-109. This statement ~~must~~shall include a schedule of any fee or expenses charged or required to be paid by the agency and a summary of the provisions of this Chapter that pertain to the requirements and consequences of a relinquishment and to the selection of a prospective adoptive parent.

(c) An agency may notify the parent when a placement has occurred and when an adoption decree is issued.

(d) ~~The selection of a prospective adoptive parent for a minor shall be made by the agency on the basis of a preplacement assessment.~~An agency may place a minor for adoption only with an individual for whom a favorable preplacement assessment has been prepared. Placement shall be made as follows:

(1) If the agency has agreed to place the minor with the prospective adoptive parent selected by the parent or guardian, the minor shall be placed with the individual selected by the parent or guardian.

(2) If the agency has not agreed to place the minor with the prospective adoptive parent selected by the parent or guardian, the minor shall be placed with the prospective adoptive parent selected by the agency on the basis of the preplacement assessment. The selection may not be delegated, but may be based on criteria requested by a parent who relinquishes the child to the agency.

(d1) A minor who is in the custody or placement responsibility of a county department of social services shall not be placed with a selected prospective adoptive parent prior to the completion of an investigation of the individual's criminal history pursuant to G.S. 48-3-309 or G.S. 131D-10.3A and, based on the criminal history, a determination as to the individual's fitness to have responsibility for the safety and well-being of children.

(e) In addition to the authority granted in G.S. 131D-10.5, the Social Services Commission may adopt rules for placements by agencies consistent with the purposes of this Chapter.

(f) An agency may release identifying information as provided in G.S. 48-9-104."

SECTION 8. G.S. 48-3-303(c) is amended by adding a new subdivision to read:

"(c) The preplacement assessment ~~must~~,shall, after a reasonable investigation, report on the following about the individual being assessed:

...

(12) The agency preparing the preplacement assessment may redact from the preplacement assessment provided to a placing parent or guardian detailed information reflecting the prospective adoptive parent's financial account balances and detailed information about the prospective adoptive parent's extended family members, including surnames, names of employers, names of schools attended, social security numbers, telephone numbers and addresses, and other similarly detailed information about extended family members obtained under subsections (b) and (c) of this section."

SECTION 9. G.S. 48-3-307 is amended by adding a new subsection to read:

"(c) A prospective adoptive parent shall file or cause to be filed a certificate indicating that the prospective adoptive parent has delivered a copy of the assessment to the parent or guardian who placed the minor for adoption."

SECTION 10. G.S. 48-3-608 reads as rewritten:

"**§ 48-3-608. Revocation of consent.**

(a) ~~A consent to the adoption of an infant who is in utero or is three months old or less at the time the consent is given may be revoked within 21 days following the day on which it is executed, inclusive of weekends and holidays.~~A consent to the adoption of any ~~other~~infant who is in utero or any minor may be revoked within seven days following the day on which it is executed, inclusive of weekends and holidays. If the final day of the revocation period falls on a weekend or North Carolina or federal holiday, then the revocation period extends to the next business day. The individual who gave the consent may revoke by giving written notice to the person specified in the consent. Notice may be given by personal delivery, overnight delivery service, or registered or certified mail, return receipt requested. If notice is given by mail, notice is deemed complete when it is deposited in the United States mail, postage prepaid, addressed to the person to whom consent was given at the address specified in the consent. If notice is given by overnight delivery service, notice is deemed complete on the date it is deposited with the service as shown by the receipt from the service, with delivery charges paid by the sender, addressed to the person to whom consent was given at the address specified in the consent.

(b) In a direct placement, if:

(1) A preplacement assessment is required, and

(2) Placement occurs before the preplacement assessment is given to the parent or guardian who is placing the minor,

then that individual's time under subsection (a) of this section to revoke any consent previously given shall be either five business days after the date the individual receives the preplacement assessment or the remainder of the time provided in subsection (a) of this section, whichever is longer. The date of receipt is the earlier of the date of actual receipt or the date established pursuant to G.S. 48-3-307.

(c) If a person who has physical custody places the minor with the prospective adoptive parent and thereafter revokes a consent pursuant to this section, the prospective adoptive parent shall, immediately upon request, return the minor to that person. The revocation restores the right to physical custody and any right to legal custody to the person who placed the minor and divests the prospective adoptive parent of any right to legal or physical custody and any further responsibility for the care and support of the minor. In any subsequent proceeding, the court shall award reasonable attorneys' fees to the person who revoked if the prospective adoptive parent fails upon request to return the minor.

(d) If a person other than a person described in subsection (c) of this section revokes a consent pursuant to this section and this person's consent is required, the adoption cannot proceed until another consent is obtained or the person's parental rights are terminated. The person who revoked consent is not thereby entitled to physical custody of the minor. If the minor whose consent is required revokes consent, the county department of social services shall be notified for appropriate action.

(e) A second consent to adoption by the same adoptive parents is irrevocable."

SECTION 11. G.S. 48-3-706 reads as rewritten:

"**§ 48-3-706. Revocation of relinquishments.**

(a) ~~A relinquishment of an infant who is in utero or is three months old or less at the time the relinquishment is executed may be revoked within 21 days following the day on which it is executed, inclusive of weekends and holidays.~~A relinquishment of any ~~other~~infant who is in utero or any minor may be revoked within seven days following the day on which it is executed, inclusive of weekends and holidays. If the final day of the period falls on a weekend or a North Carolina or federal holiday, then the revocation period extends to the next business day. The individual who gave the relinquishment may revoke by giving written notice to the agency to which the relinquishment was given. Notice may be given by personal delivery, overnight delivery service, or registered or certified mail, return receipt requested. If notice is given by mail, notice is deemed complete when it is deposited in the United States mail, postage prepaid, addressed to the agency at the agency's address as given in the relinquishment. If notice is given by overnight delivery service, notice is deemed complete on the date it is deposited with the service as shown by the receipt from the service, with delivery charges paid by the sender, addressed to the agency at the agency's address as given in the relinquishment.

(b) If a person who has physical custody relinquishes a minor and thereafter revokes a relinquishment pursuant to this section, the agency shall upon request return the minor to that person. The revocation restores the right to physical custody and any

right to legal custody to the person who relinquished the minor and divests the agency of any right to legal or physical custody and any further responsibility for the care and support of the minor. In any subsequent proceeding, the court may award the person who revoked reasonable attorneys' fees from a prospective adoptive parent with whom the minor was placed who refuses to return the minor and from the agency if the agency fails to cooperate in securing the minor's return.

(c) If a person other than a person described in subsection (b) of this section revokes a relinquishment pursuant to this section and this person's consent is required, the agency may not give consent for the adoption and the adoption cannot proceed until another relinquishment or a consent is obtained or parental rights are terminated. The person who revoked the relinquishment is not thereby entitled to physical custody of the minor.

(d) A second relinquishment for placement with the same adoptive parent selected by the agency and agreed upon by the person executing the relinquishment, or a second general relinquishment for placement by the agency with any adoptive parent selected by the agency, is irrevocable."

SECTION 12. G.S. 48-9-104 reads as rewritten:

"**§ 48-9-104. Release of identifying information.**

~~No~~Except as provided in G.S. 48-9-109(2), no person or entity shall release from any records retained and sealed under this Article the name, address, or other information that reasonably could be expected to lead directly to the identity of an adoptee, an adoptive parent of an adoptee, an adoptee's parent at birth, or an individual who, but for the adoption, would be the adoptee's sibling or grandparent, except upon order of the court for cause pursuant to G.S. 48-9-105."

SECTION 13. G.S. 48-9-109 reads as rewritten:

"**§ 48-9-109. Certain disclosures authorized.**

Nothing in this Article shall be interpreted or construed to ~~prevent~~prevent:

(1) ~~an~~An employee of a court, agency, or any other person from:

~~(1)~~ a. Inspecting permanent, confidential, or sealed records, other than records maintained by the State Registrar, for the purpose of discharging any obligation under this ~~Chapter;~~Chapter.

~~(2)~~ b. Disclosing the name of the court where a proceeding for adoption occurred, or the name of an agency that placed an adoptee, to an individual described in G.S. 48-9-104 who can verify his or her ~~identity; or~~identity.

~~(3)~~ c. Disclosing or using information contained in permanent and sealed records, other than records maintained by the State Registrar, for statistical or other research purposes as long as the disclosure will not result in identification of a person who is the subject of the information and subject to any further conditions the Department may reasonably impose.

(2) In agency placements, a parent or guardian placing a child for adoption and the adopting parents from authorizing an agency to release information or from releasing information to each other that could reasonably be expected to lead directly to the identity of an adoptee, an adoptive parent of an adoptee, or an adoptee's placing parent or guardian. The consent to the release of identifying information shall be in writing and signed prior to the adoption by any placing parent or guardian and the adopting parents and acknowledged under oath in the presence of an individual authorized to administer oaths or take acknowledgments. Any consent to release identifying information shall be filed under G.S. 48-2-305."

SECTION 14. G.S. 48-10-101 reads as rewritten:

"**§ 48-10-101. Prohibited activities in placement.**

(a) No one other than a person or entity specified in G.S. 48-3-201 may place a minor for adoption. No one other than a person or entity specified in G.S. 48-3-201, or an adoption facilitator, may solicit potential adoptive parents for children in need of adoption. No one other than an agency or an adoption facilitator, or an individual with a completed preplacement assessment that contains a finding that the individual is suitable to be an adoptive parent or that individual's immediate family, may solicit for adoption a potential adoptee.

(b) No one other than a county department of social services, an adoption facilitator, or an agency licensed by the Department in this State may advertise in any periodical or newspaper, or by radio, television, or other public medium, that any person or entity will place or accept a child for adoption.

(b1) Notwithstanding subsections (a) and (b) of this section, this Article shall not prohibit a person from advertising that the person desires to adopt. This subsection shall apply only to a person with a current completed preplacement assessment finding that person suitable to be an adoptive parent. The advertisement may be published only in a periodical or newspaper or on radio, television, cable television, or the Internet. The advertisement shall include a statement that (i) the person has a completed preplacement assessment finding that person suitable to be an adoptive parent, (ii) identifies the name of the agency that completed the preplacement assessment, and (iii) identifies the date the preplacement assessment was completed. Any advertisement under this subsection may state whether the person is willing to provide lawful expenses as permitted by G.S. 48-10-103.

(c) A person who violates ~~subsection (a) or (b)~~subsection (a), (b), or (b1) of this section is guilty of a Class 1 misdemeanor.

(d) The district court may enjoin any person from violating this section."

SECTION 15. This act becomes effective November 1, 2001. Section 4 applies to adoptions in which the petition is pending or filed on or after that date. Sections 3, 5, 7, 9, 12, and 13 apply to adoptions in which the petition is filed on or after that date. Sections 6 and 8 apply to preplacement assessments prepared on or after that

date. Section 10 applies to consents executed on or after that date. Section 11 applies to relinquishments executed on or after that date. Section 14 applies to advertising published on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 499*

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

S499-ARH-30 [v.4]

Date _____,2001

Comm. Sub. [YES]
Amends Title [NO]
S499-CSRH-35[V.6]

Representative Haire

moves to amend the Proposed Committee Substitute on page 4, line 41, by rewriting the line to read:
"served notice as provided under G.S. 1A-1, Rule 4(j)(1) of the Rules of Civil Procedure.'".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 499*

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

S499-ARH-32 [v.5]

Date _____,2001

Comm. Sub. [YES]
Amends Title [NO]
S499-CSRH-35[V.6]

Representative Hall

moves to amend the Proposed Committee Substitute on page 10, line 29, by inserting after the word "on" the following new phrase:
"radio, television, cable television, or".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 499*

Judiciary I Committee Substitute Adopted 4/24/01

PROPOSED HOUSE COMMITTEE SUBSTITUTE S499-CSRH-35 [v.6]

5/7/2001 5:58:54 PM

Short Title: Amend Adoption Laws. (Public)

Sponsors:

Referred to:

March 19, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS RELATING TO ADOPTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 48-1-101 reads as rewritten:

"**§ 48-1-101. Definitions.**

In this Chapter, the following definitions apply:

(1) "Adoptee" means an individual who is adopted, is placed for adoption, or is the subject of a petition for adoption properly filed with the court.

(2) "Adoption" means the creation by law of the relationship of parent and child between two individuals.

(3) "Adult" means an individual who has attained 18 years of age, or if under the age of 18, is either married or has been emancipated under the applicable State law.

(3a) "Adoption facilitator" means an individual or a nonprofit entity that assists biological parents in locating and evaluating prospective adoptive parents without charge.

(4) "Agency" means a public or private association, corporation, institution, or other person or entity that is licensed or otherwise authorized by the law of the jurisdiction where it operates to place minors for adoption. "Agency" also means a county department of social services in this State.

(4a) <u>"Agency identified adoption" means a placement where an agency has agreed to place the minor with a prospective adoptive parent selected by the parent or guardian.</u>

(5) "Child" means a son or daughter, whether by birth or adoption.

(5a) "Criminal history" means a county, State, or federal criminal history of conviction or a pending indictment of a crime, whether a misdemeanor or a felony, that bears upon an individual's fitness to have

responsibility for the safety and well-being of children, including the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication. Such 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. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(6) "Department" means the North Carolina Department of Health and Human Services.

(7) "Division" means the Division of Social Services of the Department.

(8) "Guardian" means an individual, other than a parent, appointed by a clerk of court in North Carolina to exercise all of the powers conferred by G.S. 35A-1241, including a standby guardian appointed under Article 21 of Chapter 35A of the General Statutes whose authority has actually commenced; and also means an individual, other than a parent, appointed in another jurisdiction according to the law of that jurisdiction who has the power to consent to adoption under the law of that jurisdiction.

(9) "Legal custody" of an individual means the general right to exercise continuing care of and control over the individual as authorized by law, with or without a court order, and:

a. Includes the right and the duty to protect, care for, educate, and discipline the individual;

b. Includes the right and the duty to provide the individual with food, shelter, clothing, and medical care; and

c. May include the right to have physical custody of the individual.

(10) "Minor" means an individual under 18 years of age who is not an adult.

(11) "Party" means a petitioner, adoptee, or any person whose consent to an adoption is necessary under this Chapter but has not been obtained.

(12) "Physical custody" means the physical care of and control over an individual.

(13) "Placement" means transfer of physical custody of a minor to the selected prospective adoptive parent. Placement may be either:
a. Direct placement by a parent or the guardian of the minor; or
b. Placement by an agency.

(14) "Preplacement assessment" means a document, whether prepared before or after placement, that contains the information required by G.S. 48-3-303 and any rules adopted by the Social Services Commission.

(15) "Relinquishment" means the voluntary surrender of a minor to an agency for the purpose of adoption.

(16) "Report to the court" means a document prepared in accordance with G.S. 48-2-501, et seq.

(17) "State" means a state as defined in G.S. 12-3(11).

(18) "Stepparent" means an individual who is the spouse of a parent of a child, but who is not a legal parent of the child."

SECTION 2. G.S. 48-2-304(b) reads as rewritten:

"(b) Any petition to adopt a minor shall also state:

(1) The length of time the adoptee has been in the physical custody of the ~~petitioner;~~petitioner.

(2) If the adoptee is not in the physical custody of the petitioner, the reason why the petitioner does not have physical custody and the date and manner in which the petitioner intends to acquire ~~custody;~~custody.

(3) That the petitioner has the resources, including those available under a subsidy for an adoptee with special needs, to provide for the care and support of the ~~adoptee;~~adoptee.

(4) Any information required by the Uniform Child-Custody Jurisdiction and Enforcement Act, Article 2 of Chapter 50A of the General Statutes, which is known to the ~~petitioner;~~petitioner.

(5) That any required assessment has been completed or updated within the ~~12~~18 months before the ~~placement; and~~placement.

(6) That all necessary consents, relinquishments, or terminations of parental rights have been obtained and will be filed as additional documents with the petition; or that the necessary consents, relinquishments, and terminations of parental rights that have been obtained will be filed as additional documents with the petition, along with the document listing the names of any other individuals whose consent, relinquishment, or termination of rights may be necessary but has not been obtained."

SECTION 3. G.S. 48-2-305 reads as rewritten:

"**§ 48-2-305. Petition for adoption; additional documents.**

At the time the petition is filed, the petitioner shall file or cause to be filed the following documents:

(1) Any required affidavit of parentage executed ~~pursuant to G.S. 48-3-206;~~ under G.S. 48-3-206.

(2) Any required consent or relinquishment that has been ~~executed;~~executed.

(3) A certified copy of any court order terminating the rights and duties of a parent or a guardian of the ~~adoptee;~~adoptee.

(4) A certified copy of any court order or pleading in a pending proceeding concerning custody of or visitation with the ~~adoptee;~~adoptee.

(5) A copy of any required preplacement assessment certified by the agency that prepared it and any certificate of service required by G.S. 48-3-307or an affidavit from the petitioner stating why the assessment is not ~~available;~~available.

(6) A copy of any document containing the information required under G.S. 48-3-205 concerning the health, social, educational, and genetic history of the adoptee and the adoptee's original family which the petitioner received before the placement or at any later time, certified by the person who prepared it, or if this document is not available, an affidavit stating the reason why it is not ~~available;~~available.

(7) Any signed copy of the form required by the Interstate Compact on the Placement of Children, Article 38 of Chapter 7B of the General Statutes, authorizing a minor to come into this ~~State;~~State.

(8) A writing that states the name of any individual whose consent is or may be required, but who has not executed a consent or a relinquishment or whose parental rights have not been legally terminated, and any fact or circumstance that may excuse the lack of consent or ~~relinquishment; and~~relinquishment.

(9) In an adoption pursuant to Article 4 of this Chapter, a copy of any agreement to release past-due child support payments.

(10) Any consent to an agency by a placing parent and adopting parents to release identifying information under G.S. 48-9-109.

The petitioner may also file any other document necessary or helpful to the court's determination."

SECTION 4. G.S. 48-2-402(c) reads as rewritten:

"(c) In an agency placement under Article 3 of this Chapter, the agency or other proper person shall file a petition to terminate the parental rights of an unknown parent or possible parent instead of serving notice under ~~this subsection,~~subsection (b) of this section, and the court shall stay any adoption proceeding already ~~filed.~~filed, except that nothing in this subsection shall require that the agency or other proper person file a petition to terminate the parental rights of any known or possible parent who has been served notice by personal delivery or by registered or certified mail."

SECTION 5. G.S. 48-2-603(a) reads as rewritten:

"(a) At the hearing on, or disposition of, a petition to adopt a minor, the court shall grant the petition upon finding by a preponderance of the evidence that the adoption will serve the best interest of the adoptee, and ~~that:~~ upon finding the following:

(1) At least 90 days have elapsed since the filing of the petition for adoption, unless the court for cause waives this ~~requirement;~~ requirement.

(2) The adoptee has been in the physical custody of the petitioner for at least 90 days, unless the court for cause waives this ~~requirement;~~requirement.

(3) Notice of the filing of the petition has been served on any person entitled to receive notice under Part 4 of this ~~Article;~~Article.

(4) Each necessary consent, relinquishment, waiver, or judicial order terminating parental rights, has been obtained and filed with the court and the time for revocation has ~~expired;~~expired.

(5) Any assessment required by this Chapter has been filed with and considered by the ~~court;~~court.

(6) If applicable, the requirements of the Interstate Compact on the Placement of Children, Article 38 of Chapter 7B of the General Statutes, have been ~~met;~~met.

(7) Any motion to dismiss the proceeding has been ~~denied;~~denied.

(8) Each petitioner is a suitable adoptive ~~parent;~~parent.

(9) Any accounting and affidavit required under G.S. 48-2-602 has been reviewed by the court, and the court has denied, modified, or ordered reimbursement of any payment or disbursement that violates Article 10 or is unreasonable when compared with the expenses customarily incurred in connection with an ~~adoption;~~adoption.

(10) The petitioner has received information about the adoptee and the adoptee's biological family if required by ~~G.S. 48-3-205; and~~ G.S. 48-3-205.

(10a) Any certificate of service required by G.S. 48-3-307 has been filed.

(11) There has been substantial compliance with the provisions of this Chapter."

SECTION 6. G.S. 48-3-202(b) reads as rewritten:

"(b) Information about a prospective adoptive parent ~~must~~shall be provided to a parent or guardian by the prospective adoptive parent, the prospective adoptive parent's attorney, or a person or entity assisting the parent or guardian. ~~This~~ Except as otherwise provided in this subsection, this information ~~must~~shall include the preplacement assessment ~~or assessments~~ prepared pursuant to Part 3 of this Article, and may include additional information requested by the parent or guardian. The agency preparing the preplacement assessment may redact from the preplacement assessment provided to a placing parent or guardian detailed information reflecting the prospective adoptive parent's financial account balances and detailed information about the prospective

adoptive parent's extended family members, including surnames, names of employers, names of schools attended, social security numbers, telephone numbers and addresses, and other similarly detailed information about extended family members obtained under G.S. 48-3-303."

SECTION 7. G.S. 48-3-203 reads as rewritten:

"**§ 48-3-203. Agency placement adoption.**

(a) An agency may acquire legal and physical custody of a minor for purposes of adoptive placement only by means of a relinquishment pursuant to Part 7 of this Article or by a court order terminating the rights and duties of a parent or guardian of the minor.

(b) An agency shall give any ~~individual~~individual, upon ~~request~~request, a written statement of the services it ~~provides and of~~provides, its procedure for selecting a prospective adoptive parent for a minor, including the role of the minor's parent or guardian in the selection ~~process.~~process, and the procedure for an agency identified adoption and the disclosures permitted under G.S. 48-9-109. This statement ~~must~~shall include a schedule of any fee or expenses charged or required to be paid by the agency and a summary of the provisions of this Chapter that pertain to the requirements and consequences of a relinquishment and to the selection of a prospective adoptive parent.

(c) An agency may notify the parent when a placement has occurred and when an adoption decree is issued.

(d) ~~The selection of a prospective adoptive parent for a minor shall be made by the agency on the basis of a preplacement assessment.~~ An agency may place a minor for adoption only with an individual for whom a favorable preplacement assessment has been prepared. Placement shall be made as follows:

(1) If the agency has agreed to place the minor with the prospective adoptive parent selected by the parent or guardian, the minor shall be placed with the individual selected by the parent or guardian.

(2) If the agency has not agreed to place the minor with the prospective adoptive parent selected by the parent or guardian, the minor shall be placed with the prospective adoptive parent selected by the agency on the basis of the preplacement assessment. The selection may not be delegated, but may be based on criteria requested by a parent who relinquishes the child to the agency.

(d1) A minor who is in the custody or placement responsibility of a county department of social services shall not be placed with a selected prospective adoptive parent prior to the completion of an investigation of the individual's criminal history pursuant to G.S. 48-3-309 or G.S. 131D-10.3A and, based on the criminal history, a determination as to the individual's fitness to have responsibility for the safety and well-being of children.

(e) In addition to the authority granted in G.S. 131D-10.5, the Social Services Commission may adopt rules for placements by agencies consistent with the purposes of this Chapter.

(f) An agency may release identifying information as provided in G.S. 48-9-104."

SECTION 8. G.S. 48-3-303(c) is amended by adding a new subdivision to read:

"(c) The preplacement assessment ~~must,~~shall, after a reasonable investigation, report on the following about the individual being assessed:

...

(12) The agency preparing the preplacement assessment may redact from the preplacement assessment provided to a placing parent or guardian detailed information reflecting the prospective adoptive parent's financial account balances and detailed information about the prospective adoptive parent's extended family members, including surnames, names of employers, names of schools attended, social security numbers, telephone numbers and addresses, and other similarly detailed information about extended family members obtained under subsections (b) and (c) of this section."

SECTION 9. G.S. 48-3-307 is amended by adding a new subsection to read:

"(c) A prospective adoptive parent shall file or cause to be filed a certificate indicating that the prospective adoptive parent has delivered a copy of the assessment to the parent or guardian who placed the minor for adoption."

SECTION 10. G.S. 48-3-608 reads as rewritten:

"**§ 48-3-608. Revocation of consent.**

(a) ~~A consent to the adoption of an infant who is in utero or is three months old or less at the time the consent is given may be revoked within 21 days following the day on which it is executed, inclusive of weekends and holidays.~~A consent to the adoption of any ~~other~~infant who is in utero or any minor may be revoked within seven days following the day on which it is executed, inclusive of weekends and holidays. If the final day of the revocation period falls on a weekend or North Carolina or federal holiday, then the revocation period extends to the next business day. The individual who gave the consent may revoke by giving written notice to the person specified in the consent. Notice may be given by personal delivery, overnight delivery service, or registered or certified mail, return receipt requested. If notice is given by mail, notice is deemed complete when it is deposited in the United States mail, postage prepaid, addressed to the person to whom consent was given at the address specified in the consent. If notice is given by overnight delivery service, notice is deemed complete on the date it is deposited with the service as shown by the receipt from the service, with delivery charges paid by the sender, addressed to the person to whom consent was given at the address specified in the consent.

(b) In a direct placement, if:

(1) A preplacement assessment is required, and

(2) Placement occurs before the preplacement assessment is given to the parent or guardian who is placing the minor,

then that individual's time under subsection (a) of this section to revoke any consent previously given shall be either five business days after the date the individual receives the preplacement assessment or the remainder of the time provided in subsection (a) of this section, whichever is longer. The date of receipt is the earlier of the date of actual receipt or the date established pursuant to G.S. 48-3-307.

(c) If a person who has physical custody places the minor with the prospective adoptive parent and thereafter revokes a consent pursuant to this section, the prospective adoptive parent shall, immediately upon request, return the minor to that person. The revocation restores the right to physical custody and any right to legal custody to the person who placed the minor and divests the prospective adoptive parent of any right to legal or physical custody and any further responsibility for the care and support of the minor. In any subsequent proceeding, the court shall award reasonable attorneys' fees to the person who revoked if the prospective adoptive parent fails upon request to return the minor.

(d) If a person other than a person described in subsection (c) of this section revokes a consent pursuant to this section and this person's consent is required, the adoption cannot proceed until another consent is obtained or the person's parental rights are terminated. The person who revoked consent is not thereby entitled to physical custody of the minor. If the minor whose consent is required revokes consent, the county department of social services shall be notified for appropriate action.

(e) A second consent to adoption by the same adoptive parents is irrevocable."

SECTION 11. G.S. 48-3-706 reads as rewritten:

"**§ 48-3-706. Revocation of relinquishments.**

(a) ~~A relinquishment of an infant who is in utero or is three months old or less at the time the relinquishment is executed may be revoked within 21 days following the day on which it is executed, inclusive of weekends and holidays.~~ A relinquishment of any ~~other~~infant who is in utero or any minor may be revoked within seven days following the day on which it is executed, inclusive of weekends and holidays. If the final day of the period falls on a weekend or a North Carolina or federal holiday, then the revocation period extends to the next business day. The individual who gave the relinquishment may revoke by giving written notice to the agency to which the relinquishment was given. Notice may be given by personal delivery, overnight delivery service, or registered or certified mail, return receipt requested. If notice is given by mail, notice is deemed complete when it is deposited in the United States mail, postage prepaid, addressed to the agency at the agency's address as given in the relinquishment. If notice is given by overnight delivery service, notice is deemed complete on the date it is deposited with the service as shown by the receipt from the service, with delivery charges paid by the sender, addressed to the agency at the agency's address as given in the relinquishment.

(b) If a person who has physical custody relinquishes a minor and thereafter revokes a relinquishment pursuant to this section, the agency shall upon request return the minor to that person. The revocation restores the right to physical custody and any

right to legal custody to the person who relinquished the minor and divests the agency of any right to legal or physical custody and any further responsibility for the care and support of the minor. In any subsequent proceeding, the court may award the person who revoked reasonable attorneys' fees from a prospective adoptive parent with whom the minor was placed who refuses to return the minor and from the agency if the agency fails to cooperate in securing the minor's return.

(c) If a person other than a person described in subsection (b) of this section revokes a relinquishment pursuant to this section and this person's consent is required, the agency may not give consent for the adoption and the adoption cannot proceed until another relinquishment or a consent is obtained or parental rights are terminated. The person who revoked the relinquishment is not thereby entitled to physical custody of the minor.

(d) A second relinquishment for placement with the same adoptive parent selected by the agency and agreed upon by the person executing the relinquishment, or a second general relinquishment for placement by the agency with any adoptive parent selected by the agency, is irrevocable."

SECTION 12. G.S. 48-9-104 reads as rewritten:

"**§ 48-9-104. Release of identifying information.**

~~No~~Except as provided in G.S. 48-9-109(2), no person or entity shall release from any records retained and sealed under this Article the name, address, or other information that reasonably could be expected to lead directly to the identity of an adoptee, an adoptive parent of an adoptee, an adoptee's parent at birth, or an individual who, but for the adoption, would be the adoptee's sibling or grandparent, except upon order of the court for cause pursuant to G.S. 48-9-105."

SECTION 13. G.S. 48-9-109 reads as rewritten:

"**§ 48-9-109. Certain disclosures authorized.**

Nothing in this Article shall be interpreted or construed to ~~prevent~~prevent:

(1) ~~an~~An employee of a court, agency, or any other person from:

~~(1)~~ a. Inspecting permanent, confidential, or sealed records, other than records maintained by the State Registrar, for the purpose of discharging any obligation under this ~~Chapter;~~Chapter.

~~(2)~~ b. Disclosing the name of the court where a proceeding for adoption occurred, or the name of an agency that placed an adoptee, to an individual described in G.S. 48-9-104 who can verify his or her ~~identity; or~~identity.

~~(3)~~ c. Disclosing or using information contained in permanent and sealed records, other than records maintained by the State Registrar, for statistical or other research purposes as long as the disclosure will not result in identification of a person who is the subject of the information and subject to any further conditions the Department may reasonably impose.

(2) In agency placements, a parent or guardian placing a child for adoption and the adopting parents from authorizing an agency to release information or from releasing information to each other that could reasonably be expected to lead directly to the identity of an adoptee, an adoptive parent of an adoptee, or an adoptee's placing parent or guardian. The consent to the release of identifying information shall be in writing and signed prior to the adoption by any placing parent or guardian and the adopting parents and acknowledged under oath in the presence of an individual authorized to administer oaths or take acknowledgments. Any consent to release identifying information shall be filed under G.S. 48-2-305."

SECTION 14. G.S. 48-10-101 reads as rewritten:

"**§ 48-10-101. Prohibited activities in placement.**

(a) No one other than a person or entity specified in G.S. 48-3-201 may place a minor for adoption. No one other than a person or entity specified in G.S. 48-3-201, or an adoption facilitator, may solicit potential adoptive parents for children in need of adoption. No one other than an agency or an adoption facilitator, or an individual with a completed preplacement assessment that contains a finding that the individual is suitable to be an adoptive parent or that individual's immediate family, may solicit for adoption a potential adoptee.

(b) No one other than a county department of social services, an adoption facilitator, or an agency licensed by the Department in this State may advertise in any periodical or newspaper, or by radio, television, or other public medium, that any person or entity will place or accept a child for adoption.

(b1) Notwithstanding subsections (a) and (b) of this section, this Article shall not prohibit a person from advertising that the person desires to adopt. This subsection shall apply only to a person with a current completed preplacement assessment finding that person suitable to be an adoptive parent. The advertisement may be published only in a periodical or newspaper or on the Internet. The advertisement shall include a statement that (i) the person has a completed preplacement assessment finding that person suitable to be an adoptive parent, (ii) identifies the name of the agency that completed the preplacement assessment, and (iii) identifies the date the preplacement assessment was completed. Any advertisement under this subsection may state whether the person is willing to provide lawful expenses as permitted by G.S. 48-10-103.

(c) A person who violates ~~subsection (a) or (b)~~subsection (a), (b), or (b1) of this section is guilty of a Class 1 misdemeanor.

(d) The district court may enjoin any person from violating this section."

SECTION 15. This act becomes effective November 1, 2001. Section 4 applies to adoptions in which the petition is pending or filed on or after that date. Sections 3, 5, 7, 9, 12, and 13 apply to adoptions in which the petition is filed on or after that date. Sections 6 and 8 apply to preplacement assessments prepared on or after that date. Section 10 applies to consents executed on or after that date. Section 11 applies

to relinquishments executed on or after that date. Section 14 applies to advertising published on or after that date.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
S.B. 370 A BILL TO BE ENTITLED AN ACT AMENDING THE JOINT SECURITY FORCE PROVISIONS FOR STATE FACILITIES FOR MENTALLY ILL PERSONS.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 1

SENATE BILL 370

Short Title:	State MH Joint Security Force Jurisd.-AB.	(Public)
Sponsors:	Senators Kerr; Albertson and Reeves.	
Referred to:	Judiciary II.	

March 8, 2001

A BILL TO BE ENTITLED

AN ACT AMENDING THE JOINT SECURITY FORCE PROVISIONS FOR STATE FACILITIES FOR MENTALLY ILL PERSONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 6 of Chapter 122C of the General Statutes is amended by adding the following new Parts to read:

"Part 2B. Cherry Hospital Joint Security Force.

"**§ 122C-430A. Joint security force.**

The Secretary may designate one or more special police officers who shall make up a joint security force to enforce the law of North Carolina and any ordinance or regulation adopted pursuant to G.S. 143-116.6 or G.S. 143-116.7 or pursuant to the authority granted the Department by any other law on the territory of the Cherry Hospital in Wayne County. After taking the oath of office for law enforcement officers as set out in G.S. 11-11, these special police officers have the same powers as peace officers now vested in sheriffs within the territory of the Cherry Hospital. These special police officers shall also have the power prescribed by G.S. 122C-205 outside the territory of the Cherry Hospital but within the confines of Wayne County. These special police officers may arrest persons outside the territory of the Cherry Hospital but within the confines of Wayne County, when the person arrested has committed a criminal offense within the territory of the Cherry Hospital, for which the officers could have arrested the person within that territory, and the arrest is made during the person's immediate and continuous flight from that territory."

"Part 2C. Dorothea Dix Hospital Joint Security Force.

"**§ 122C-430B. Joint security force.**

The Secretary may designate one or more special police officers who shall make up a joint security force to enforce the law of North Carolina and any ordinance or regulation adopted pursuant to G.S. 143-116.6 or G.S. 143-116.7 or pursuant to the

authority granted the Department by any other law on the territory of the Dorothea Dix Hospital in Wake County. After taking the oath of office for law enforcement officers as set out in G.S. 11-11, these special police officers have the same powers as peace officers now vested in sheriffs within the territory of the Dorothea Dix Hospital. These special police officers shall also have the power prescribed by G.S. 122C-205 outside the territory of the Dorothea Dix Hospital but within the confines of Wake County. These special police officers may arrest persons outside the territory of the Dorothea Dix Hospital but within the confines of Wake County, when the person arrested has committed a criminal offense within the territory of the Dorothea Dix Hospital, for which the officers could have arrested the person within that territory, and the arrest is made during the person's immediate and continuous flight from that territory."

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

SENATE BILL 370:
State Mental Health Joint Security Force

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Kerr
Date:	May 10, 2001	**Summary by:**	Jeff Hudson
Version:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 370 would grant the Secretary of Health and Human Services the power to designate one or more special police officers at Cherry Hospital and Dorothea Dix Hospital. Within the territory of the hospital, these officers would have the same power as sheriffs. Within the county in which the hospital is located, they would have the power to retrieve clients and return them to the hospital and to arrest a person who commits a criminal offense within the territory of the hospital if the arrest is made during the person's immediate and continuous flight from the territory of the hospital.***

BACKGROUND AND ANALYSIS: The directors of State facilities such as Cherry Hospital and Dorothea Dix Hospital currently have the authority to appoint special police officers that have the powers of city police officers within the territory of the facility. Because the powers of the special police officers are limited to the territory of the facility, if a client escapes from the territory of such a facility, the county sheriff or municipal police must typically locate and return the client to the facility. Senate Bill 370 would allow special police officers appointed by the Secretary to carry out this recovery within the county in which the facility is located -- in the case of Cherry Hospital, Wayne County, and in the case of Dorothea Dix Hospital, Wake County. Senate Bill 370 would also authorize the special police officers to arrest a person outside the territory of the facility but within the county if the person commits a criminal offense within the territory of the hospital and the arrest is made during the person's immediate and continuous flight from the territory of the hospital. The Secretary already has the authority to appoint special police officers with similar powers for the Black Mountain Center, the Alcohol Rehabilitation Center, and the Juvenile Evaluation Center, all in Buncombe County, and Broughton Hospital, the North Carolina School for the Deaf, the Western Regional Vocational Rehabilitation Facility, and the Western Carolina Center, all in Burke County.

EFFECTIVE DATE: Senate Bill 370 would become effective when it becomes law.

Note: Steve Rose, Committee Counsel to the Senate Judiciary II Committee, contributed to the preparation of this summary

S370-SMSB-001

calls of the board for any information which it may wish at his hands. (1907, c. 883, s. 1; C.S., s. 7520.)

§ 143-113. Trading by interested officials forbidden.

The directors, stewards, and superintendents of the State institutions shall not trade directly or indirectly with or among themselves, or with any concern in which they are interested, for any supplies needed by any such institutions. (1907, c. 883, s. 2; C.S., s. 7521.)

§ 143-114. Diversion of appropriations to State institutions.

It shall be unlawful for the board of trustees, board of directors, or other body controlling any State institution, to divert, use, or expend any moneys appropriated for the use of said institutions for its permanent improvement and enlargement to the payment of any of the current expenses of said institution or for the payment of the cost of the maintenance thereof; it shall likewise be unlawful for any board of trustees, board of directors, or other controlling body of any State institution to which money is appropriated for its maintenance by the State to divert, use or expend any money so appropriated for maintenance, for the permanent enlargement or permanent equipment, or the purchase of land for said institution. (1921, c. 232, s. 1; C.S., s. 7521 (a).)

§ 143-115. Trustee, director, officer or employee violating law guilty of misdemeanor.

Any member or members of any board of trustees, board of directors, or other controlling body governing any of the institutions of the State, or any officer, employee of, or person holding any position with any of the institutions of the State, violating any of the provisions of G.S. 143-114, shall be guilty of a Class 1 misdemeanor, and upon conviction in any court of competent jurisdiction judgment shall be rendered by such court removing such member, officer, employee, or person holding any position from his place, office or position. (1921, c. 232, s. 2; C.S., s. 7521 (b); 1993, c. 539, s. 1005; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 143-116. Venue for trial of offenses.

All offenses against G.S. 143-114 and 143-115 shall be held to have been committed in the County of Wake and shall be tried and disposed of by the courts of said county having jurisdiction thereof. (1921, c. 232, s. 3; C.S., s. 7521 (c).)

§§ 143-116.1 through 143-116.5: Reserved for future codification purposes.

ARTICLE 6A.

Rules of Conduct; Traffic Laws for Institutions.

§ 143-116.6. Rules concerning conduct; violation.

(a) The Secretary of Health and Human Services may adopt rules for State-owned institutions under the jurisdiction of the Department of Health

and Human Servi
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§ 143-116.7. M
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and Human Services for the regulation and deportment of persons in the buildings and grounds of the institutions, and for the suppression of nuisances and disorder. Rules adopted under this section shall be consistent with G.S. 14-132. Copies of the rules shall be posted at the entrance to the grounds and at different places on the grounds.

(b) Any person violating such rules shall, upon conviction, be guilty of a Class 2 misdemeanor. (1981, c. 614, s. 5; 1987, c. 827, s. 255; 1993, c. 539, s. 1006; 1994, Ex. Sess., c. 24, s. 14(c); 1997-443, s. 11A.118(a).)

§ 143-116.7. Motor vehicle laws applicable to streets, alleys and driveways on the grounds of Department of Health and Human Services institutions; traffic regulations; registration and regulation of motor vehicles.

(a) Except as otherwise provided in this section, all the provisions of Chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles thereon are made applicable to the streets, alleys, roads and driveways on the grounds of all State institutions under the jurisdiction of the Department of Health and Human Services. Any person violating any of the provisions of the Chapter in or on such streets, alleys, roads or driveways shall, upon conviction be punished as prescribed in this section. Nothing herein contained shall be construed as in any way interfering with the ownership and control of the streets, alleys, roads and driveways on the grounds of the State institutions operated by the Department of Health and Human Services.

(b) The Secretary of Health and Human Services may adopt rules consistent with the provisions of Chapter 20 of the General Statutes, with respect to the use of the streets, alleys, and driveways of institutions of the Department of Health and Human Services. Based upon a traffic and engineering investigation, the Secretary of Health and Human Services may also determine and establish speed limits on streets lower than those provided in G.S. 20-141.

(c) The Secretary may, by rule, regulate parking and establish parking areas on the grounds of institutions of the Department of Health and Human Services.

(d) The Secretary may, by rule, provide for the registration and parking of motor vehicles maintained and operated by employees of the institution, and may fix fees, not to exceed ten dollars ($10.00) per year, for such registration.

(e) Rules adopted under this section may provide that violation subjects the offender to a civil penalty, not to exceed fifty dollars ($50.00). Penalties may be graduated according to the seriousness of the offense or the number of prior offenses by the person charged but shall not exceed fifty dollars ($50.00). The Secretary may establish procedures for the collection of penalties, and they may be enforced by civil action in the nature of debt.

(f) A rule adopted under this section may provide for the removal of illegally parked motor vehicles. Any such removal must be in compliance with Article 7A of Chapter 20 of the General Statutes.

(g) Any violation under this section or of a provision of Chapter 20 of the General Statutes made applicable to the grounds of State institutions solely by operation of this section shall be considered an infraction and shall be subject to an infraction penalty not to exceed fifty dollars ($50.00). A rule adopted under this section may provide that a violation shall not be an infraction, but shall be enforced by other methods available, including the methods authorized by subsection (e).

(h) Any fees or civil penalties collected pursuant to this section shall be deposited in the General Fund Budget Code of the institution where the fees or

civil penalties are collected and shall only be used to support the cost of administration of this section. Infraction penalties shall be disbursed as provided in G.S. 14-3.1(a). (1981, c. 614, s. 5; 1985, c. 672; c. 764, s. 39; 1985 (Reg. Sess., 1986), c. 852, ss. 13, 14; 1987, c. 827, s. 256; 1997-443, s. 11A.118(a).)

§ 143-116.8. Motor vehicle laws applicable to State parks and forests road system.

(a) Except as otherwise provided in this section, all the provisions of Chapter 20 of the General Statutes relating to the use of highways and public vehicular areas of the State and the operation or vehicles thereon are made applicable to the State parks and forests road system. For the purposes of this section, the term "State parks and forests road system" shall mean the streets, alleys, roads, public vehicular areas and driveways of the State parks, State forests, State recreation areas, State lakes, and all other lands administered by the Department of Environment and Natural Resources. This term shall not be construed, however, to include streets that are a part of the State highway system. Any person violating any of the provisions of Chapter 20 hereby made applicable in the State parks and forests road system shall, upon conviction, be punished in accordance with Chapter 20. Nothing herein contained shall be construed as in any way interfering with the ownership and control of the State parks and forests road system by the Department of Environment and Natural Resources.

(b)(1) It shall be unlawful for a person to operate a vehicle in the State parks and forests road system at a speed in excess of twenty-five miles per hour (25 mph). When the Secretary of Environment and Natural Resources determines that this speed is greater than reasonable and safe under the conditions found to exist in the State parks and forests road system, the Secretary may establish a lower reasonable and safe speed limit. No speed limit established by the Secretary pursuant to this provision shall be effective until posted in the part of the system sought to be affected.

(2) Any person convicted of violating this subsection by operating a vehicle on the State parks and forests road system while fleeing or attempting to elude arrest or apprehension by a law enforcement officer with authority to enforce the motor vehicle laws, shall be punished as provided in G.S. 20-141.5.

(3) For the purposes of enforcement and administration of Chapter 20, the speed limits stated and authorized to be adopted by this section are speed limits under Chapter 20.

(4) The Secretary may designate any part of the State parks and forests road system for one-way traffic and shall erect appropriate signs giving notice thereof. It shall be a violation of G.S. 20-165.1 for any person to willfully drive or operate any vehicle on any part of the State parks and forests road system so designated except in the direction indicated.

(5) The Secretary shall have power, equal to the power of local authorities under G.S. 20-158 and G.S. 20-158.1, to place vehicle control signs and signals and yield-right-of-way signs in the State parks and forests road system; the Secretary also shall have power to post such other signs and markers and mark the roads in accordance with Chapter 20 as the Secretary may determine appropriate for highway safety and traffic control. The failure of any vehicle driver to obey any vehicle control sign or signal, or any yield-right-of-way sign placed under the authority of this section in the State parks and forests road system

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§ 143-117. Ins

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Jury—Officer of

You swear (or affirm) that you will keep every person sworn on this jury in some private and convenient place when in your charge. You shall not suffer any person to speak to them, neither shall you speak to them yourself, unless it be to ask them whether they are agreed in their verdict, but with leave of the court; so help you, God.

Oath for Petit Juror

You do solemnly swear (affirm) that you will truthfully and without prejudice or partiality try all issues in civil or criminal actions that come before you and give true verdicts according to the evidence, so help you, God.

Justice, Judge, or Magistrate of the General Court of Justice

I, _____, do solemnly swear (affirm) that I will administer justice without favoritism to anyone or to the State; that I will not knowingly take, directly or indirectly, any fee, gift, gratuity or reward whatsoever, for any matter or thing done by me or to be done by me by virtue of my office, except the salary and allowances by law provided; and that I will faithfully and impartially discharge all the duties of ____ of the _____ Division of the General Court of Justice to the best of my ability and understanding, and consistent with the Constitution and laws of the State; so help me, God.

Register of Deeds

I, A. B., do solemnly swear (or affirm) that I will faithfully and truly, according to the best of my skill and ability, execute the duties of the office of register of deeds for the county of _____, in all things according to law; so help me, God.

Secretary of State

I, A. B., do swear (or affirm) that I will, in all respects, faithfully and honestly execute the office of Secretary of State of the State of North Carolina, during my continuance in office, according to law; so help me, God.

Sheriff

I, A. B., do solemnly swear (or affirm) that I will execute the office of sheriff of ____ county to the best of my knowledge and ability, agreeably to law; and that I will not take, accept or receive, directly or indirectly, any fee, gift, bribe, gratuity or reward whatsoever, for returning any man to serve as a juror or for making any false return on any process to me directed; so help me, God.

Law Enforcement Officer

I, A. B., do solemnly swear (or affirm) that I will be alert and vigilant to enforce the criminal laws of this State; that I will not be influenced in any matter on account of personal bias or prejudice; that I will faithfully and impartially execute the duties of my office as a law enforcement officer according to the best of my skill, abilities, and judgment; so help me, God.

State Treasurer

I, A. B., do swear (or affirm) that, according to the best of my abilities and judgment, I will execute impartially the office of State Treasurer, in all things

§ 122C-202.1. Hospital privileges.

Nothing in this Article related to admission, commitment, or treatment shall be deemed to mandate hospitals to grant or deny to any individuals privileges to practice in hospitals. (1985, c. 589, s. 2.)

§ 122C-203. Admission or commitment and incompetency proceedings to have no effect on one another.

The admission or commitment to a facility of an alleged mentally ill individual, an alleged substance abuser, or an alleged mentally retarded or developmentally disabled individual under the provisions of this Article shall in no way affect incompetency proceedings as set forth in Chapter 35A or former Chapters 33 or 35 of the General Statutes and incompetency proceedings under those Chapters shall have no effect upon admission or commitment proceedings under this Article. (1963, c. 1184, s. 1; 1985, c. 589, s. 2; 1989, c. 625, s. 21; 1989 (Reg. Sess., 1990), c. 1024, s. 26(b).)

§ 122C-204. Civil liability for corruptly attempting admission or commitment.

Nothing in this Article relieves from liability in any suit instituted in the courts of this State any individual who unlawfully, maliciously, and corruptly attempts to admit or commit any individual to any facility under this Article. (1963, c. 1184, s. 1; 1985, c. 589, s. 2.)

§ 122C-205. Return of clients to 24-hour facilities.

(a) When a client of a 24-hour facility who:
(1) Has been involuntarily committed;
(2) Is being detained pending a judicial hearing;
(3) Has been voluntarily admitted but is a minor or incompetent adult;
(4) Has been placed on conditional release from the facility; or
(5) Has been involuntarily committed or voluntarily admitted and is the subject of a detainer placed with the 24-hour facility by an appropriate official

escapes or breaches a condition of his release, if applicable, the responsible professional shall notify or cause to be notified immediately the appropriate law enforcement agency in the county of residence of the client, the appropriate law enforcement agency in the county where the facility is located, and the appropriate law enforcement agency in any county where there are reasonable grounds to believe that the client may be found. The responsible professional shall determine the amount of personal identifying and background information reasonably necessary to divulge to the law enforcement agency or agencies under the particular circumstances involved in order to assure the expeditious return of the client to the 24-hour facility involved and protect the general public.

(b) When a competent adult who has been voluntarily admitted to a 24-hour facility escapes or breaches a condition of his release, the responsible professional, in the exercise of accepted professional judgment, practice, and standards, will determine if it is reasonably foreseeable that:
(1) The client may cause physical harm to others or himself;
(2) The client may cause damage to property;
(3) The client may commit a felony or a violent misdemeanor; or
(4) That the health or safety of the client may be endangered

unless he is immediately returned to the facility. If the responsible professional finds that any or all of these occurrences are reasonably foreseeable, he will follow the same procedures as those set forth in subsection (a) of this section.

(c) Upon receipt of notice of an escape or breach of a condition of release as described in subsections (a) and (b) of this section, an appropriate law enforcement officer shall take the client into custody and have the client returned to the 24-hour facility from which the client has escaped or has been conditionally released. Transportation of the client back to the 24-hour facility shall be provided in the same manner as described in G.S. 122C-251 and G.S. 122C-408(b). Law enforcement agencies who are notified of a client's escape or breach of conditional release shall be notified of the client's return by the responsible 24-hour facility. Under the circumstances described in this section, the initial notification by the 24-hour facility of the client's escape or breach of conditional release shall be given by telephone communication to the appropriate law enforcement agency or agencies and, if available and appropriate, by Division of Criminal Information (DCI) message to any law enforcement agency in or out of state and by entry into the National Crime Information Center (NCIC) telecommunications system. As soon as reasonably possible following notification, written authorization to take the client into custody shall also be issued by the 24-hour facility. Under this section, law enforcement officers shall have the authority to take a client into custody upon receipt of the telephone notification or Division of Criminal Information message prior to receiving written authorization. The notification of a law enforcement agency does not, in and of itself, render this information public information within the purview of Chapter 132 of the General Statutes. However, the responsible law enforcement agency shall determine the extent of disclosure of personal identifying and background information reasonably necessary, under the circumstances, in order to assure the expeditious return of a client to the 24-hour facility involved and to protect the general public and is authorized to make such disclosure. The responsible law enforcement agency may also place any appropriate message or entry into either the Division of Criminal Information System or National Crime Information System, or both, as appropriate.

(d) In the situations described in subsections (a) and (b) of this section, the responsible professional shall also notify or cause to be notified as soon as practicable:

(1) The next of kin of the client or legally responsible person for the client;
(2) The clerk of superior court of the county of commitment of the client;
(3) The area authority of the county of residence of the client, if appropriate;
(4) The physician or eligible psychologist who performed the first examination for a commitment of the client, if appropriate; and
(5) Any official who has placed a detainer on a client as described in subdivision (a)(5) of this section

of the escape or breach of condition of the client's release upon occurrence of either action and of his subsequent return to the facility. (1899, c. 1, s. 27; Rev., s. 4563; C.S., s. 6175; 1927, c. 114; 1945, c. 952, s. 12; 1953, c. 256, s. 1; 1955, c. 887, s. 3; 1973, c. 673, s. 11; 1983, c. 548; 1985, c. 589, s. 2; c. 695, s. 2; 1985 (Reg. Sess., 1986), c. 863, ss. 12-14; 1987, c. 749, s. 1.)

OPINIONS OF ATTORNEY GENERAL

Any Escaped Patient, Regardless of the Type of Commitment, Must Be Returned by the Sheriff. — See opinion of Attorney General to Lena Davis, Broughton Hospital, 41 N.C.A.G. 900 (1972), rendered under former statutory provisions.

§ 122C-205.1

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CASE NOTES

As a licensed dentist employed at a state mental hospital, petitioner was bound to follow both the rules and regulations of the Department of Human Resources, which regulate employees at those institutions, and the rules and regulations of the Board of Dental Examiners, which regulates the practice of all dentists practicing in North Carolina. Woodlief v. North Carolina State Bd. of Dental Exmrs., 104 N.C. App. 52, 407 S.E.2d 596 (1991).

§ 122C-182. Authority to contract with area authorities.

To establish a coordinated system of services for its clients, a State facility shall contract with an area authority. Contracted services shall meet the rules of the Commission and the Secretary. (1985, c. 589, s. 2.)

§ 122C-183. Appointment of employees as police officers who may arrest without warrant.

The director of each State facility may appoint as special police officers the number of employees of their respective facilities they consider necessary. Within the grounds of the State facility the employees appointed as special police officers have all the powers of police officers of cities. They have the right to arrest without warrant individuals committing violations of the State law or the ordinances or rules of that facility in their presence and to bring the offenders before a magistrate who shall proceed as in other criminal cases. (1899, c. 1, s. 55; 1901, c. 627; Rev., s. 4569; C.S., s. 6181; 1921, c. 207; 1957, c. 1232, s. 12; 1959, c. 1002, s. 12; 1973, c. 108, s. 73; c. 673, s. 12.1; 1981, c. 635, s. 5; 1985, c. 589, s. 2.)

§ 122C-184. Oath of special police officers.

Before exercising the duties of a special police officer, the employees appointed under G.S. 122C-183 shall take an oath or affirmation of office before an officer empowered to administer oaths. The oath or affirmation shall be filed with the records of the Department. The oath or affirmation of office is:

State of North Carolina: _____ County.

I, _____, do solemnly swear (or affirm) that I will well and truly execute the duties of office of special police officer in and for the State facility called _____, according to the best of my skill and ability and according to law; and that I will use my best endeavors to enforce all the ordinances of said facility, and to suppress nuisances, and to suppress and prevent disorderly conduct within these grounds. So help me, God.

Sworn and subscribed before me, this ____ day of _____, A.D. _____.

(1899, c. 1, s. 56; 1901, c. 627; Rev., s. 4570; C.S., s. 6182; 1963, c. 1166, s. 11; 1973, c. 108, s. 74; c. 476, s. 133; 1985, c. 589, s. 2.)

§ 122C-185. Application of funds belonging to State facilities.

(a) All moneys and proceeds of property donated to any State facility shall be deposited into the State treasury and accounted for in the appropriate fund as determined by the Secretary and approved by the Office of State Budget and Management. All moneys and proceeds of property donated in which there are special directions for their application and the interest earned on these funds shall be spent as the donor has directed and except as required for deposit with the State treasury, shall not be subject to the provisions of the Executive Budget Act except for capital improvements projects which shall be authorized and executed in accordance with G.S. 143-18.1.

§§ 122C-414 through 122C-420: Reserved for future codification purposes.

Part 2. Black Mountain Joint Security Force.

§ 122C-421. Joint security force.

(a) The Secretary may designate one or more special police officers who shall make up a joint security force to enforce the law of North Carolina and any ordinance or regulation adopted pursuant to G.S. 143-116.6 or G.S. 143-116.7 or pursuant to the authority granted the Department by any other law on the territory of the Black Mountain Center, the Alcohol Rehabilitation Center, and the Juvenile Evaluation Center, all in Buncombe County. After taking the oath of office for law enforcement officers as set out in G.S. 11-11, these special police officers have the same powers as peace officers now vested in sheriffs within the territory embraced by the named centers. These special police officers shall also have the power prescribed by G.S. 7B-1900 outside the territory embraced by the named centers but within the confines of Buncombe County. These special police officers may arrest persons outside the territory of the named centers but within the confines of Buncombe County when the person arrested has committed a criminal offense within that territory, for which the officers could have arrested the person within that territory, and the arrest is made during the person's immediate and continuous flight from that territory.

(b) These special police officers may exercise any and all of the powers enumerated in this Part upon or in pursuit from the property formerly occupied by the Black Mountain Center and transferred to the Department of Correction by Senate Bill 388 and House Bill 709 of the 1985 Session of the General Assembly. These special police officers shall exercise said powers upon the property transferred to the Department of Correction only by agreement of the Departments of Correction and Health and Human Services. (1983 (Reg. Sess., 1984), c. 1116, s. 30; 1985, c. 408, ss. 3, 5; c. 589, s. 2; 1995, c. 391, s. 5; 1997-320, s. 2; 1997-443, s. 11A.118(a); 1998-202, s. 13(gg).)

Editor's Note. — Session Laws 1994, Extra Session, c. 24, s. 37, effective March 26, 1994, provides: "The Secretary of the Department of Human Resources shall designate the Director of the Juvenile Evaluation Center as the Director of the Joint Security Force established in G.S. 122C-421, serving the territory of the Black Mountain Center, the Alcohol Rehabilitation Center, and the Juvenile Evaluation Center, all in Buncombe County, and having the power prescribed by G.S. 7A-571(a)(4) [see now § 7B-1900(3)] and G.S. 122C-421 outside the territory embraced by the named centers but within the confines of Buncombe County."

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Effect of Amendments. — The 1998 amendment, effective July 1, 1999, and applicable to acts committed on or after that date, substituted "G.S. 7B-1900" for "G.S. 7A-571(a)(4)" in the third sentence of subsection (a).

§§ 122C-422 through 122C-429: Reserved for future codification purposes.

Part 2A. Broughton Hospital Joint Security Force.

§ 122C-430. Joint security force.

The secretary may designate one or more special police officers who shall make up a joint security force to enforce the law of North Carolina and any ordinance or regulation adopted pursuant to G.S. 143-116.6 or G.S. 143-116.7 or pursuant to the authority granted the department by any other law on the territory of the Broughton Hospital, North Carolina School For The Deaf, Western Regional Vocational Rehabilitation Facility, Western Carolina Center, and the surrounding grounds and land adjacent to Broughton Hospital allocated to the Department of Agriculture and Consumer Services, All in Burke County. after taking the oath of office for law enforcement officers as set out in G.S. 11-11, these special police officers have the same powers as peace officers now vested in sheriffs within the territory embraced by the named facilities. These special police officers may arrest persons outside the territory of the named institutions but within the confines of Burke County when the person arrested has committed a criminal offense within that territory for which the officers could have arrested the person within that territory, and the arrest is made during the person's immediate and continuous flight from that territory. (1997-320, s. 1.)

Part 3. North Carolina Alcoholism Research Authority.

§ 122C-431. North Carolina Alcoholism Research Authority created.

(a) The North Carolina Alcoholism Research Authority is created and shall consist of and be governed by a nine-member board to be appointed by the Governor. Three of the members shall be appointed for a two-year term, three shall be appointed for a four-year term and three shall be appointed for a six-year term; thereafter all appointments shall be for terms of six years. Any vacancy occurring in the membership of the board shall be filled by the Governor for the unexpired term.

(b) The board shall elect one of its members as chairman and one as vice-chairman. The director of the Center for Alcohol Studies of The University of North Carolina at Chapel Hill shall serve ex officio as executive secretary to the Authority. Board members shall receive the same per diem, subsistence, and travel allowances as members of similar State boards and commissions, provided funds are available in the "Alcoholism Research Fund" for this purpose. (1973, c. 682, ss. 1, 2; 1985, c. 589, s. 2.)

§ 122C-432. Authorized to receive and spend funds.

The Authority may receive funds from State, federal, private, or other sources. These funds shall be held separately and designated as the "Alcoholism Research Fund". The Authority shall spend the Fund on research as to the causes and effects of alcohol abuse and alcoholism and for the training of alcohol research personnel. Expenditures for the purposes specified in this section shall be made as grants to nonprofit corporations, organizations, agencies, or institutions engaging in such research or training. The Authority

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§ 122C-43

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VISITOR REGISTRATION SHEET

S. H — Name of Committee

5.10.01 — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
J.S. Greenfield	Cherry Hospital Police
Callen Edwson	Dorothea Dix Hospital
Bic Flair	Arthur Bar (Chaos)
Shanese Ransome	NCDSS
Esther Hight	NCDSS
Roz Sawicki	NC Child Care Coalition
Tom Covell	BPOHL
Wade Hargrove	"

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

May 15, 2001 – 10:00 a.m.

The House Committee on Judiciary II met on Tuesday, May 15, 2001, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Representatives Bowie, Decker, Gulley, Hall, Jeffus, Justus, Miller, Pope, Sherrill, and Weiss. Robin Johnson, Esther Manheimer, Jeff Hudson, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

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

SB 397 GED Credits for Inmates. Rep. Miller moved that the proposed committee substitute be before the committee for purposes of discussion, and without objection, the PCS was before the committee. Sen. Ballance, bill sponsor, was recognized to explain the bill. Rep. Baddour noted that the bill was consistent with structured sentencing. The committee raised questions with regard to how the GED program would be administered, the costs associated with offering such educational programs, and the amount of time off the offender could receive in return for the completion of the GED program. Rep. Hall moved that the House committee substitute be given a favorable report, unfavorable as to Senate committee substitute. Motion passed unanimously.

HB 1402 Address Confidentiality Program/Funds. Rep. Weiss moved that the proposed committee substitute be before the committee for purposes of discussion, and without objection, the PCS was before the committee. Rep. Jeffus, bill sponsor, was recognized to provide a section by section review of the bill. Ann Winner, Coalition Against Domestic Violence, noted that the bill was needed to keep domestic violence victims safe. Shelia Pope, Secretary of State's Office, spoke in support of the bill and commented on the role her office would play in this process. Rep. Miller questioned how this change would impact how an individual registered to vote. There being further questions and concerns to come before the committee, no action was taken.

The meeting adjourned at 10:50 a.m.

Phil Baddour
Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Elizabeth Kirkland
Committee Assistant

HOUSE JUDICIARY II COMMITTEE
AGENDA

May 15, 2001
10:00 A.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Jeff Hudson
Elizabeth Kirkland (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDERED:

HB 241 Family Drug Treatment Court Program – Rep. Warner
SB 397 GED Credits for Inmates – Sen. Ballance – Sen. Ballance
HB 1402 Address Confidentiality Program/Funds – Rep. Jeffus

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 397

Judiciary II Committee Substitute Adopted 3/27/01

PROPOSED HOUSE COMMITTEE SUBSTITUTE S397-CSRH-40 [v.1]

5/14/2001 5:45:52 PM

Short Title: GED and Other Credit for Inmates. (Public)

Sponsors:

Referred to:

March 12, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CREDIT TO MISDEMEANANTS IN LOCAL CONFINEMENT FACILITIES FOR ATTENDING GED CLASSES AND OTHER PROGRAMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 162-60 reads as rewritten:

"**§ 162-60. Reduction in sentence allowed for ~~work.~~ work, education, and other programs.**

(a) A prisoner who has faithfully performed the duties assigned to ~~him pursuant to~~ the prisoner under G.S. 162-58 is entitled to a reduction in ~~his~~ the prisoner's sentence of four days for each 30 days of work performed.

(b) A prisoner who is convicted of a misdemeanor offense and housed in a local confinement facility and who faithfully participates in a general education development diploma program (GED program) or in any other education, rehabilitation, or training program is entitled to a reduction in the prisoner's sentence of four days for each 30 days of classes attended, up to the maximum credit allowed under G.S. 15A-1340.20(d).

(c) The person having custody of the prisoner, as defined in G.S. 162-59, ~~shall be~~ is the sole judge as to whether the prisoner has faithfully performed ~~his duties.~~ the assigned duties under G.S. 162-58 or has faithfully participated in a GED program or other education, rehabilitation, or training program under subsection (b) of this section. A prisoner who escapes or attempts to escape while performing work pursuant to G.S. 162-58 or while participating in a GED program or other education, rehabilitation, or training program shall forfeit any reduction in sentence that ~~he~~ the prisoner would have been entitled to under this section."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

S 2

SENATE BILL 397
Judiciary II Committee Substitute Adopted 3/27/01

Short Title: GED and Other Credit for Inmates. (Public)

Sponsors:

Referred to:

March 12, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CREDIT TO MISDEMEANANTS IN LOCAL CONFINEMENT FACILITIES FOR ATTENDING GED CLASSES AND OTHER PROGRAMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 162-60 reads as rewritten:

"**§ 162-60. Reduction in sentence allowed for ~~work.~~ work, education, and other programs.**

(a) A prisoner who has faithfully performed the duties assigned to ~~him~~ the prisoner pursuant to G.S. 162-58 is entitled to a reduction in ~~his~~ the prisoner's sentence of four days for each 30 days of work ~~performed.~~ performed, up to the maximum credit allowed under G.S. 15A-1340.20(d).

(b) A prisoner convicted and housed in a local confinement facility who attends classes toward a general education development (GED) diploma, or any other education, rehabilitation, or training program is entitled to a reduction in the prisoner's sentence of four days for each 30 days of classes attended, up to the maximum credit allowed under G.S. 15A-1340.20(d).

(c) The person having custody of the prisoner, as defined in G.S. 162-59, shall be the sole judge as to whether the prisoner has faithfully performed ~~his duties.~~ the assigned duties under G.S. 162-58 or attended GED classes or other programs under subsection (b) of this section. A prisoner who escapes or attempts to escape while performing work pursuant to G.S. 162-58 or while attending GED classes or other programs shall forfeit any reduction in sentence that ~~he~~ the prisoner would have been entitled to under this section."

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

SENATE BILL 397:
GED and Other Credit for Inmates.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Ballance
Date:	May 15, 2001	**Summary by:**	Robin Johnson
Version:	S397-CSRH-40[v.1]		Committee Counsel

The PCS makes clarifying changes.

SUMMARY: ***The bill would allow misdemeanants who are housed in a local correctional facility and who participate in a general education development diploma program (GED program) or other education, rehabilitation, or training program to receive up to four days off their sentence for each month of incarceration. The act would be effective when it becomes law.***

CURRENT LAW: G.S. 148-13 (attached) directs the Secretary of Correction (Secretary) to adopt rules to specify the rates and circumstances under which earned time authorized under another statute may be earned or forfeited by an individual serving an active prison sentence for a misdemeanor conviction. That other statute, G.S. 15A-1340.20(d) (attached), allows this individual to receive earned time credit under rules adopted by the Secretary and in combination with a third statute. The third statute, G.S. 162-60, which the bill is amending, applies only to this individual when housed in a local confinement facility and only provides for a sentence reduction for time worked on public projects. This earned time credit is limited to no more than four days per month of incarceration.

The Department of Correction (DOC) has adopted policies governing the method of computing sentence reduction credits. These policies define Earned Time as a sentence reduction credit awarded to inmates for participation in work and program activities and is applicable to inmates sentenced under the Structured Sentencing Act. Inmates are allowed sentence reduction credits for work performed or for participation in training, education, or rehabilitation programs. The sentence reduction credits cannot exceed four days per month of incarceration for misdemeanants. The amount of time deducted from the sentence is pro-rated based upon the number of hours the inmate spends in the approved activity per day. For example, inmates who perform work assignments or who participate in training programs that require a minimum of six hours participation per day for the number of days per month assigned to participate, shall receive four days per month deducted from the inmate's sentence.

The GED program is a national diploma program that provides an alternative route for individuals who have not earned a traditional high school diploma. It consists of classes and a series of tests.

BILL ANALYSIS: The bill would amend G.S. 162-60 by adding a new subsection (b) to clearly authorize a sentence reduction for a prisoner who is convicted of a misdemeanor offense and in a local confinement facility and who participates in a GED program or other education, rehabilitation, or training program. The sentence reduction would be limited to four days for every 30 days of participation in the program.

S397-SMRH-001: Kory Goldsmith, Senate Judiciary II Counsel, substantially contributed to this summary

§ 148-13. Regulations as to custody grades, privileges, gain time credit, etc.

(a) The Secretary of Correction may issue regulations regarding the grades of custody in which State prisoners are kept, the privileges and restrictions applicable to each custody grade, and the amount of cash, clothing, etc., to be awarded to State prisoners after their discharge or parole. The amount of cash awarded to a prisoner upon discharge or parole after being incarcerated for two years or longer shall be at least forty-five dollars ($45.00).

(a1) The Secretary of Correction shall adopt rules to specify the rates at, and circumstances under, which earned time authorized by G.S. 15A-1340.13(d) and G.S. 15A-1340.20(d) may be earned or forfeited by persons serving activated sentences of imprisonment for felony or misdemeanor convictions.

(b) With respect to prisoners who are serving prison or jail terms for impaired driving offenses under G.S. 20-138.1, the Secretary of Correction may, in his discretion, issue regulations regarding deductions of time from the terms of such prisoners for good behavior, meritorious conduct, work or study, participation in rehabilitation programs, and the like.

(c), (d) Repealed by Session Laws 1993, c. 538, s. 32, effective January 1, 1995.

(e) The Secretary's regulations concerning earned time credits authorized by this section shall be distributed to and followed by local jail administrators with regard to sentenced jail prisoners.

(f) The provisions of this section do not apply to persons sentenced to a term of special probation under G.S. 15A-1344(e) or G.S. 15A-1351(a).

§ 15A-1340.20. Procedure and incidents of sentence of imprisonment for misdemeanors.

(a) Application to Misdemeanors Only. – This Part applies to sentences imposed for misdemeanor convictions.

(b) Procedure Generally; Term of Imprisonment. – A sentence imposed for a misdemeanor shall contain a sentence disposition specified for the class of offense and prior conviction level, and any sentence of imprisonment shall be within the range specified for the class of offense and prior conviction level, unless applicable statutes require otherwise. The kinds of sentence dispositions are active punishment, intermediate punishment, and community punishment. Except for the work and earned time credits authorized by G.S. 162-60, or earned time credits authorized by G.S. 15A-1355(c), if applicable, an offender whose sentence of imprisonment is activated shall serve each day of the term imposed.

(c) Suspension of Sentence. – Unless otherwise provided, the court shall suspend a sentence of imprisonment if the class of offense and prior conviction level requires community or intermediate punishment as a sentence disposition.

(c1) Active Punishment Exception. – The court may impose an active punishment for a class of offense and prior conviction level that does not otherwise authorize the imposition of an active punishment if the term of imprisonment is equal to or less than the total amount of time the offender has already spent committed to or in confinement in any State or local correctional, mental, or other institution as a result of the charge that culminated in the sentence.

(d) Earned Time Authorization. – An offender sentenced to a term of imprisonment that is activated is eligible to receive earned time credit for misdemeanant offenders awarded by the Department of Correction or the custodian of a local confinement facility, pursuant to rules adopted in accordance with law and pursuant to G.S. 162-60. These rules and statute combined shall not award misdemeanant offenders more than four days of earned time credit per month of incarceration.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1402
PROPOSED COMMITTEE SUBSTITUTE H1402-CSSK-33 [v.2]

5/14/2001 6:16:18 PM

Short Title: . Address Confidentiality Program/Funds. (Public)

Sponsors:

Referred to:

April 26, 2001

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH AN ADDRESS CONFIDENTIALITY PROGRAM FOR VICTIMS OF DOMESTIC VIOLENCE, SEXUAL OFFENSES, AND STALKING AND TO APPROPRIATE FUNDS FOR THAT PURPOSE.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 15C.

"Address Confidentiality Program.

"**§ 15C-1. Purpose.**

The General Assembly establishes a program in the Department of the Secretary of State to protect the confidentiality of victims of actual or threatened violence. The purpose of the program is to allow children and adult persons attempting to escape from actual or threatened domestic violence, sexual offenses, or violence threatened by stalkers to participate in the electoral process and other rights as citizens, including obtaining drivers licenses, birth records, public utilities, school and employment records, without placing them in fear of their assailants or potential assailants locating them. The program will: (i) allow State and local agencies to respond to requests for public records without disclosing the location of the victims; (ii) enable interagency cooperation in providing address confidentiality for the victims; (iii) enable State and local agencies to accept a program participant's use of an address designated by the Department of the Secretary of State as a substitute address; and (iv) allow newly relocated victims to keep their addresses confidential from abusive individuals.

"**§ 15C-2. Definitions.**

The following definitions apply in this Chapter:

(1) Address. – A residential, work, or school street address as specified on the individual's application to be a program participant under this Chapter.

(2) Application assistant. – An employee of a State or local agency or nonprofit program that provides counseling, referral, shelter, or other specialized services to victims of domestic violence, sexual offenses, or stalking and who has been designated by the Secretary of State to assist individuals with the program participation applications.

(3) Person. – Any individual, corporation, limited liability company, partnership, trust, estate, or other association or any state, the United States, or any subdivision thereof.

(4) Program participant. – An individual accepted into the program in accordance with G.S. 15C-3 of this Chapter.

(5) Secretary. – Department of the Secretary of State.

(6) Victim of domestic violence. – An individual against whom domestic violence has been committed as defined in G.S. 50B-1.

(7) Victim of a sexual offense. – An individual against whom a sexual offense has been committed pursuant to Article 7A of Chapter 14 of the General Statutes.

(8) Victim of stalking. – An individual against whom stalking has been committed as defined in G.S. 14-277.3.

"**§ 15C-3. Address confidentiality program.**

(a) Any of the following individuals may apply to the Secretary to have an address designated by the Secretary to serve as the person's address:

(1) An adult who resides in this State and is a victim of domestic violence, a victim of a sexual offense, or a victim of stalking.

(2) A parent or guardian acting on behalf of a minor when the minor resides with the victim.

(3) A guardian acting on behalf of an incapacitated person who is a victim of domestic violence, a victim of a sexual offense, or a victim of stalking.

(b) The Secretary shall approve an application forwarded by an application assistant if the application is filed in the manner and on the form prescribed by the Secretary, and it contains:

(1) A statement by the applicant that the applicant is a victim of domestic violence, a victim of a sexual offense, or a victim of stalking and that the applicant fears for his or her safety or the safety of his or her child.

(2) A designation of the Secretary as an agent for purposes of service of process and the receipt of first-class mail.

(3) The mailing address where the applicant can be contacted by the Secretary and the telephone number where the applicant can be reached by the Secretary.

(4) The mailing address that the applicant requests not to be disclosed by the Secretary that directly relates to the increased risk of domestic violence, sexual offense, or stalking.

(5) A statement that disclosure of the applicant's address would endanger the applicant's safety or the safety of the applicant's child, and that to the best of the applicant's knowledge, the information contained in the application is true.

(6) A recommendation of an application assistant that the applicant have an address designated by the Secretary to serve as the applicant's address.

(c) The application shall be dated, signed, and verified by the applicant and shall be signed by the application assistant who assisted in preparing the application.

"**§ 15C-4. Filing and certification of applications.**

Applications shall be filed with the Secretary. Upon filing a properly completed application, the Secretary shall certify the applicant as a program participant. Applicants shall be certified for four years following the date of filing unless the certification is withdrawn or canceled prior to the end of the four-year period. A program participant may withdraw the certification by filing a request for withdrawal acknowledged before a notary with the Secretary. A certification may be renewed by filing an application containing the information required by G.S. 15C-3 with the Secretary at least 30 days prior to expiration of the current certification. The Secretary shall not be required to forward any mail other than first-class mail to the program participant. The Secretary shall not be required to track or otherwise maintain records of any mail received on behalf of a program participant unless the mail is certified or registered mail.

"**§ 15C-5. Change of name or address.**

(a) A participant shall notify the Secretary within 30 days after the participant has obtained a legal name change by providing the Secretary a certified copy of any judgment or order evidencing the change or any other documentation the Secretary deems to be sufficient evidence of the name change. If the participant fails to notify the Secretary of a name change in the manner provided in this subsection, the participant shall lose certification in the program.

(b) A participant shall notify the Secretary of a change in address or telephone number from the address or telephone number listed for the participant on the application at least seven days before the change occurs. If the participant fails to notify the Secretary of a change in address or telephone number in the manner provided in this subsection, the participant shall lose certification in the program.

"**§ 15C-6. Falsifying application information.**

A person who falsely attests in an application that disclosure of the applicant's address would endanger the applicant's safety or the safety of the applicant's child or who knowingly provides false information when applying for certification shall lose his or her certification. The Attorney General shall investigate violations of this section and upon finding that a violation has occurred, assess a civil penalty not to exceed five hundred dollars ($500.00).

"**§ 15C-7. Certification cancellation.**

(a) The Secretary shall cancel the certification of a program participant under any of the following circumstances:

(1) The program participant files a request for withdrawal of the certification that has been acknowledged before a notary.

(2) The program participant fails to notify the Secretary of a change in the participant's name, address, or telephone number listed on the application pursuant to G.S. 15C-6.

(3) Mail forwarded to the program participant is returned as undeliverable.

(4) The program participant submitted false information in applying for certification to the program.

(b) The provisions of Chapter 150B of the General Statutes shall not apply to any cancellation by the Secretary pursuant to subsection (a) of this section.

"**§ 15C-8. Address use by State or local agencies.**

After a program participant demonstrates proof of his or her certification in the program, State or local agencies shall accept the address designation by the Secretary as a program participant's substitute address when creating a new public record for the participant.

"**§ 15C-9. Disclosure of address prohibited.**

(a) The Secretary is prohibited from disclosing any address or telephone number of a program participant other than the address designated by the Secretary, except under the following circumstances:

(1) The information is requested by a law enforcement agency for official use only.

(2) The information is required by direction of a court order. However, any person to whom a program participant's address or telephone number has been disclosed pursuant to this subdivision shall not disclose the address or telephone number to any other person unless permitted to do so by order of the court.

(b) Any person who discloses information in violation of this section shall be guilty of a Class 1 misdemeanor and assessed a fine not to exceed five hundred dollars ($500.00).

(c) A program participant's address or telephone number maintained by the Secretary or disclosed by the Secretary pursuant to this Chapter is not a public record within the meaning of G.S. 132-1(a).

"**§ 15C-10. Limited liability.**

The Secretary and any agent or person employed by the Secretary shall be held harmless from any liability in any action brought by or on behalf of any person injured or harmed pursuant to this Chapter.

"**§ 15C-11. Rule-making authority.**

The Secretary is authorized to adopt any rules deemed necessary to carry out the provisions of this Chapter.

"**§ 15C-12. Additional time for action.**

Whenever the laws of this State provide a program participant a legal right to act within a prescribed period of 10 days or less after the service of a notice or other paper upon the participant, and the notice or paper is served upon the participant by mail pursuant to this Chapter, five days shall be added to the prescribed period."

SECTION 2. G.S. 1A-1, Rule 6 is amended by adding a new subsection to read:

"(f) Additional Time for Address Confidentiality Program Participants. – Whenever a person participating in the address confidentiality program pursuant to Chapter 15C of the General Statutes has a legal right to act within a prescribed period of 10 days or less after the service of a notice or other paper upon the participant, and the notice or paper is served upon the participant by mail, five days shall be added to the prescribed period."

SECTION 3. There is appropriated from the General Fund to the Department of the Secretary of State the sum of one hundred fifteen thousand dollars ($115,000) for the 2001-2002 fiscal year and the sum of eighty-six thousand five hundred fifty dollars ($86,550) for the 2002-2003 fiscal year for the costs of implementing Section 1 of this act.

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

HOUSE BILL 1402

Short Title:	Address Confidentiality Program/Funds.	(Public)
Sponsors:	Representatives Jeffus; Barefoot, Boyd-McIntyre, Buchanan, Cox, Dedmon, Easterling, Edwards, Smith, Tucker, Weiss, and Wright.	
Referred to:	Judiciary II, if favorable, Appropriations.	

April 26, 2001

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH AN ADDRESS CONFIDENTIALITY PROGRAM FOR VICTIMS OF DOMESTIC VIOLENCE, SEXUAL OFFENSES, AND STALKING AND TO APPROPRIATE FUNDS FOR THAT PURPOSE.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 15C.

"Address Confidentiality Program.

"**§ 15C-1. Purpose.**

The General Assembly establishes a program in the Secretary of State's Office to protect the confidentiality of victims of actual or threatened violence. The purpose of the program is to allow children and adult persons attempting to escape from actual or threatened domestic violence, sexual offenses, or violence threatened by stalkers to participate in the electoral process and other rights as citizens, including obtaining drivers licenses, birth records, public utilities, school and employment records, without placing them in fear of their assailants or potential assailants locating them. The program will: (i) allow State and local agencies to respond to requests for public records without disclosing the location of the victims; (ii) enable interagency cooperation in providing address confidentiality for the victims; (iii) enable State and local agencies to accept a program participant's use of an address designated by the Secretary of State's Office as a substitute address; and (iv) allow newly relocated victims to keep their addresses confidential from abusive individuals.

"**§ 15C-2. Definitions.**

The following definitions apply in this Chapter:

(1) Address. – A residential, work, or school street address as specified on the individual's application to be a program participant under this Chapter.
(2) Application assistant. – An employee of a State or local agency or nonprofit program that provides counseling, referral, shelter, or other specialized services to victims of domestic violence, sexual offenses, or stalking and who has been designated by the Secretary of State to assist individuals with the program participation applications.
(3) Person. – Any individual, corporation, limited liability company, partnership, trust, estate, or other association or any state, the United States, or any subdivision thereof.
(4) Program participant. – An individual accepted into the program in accordance with G.S. 15C-3 of this Chapter.
(5) Secretary. – Office of the Secretary of State.
(6) Victim of domestic violence. – An individual against whom domestic violence has been committed as defined in G.S. 50B-1.
(7) Victim of a sexual offense. – An individual against whom a sexual offense has been committed pursuant to Article 7A of Chapter 14 of the General Statutes.
(8) Victim of stalking. – An individual against whom stalking has been committed as defined in G.S. 14-277.3.

"**§ 15C-3. Address confidentiality program.**

(a) Any of the following individuals may apply to the Secretary to have an address designated by the Secretary to serve as the person's address:
(1) An adult who resides in this State and is a victim of domestic violence, a victim of a sexual offense, or a victim of stalking.
(2) A parent or guardian acting on behalf of a minor when the minor resides with the victim.
(3) A guardian acting on behalf of an incapacitated person who is a victim of domestic violence, a victim of a sexual offense, or a victim of stalking.

(b) The Secretary shall approve an application forwarded by an application assistant if the application is filed in the manner and on the form prescribed by the Secretary, and it contains:
(1) A statement by the applicant that the applicant is a victim of domestic violence, a victim of a sexual offense, or a victim of stalking and that the applicant fears for his or her safety or the safety of his or her child.
(2) A designation of the Secretary as an agent for purposes of service of process and the receipt of first-class mail.
(3) The mailing address where the applicant can be contacted by the Secretary and the telephone number where the applicant can be reached by the Secretary.

(4) The mailing address that the applicant requests not to be disclosed by the Secretary that directly relates to the increased risk of domestic violence, sexual offense, or stalking.

(5) A statement that disclosure of the applicant's address would endanger the applicant's safety or the safety of the applicant's child, and that to the best of the applicant's knowledge, the information contained in the application is true.

(6) A recommendation of an application assistant that the applicant have an address designated by the Secretary to serve as the applicant's address.

(c) The application shall be dated, signed, and verified by the applicant and shall be signed by the application assistant who assisted in preparing the application.

"**§ 15C-4. Filing and certification of applications.**

Applications shall be filed with the Secretary. Upon filing a properly completed application, the Secretary shall certify the applicant as a program participant. Applicants shall be certified for four years following the date of filing unless the certification is withdrawn or canceled prior to the end of the four-year period. A program participant may withdraw the certification by filing a request for withdrawal acknowledged before a notary with the Secretary. A certification may be renewed by filing an application containing the information required by G.S. 15C-3 with the Secretary at least 30 days prior to expiration of the current certification. The Secretary shall not be required to forward any mail other than first-class mail to the program participant. The Secretary shall not be required to track or otherwise maintain records of any mail received on behalf of a program participant unless the mail is certified or registered mail.

"**§ 15C-5. Change of name or address.**

(a) A participant shall notify the Secretary within 30 days after the participant has obtained a legal name change by providing the Secretary a certified copy of any judgment or order evidencing the change or any other documentation the Secretary deems to be sufficient evidence of the name change. If the participant fails to notify the Secretary of a name change in the manner provided in this subsection, the participant shall lose certification in the program.

(b) A participant shall notify the Secretary of a change in address or telephone number from the address or telephone number listed for the participant on the application at least seven days before the change occurs. If the participant fails to notify the Secretary of a change in address or telephone number in the manner provided in this subsection, the participant shall lose certification in the program.

"**§ 15C-6. Falsifying application information.**

A person who falsely attests in an application that disclosure of the applicant's address would endanger the applicant's safety or the safety of the applicant's child or who knowingly provides false information when applying for certification shall lose his or her certification. The Attorney General shall investigate violations of this section and upon finding that a violation has occurred, assess a civil penalty not to exceed five hundred dollars ($500.00).

"**§ 15C-7. Certification cancellation.**

(a) The Secretary shall cancel the certification of a program participant under any of the following circumstances:

(1) The program participant files a request for withdrawal of the certification that has been acknowledged before a notary.

(2) The program participant fails to notify the Secretary of a change in the participant's name, address, or telephone number listed on the application pursuant to G.S. 15C-6.

(3) Mail forwarded to the program participant is returned as undeliverable.

(4) The program participant submitted false information in applying for certification to the program.

(b) The provisions of Chapter 150B of the General Statutes shall not apply to any cancellation by the Secretary pursuant to subsection (a) of this section.

"**§ 15C-8. Address use by State or local agencies.**

After a program participant demonstrates proof of his or her certification in the program, State or local agencies shall accept the address designation by the Secretary as a program participant's substitute address when creating a new public record for the participant.

"**§ 15C-9. Disclosure of address prohibited.**

(a) The Secretary is prohibited from disclosing any address or telephone number of a program participant other than the address designated by the Secretary, except under the following circumstances:

(1) The information is requested by a law enforcement agency for official use only.

(2) The information is required by direction of a court order. However, any person to whom a program participant's address or telephone number has been disclosed shall not disclose the address or telephone number to any other person unless permitted to do so by order of the court.

(b) Any person who discloses information in violation of this section shall be guilty of a Class 1 misdemeanor and assessed a fine not to exceed five hundred dollars ($500.00).

(c) A program participant's address or telephone number maintained by the Secretary or disclosed by the Secretary pursuant to this Chapter is not a public record within the meaning of G.S. 132-1(a).

"**§ 15C-10. Limited liability.**

The Secretary and any agent or person employed by the Secretary shall be held harmless from any liability in any action brought by or on behalf of any person injured or harmed pursuant to this Chapter.

"**§ 15C-11. Rule-making authority.**

The Secretary is authorized to adopt any rules deemed necessary to carry out the provisions of this Chapter.

"**§ 15C-12. Additional time for action.**

Whenever the laws of this State provide a program participant a legal right to act within a prescribed period of 10 days or less after the service of a notice or other paper

upon the participant, and the notice or paper is served upon the participant by mail pursuant to this Chapter, five days shall be added to the prescribed period."

SECTION 2. G.S. 1A-1, Rule 6 is amended by adding a new subsection to read:

"(f) Additional Time for Address Confidentiality Program Participants. – Whenever a person participating in the address confidentiality program pursuant to Chapter 15C of the General Statutes has a legal right to act within a prescribed period of 10 days or less after the service of a notice or other paper upon the participant, and the notice or paper is served upon the participant by mail, five days shall be added to the prescribed period."

SECTION 3. There is appropriated from the General Fund to the Department of the Secretary of State the sum of one hundred fifteen thousand dollars ($115,000) for the 2001-2002 fiscal year and the sum of eighty-six thousand five hundred fifty dollars ($86,550) for the 2002-2003 fiscal year for the costs of implementing Section 1 of this act.

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

HB 1402:
Address Confidentiality Program/Funds.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Jeffus
Date:	May 15, 2001	**Summary by:**	Esther Manheimer
Version:	H1402-CSSK-33[v.2]		Committee Counsel

SUMMARY: HB 1402 creates an address confidentiality program to be operated by the Secretary of State (Secretary) for persons who are victims of actual or threatened domestic violence, victims of sexual offenses, or victims of stalking. The program would allow these persons to have their first-class mail and service of process received by the Secretary and then forwarded to them by the Secretary. The victim's true mailing address would not be a public record. The act is effective when it becomes law.

CURRENT LAW: Currently, the Crime Victims' Rights Act is contained in G.S. 15A-830 through G.S. 15A-841. The Act imposes duties on the investigating police department or agency, the District Attorney's office, and the custodial agency or department to inform the victim when the defendant is arrested, escapes, or is put on trial. Any change in the defendant's status requires the government official in charge at the time to inform the victim. The Crime Victims' Rights Act covers all of the victims mentioned in this bill. However, the Crime Victims' Rights Act does not speak to the issue of keeping a victim's home address from being a public record.

BILL ANALYSIS:

Secretary to Assign an Address. This bill would allow the following persons to apply to the Secretary of State (Secretary) to have the Secretary designate an address to serve as that person's mailing address for first-class mail and service of process (the person's true mailing address and telephone number would not be a public record):

(1) An adult who resides in NC and is a victim of domestic violence, a victim of a sexual offense, or a victim of stalking.
(2) A parent acting on behalf of a minor when the minor resides with the victim.
(3) A guardian acting on behalf of an incapacitated person who is a victim of domestic violence, a victim of a sexual offense, or a victim of stalking.

The Application for an Address. Person's seeking an address designated by the Secretary must submit an application to the Secretary that includes a recommendation by an application assistant that the applicant receive an address designated by the Secretary and contains the following:

(1) A statement that the applicant is a victim of a crime listed above.
(2) A designation of the Secretary as an agent for purposes of service of process and receiving first-class mail.
(3) The applicant's true mailing address and phone number (so that the Secretary may contact the applicant).

(4) The mailing address to be kept confidential, and a statement that disclosure of the address would endanger the applicant or the applicant's child.

Maintaining a Confidential Address. Applicants assigned an address by the Secretary are first certified as program participants. Participants may retain their assigned address for four years and may renew their certification as a program participant by filing a new application 30 days before expiration of the four years. The applicant may, at any time, request withdrawal from the program. Participants will be dropped from the program for failing to provide the Secretary of a name, address, or phone number change; mail forwarded to the participant is returned as undeliverable; or the participant falsifies information on their application.

Violations of this Act. The Attorney General will investigate applicants that falsify information in their application and persons found to be falsifying information would be assessed a civil penalty not to exceed $500. Persons who disclose information deemed confidential by this bill (such as the addresses and phone numbers of victims) would be guilty of a Class 1 misdemeanor and fined not more that $500. However, the confidential address and phone number of a participant may be disclosed to a law enforcement agency for official use or when required by a court order.

Miscellaneous Provisions.

- This bill states that the Secretary is not liable for persons injured or harmed under the provisions of the bill.
- The Secretary may adopt rules to carry out the provisions of the bill.
- When a program participant receives service of a notice or other paper via the Secretary and the notice requires the participant to act within ten or less, the participant has five additional days added to the prescribed period in which to act.

Appropriation. This bill appropriates from the General Fund to the Secretary $115,000 for the 2001-2002 fiscal year and $86,550 for the 2002-2003 fiscal year to implement the provisions of this bill.

VISITOR REGISTRATION SHEET

JUDICIARY II — 5-15-01

Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mark Crozier	CCC
Leslie Starsoneck	DC Commission
Kurt Hodge	Coalition for Family Peace
Martha Boyce	503
Robert Wilson	Sec. of State office
Burglynd Draper	ROS
Greg Parker	ISC
Kristina Fires	AOC - Juv & Fam Drug Courts
Randy Monchick	" Drug Treatment Court
T Powell	AOC
	SBE
Michelle Cotton	DMH/DD/SAS

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

May 17, 2001 – 10:00 a.m.

The House Committee on Judiciary II met on Thursday, May 17, 2001, in Room 421 LOB at 10:00 a.m. The following members were present: Vice Chairman Phil Haire, Representatives Bowie, Culpepper, Decker, Gulley, Hall, Jeffus, Justus, Miller, Pope, Sherrill, and Weiss. Robin Johnson, Esther Manheimer, Jeff Hudson, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order, and called for consideration of the following bills:

SB 397 GED Credits for Inmates. Rep. Miller moved that the committee reconsider the vote by which the House committee substitute passed. Motion passed. Rep. Pope moved that the new proposed committee substitute be adopted for purposes of discussion, and without objection, the PCS was before the committee. Sen. Ballance, bill sponsor, was recognized to explain the changes. Rep. Pope moved that the House committee substitute be given a favorable report, unfavorable as to Senate committee substitute. Motion passed unanimously.

HB 241 Family Drug Treatment Court Program. Rep. Bowie moved that the proposed committee substitute be before the committee for consideration, and the motion passed. Rep. Warner, bill sponsor was recognized to present the bill. He noted that the bill came out of the Study Committee on Children & Youth. Randy Monchick with the Administrative Office of the Courts explained that the bill clarifies the current statute. He also informed the committee that there was a pilot program in existence in Charlotte. Reps. Bowie and Sherrill raised concern with regard to the composition of the local drug treatment court management committees. Rep. Bowie noted that the bill required an appropriation of $600,000. Rep. Warner pointed out that this was a bare bones budget, and the goal was simply to expand the language so that the program could be expanded in the future. Rep. Miller questioned the success of the program that they have in Durham County. There being further questions and concerns to come before the committee, no action on this bill was taken.

The meeting adjourned at 10:50 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

HOUSE JUDICIARY II COMMITTEE
AGENDA

May 17, 2001
10:00 A.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Jeff Hudson
Elizabeth Kirkland (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDERED:

SB 397 GED Credits for Inmates – Sen. Ballance
HB 241 Family Drug Treatment Court Program – Rep. Warner

ADJOURNMENT

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 397 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE CREDIT TO MISDEMEANANTS IN LOCAL CONFINEMENT FACILITIES FOR ATTENDING GED CLASSES AND OTHER PROGRAMS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ With a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 397

Judiciary II Committee Substitute Adopted 3/27/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S397-CSRH-40 [v.2]

5/16/2001 5:27:18 PM

Short Title: GED and Other Credit for Inmates. (Public)

Sponsors:

Referred to:

March 12, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CREDIT TO MISDEMEANANTS IN LOCAL CONFINEMENT FACILITIES FOR ATTENDING GED CLASSES AND OTHER PROGRAMS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 4 of Chapter 162 of the General Statutes is amended by adding the following new section:

"**§ 162-59.1. Person having custody to approve prisoners for participation in education and other programs.**

The person having custody of a prisoner convicted of a misdemeanor offense may approve that prisoner's participation in a general education development diploma program (GED program) or in any other education, rehabilitation, or training program. The decision to approve a prisoner for participation in a GED program or other education, rehabilitation, or training program shall be based on the prisoner's history of violence, if any, past criminal convictions, and current sentence. The person having custody of the prisoner may revoke this approval at any time. For purposes of this section, the person having custody of the prisoner is the sheriff, except that when the prisoner is confined in a district confinement facility the person having custody of the prisoner is the jail administrator."

SECTION 2. G.S. 162-60 reads as rewritten:

"**§ 162-60. Reduction in sentence allowed for ~~work.~~ work, education, and other programs.**

(a) A prisoner who has faithfully performed the duties assigned to ~~him pursuant to~~ the prisoner under G.S. 162-58 is entitled to a reduction in ~~his~~ the prisoner's sentence of four days for each 30 days of work performed.

(b) A prisoner who is convicted of a misdemeanor offense and housed in a local confinement facility and who faithfully participates in a general education development diploma program (GED program) or in any other education, rehabilitation, or training

program is entitled to a reduction in the prisoner's sentence of four days for each 30 days of classes attended, up to the maximum credit allowed under G.S. 15A-1340.20(d).

(c) The person having custody of the prisoner, as defined in G.S. 162-59, ~~shall be~~ is the sole judge as to whether the prisoner has faithfully performed ~~his duties.~~ the assigned duties under G.S. 162-58 or has faithfully participated in a GED program or other education, rehabilitation, or training program under subsection (b) of this section. A prisoner who escapes or attempts to escape while performing work pursuant to G.S. 162-58 or while participating in a GED program or other education, rehabilitation, or training program shall forfeit any reduction in sentence that ~~he~~ the prisoner would have been entitled to under this section."

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

SENATE BILL 397:
GED and Other Credit for Inmates.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Ballance
Date:	May 17, 2001	**Summary by:**	Robin Johnson
Version:	S397-CSRH-40[v.2]		Committee Counsel

The PCS adds a new section 1 and makes clarifying changes.

SUMMARY: The bill would authorize persons who have custody of prisoners convicted of misdemeanor offenses who are housed in a local correctional facility to approve the prisoners' participation in a general education development diploma program (GED program) or other education, rehabilitation, or training program. The bill also would allow these prisoners to receive up to four days off their sentence for each month of incarceration. The act would be effective when it becomes law.

CURRENT LAW: G.S. 148-13 (attached) directs the Secretary of Correction (Secretary) to adopt rules to specify the rates and circumstances under which earned time authorized under another statute may be earned or forfeited by an individual serving an active prison sentence for a misdemeanor conviction. That other statute, G.S. 15A-1340.20(d) (attached), allows this individual to receive earned time credit under rules adopted by the Secretary and in combination with a third statute. The third statute, G.S. 162-60, which the bill is amending, applies only to this individual when housed in a local confinement facility and only provides for a sentence reduction for time worked on public projects. This earned time credit is limited to no more than four days per month of incarceration.

The Department of Correction (DOC) has adopted policies governing the method of computing sentence reduction credits. These policies define Earned Time as a sentence reduction credit awarded to inmates for participation in work and program activities and is applicable to inmates sentenced under the Structured Sentencing Act. Inmates are allowed sentence reduction credits for work performed or for participation in training, education, or rehabilitation programs. The sentence reduction credits cannot exceed four days per month of incarceration for misdemeanants. The amount of time deducted from the sentence is pro-rated based upon the number of hours the inmate spends in the approved activity per day. For example, inmates who perform work assignments or who participate in training programs that require a minimum of six hours participation per day for the number of days per month assigned to participate, shall receive four days per month deducted from the inmate's sentence.

The GED program is a national diploma program that provides an alternative route for individuals who have not earned a traditional high school diploma. It consists of classes and a series of tests.

BILL ANALYSIS: The bill would create a new G.S. 162-159.1 by authorizing the person who has custody of a prisoner convicted of a misdemeanor offense and housed in a local confinement facility to approve that prisoner's participation in a GED program or other education, rehabilitation, or training program. The person having custody must base this approval on the prisoner's record of violence, past criminal convictions, and current sentence. The person may revoke this approval at any time. The bill also would amend G.S. 162-60 by adding a new subsection (b) to clearly authorize a sentence reduction for this prisoner's participation in a GED program or other education, rehabilitation, or training program. The sentence reduction would be limited to four days for every 30 days of participation in the program.

S397-SMRH-002: Kory Goldsmith, Senate Judiciary II Counsel, substantially contributed to this summary

§ 148-13. Regulations as to custody grades, privileges, gain time credit, etc.

(a) The Secretary of Correction may issue regulations regarding the grades of custody in which State prisoners are kept, the privileges and restrictions applicable to each custody grade, and the amount of cash, clothing, etc., to be awarded to State prisoners after their discharge or parole. The amount of cash awarded to a prisoner upon discharge or parole after being incarcerated for two years or longer shall be at least forty-five dollars ($45.00).

(a1) The Secretary of Correction shall adopt rules to specify the rates at, and circumstances under, which earned time authorized by G.S. 15A-1340.13(d) and G.S. 15A-1340.20(d) may be earned or forfeited by persons serving activated sentences of imprisonment for felony or misdemeanor convictions.

(b) With respect to prisoners who are serving prison or jail terms for impaired driving offenses under G.S. 20-138.1, the Secretary of Correction may, in his discretion, issue regulations regarding deductions of time from the terms of such prisoners for good behavior, meritorious conduct, work or study, participation in rehabilitation programs, and the like.

(c), (d) Repealed by Session Laws 1993, c. 538, s. 32, effective January 1, 1995.

(e) The Secretary's regulations concerning earned time credits authorized by this section shall be distributed to and followed by local jail administrators with regard to sentenced jail prisoners.

(f) The provisions of this section do not apply to persons sentenced to a term of special probation under G.S. 15A-1344(e) or G.S. 15A-1351(a).

§ 15A-1340.20. Procedure and incidents of sentence of imprisonment for misdemeanors.

(a) Application to Misdemeanors Only. – This Part applies to sentences imposed for misdemeanor convictions.

(b) Procedure Generally; Term of Imprisonment. – A sentence imposed for a misdemeanor shall contain a sentence disposition specified for the class of offense and prior conviction level, and any sentence of imprisonment shall be within the range specified for the class of offense and prior conviction level, unless applicable statutes require otherwise. The kinds of sentence dispositions are active punishment, intermediate punishment, and community punishment. Except for the work and earned time credits authorized by G.S. 162-60, or earned time credits authorized by G.S. 15A-1355(c), if applicable, an offender whose sentence of imprisonment is activated shall serve each day of the term imposed.

(c) Suspension of Sentence. – Unless otherwise provided, the court shall suspend a sentence of imprisonment if the class of offense and prior conviction level requires community or intermediate punishment as a sentence disposition.

(c1) Active Punishment Exception. – The court may impose an active punishment for a class of offense and prior conviction level that does not otherwise authorize the imposition of an active punishment if the term of imprisonment is equal to or less than the total amount of time the offender has already spent committed to or in confinement in any State or local correctional, mental, or other institution as a result of the charge that culminated in the sentence.

(d) Earned Time Authorization. – An offender sentenced to a term of imprisonment that is activated is eligible to receive earned time credit for misdemeanant offenders awarded by the Department of Correction or the custodian of a local confinement facility, pursuant to rules adopted in accordance with law and pursuant to G.S. 162-60. These rules and statute combined shall not award misdemeanant offenders more than four days of earned time credit per month of incarceration.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 241*
Committee Substitute Favorable 3/8/01
PROPOSED COMMITTEE SUBSTITUTE H241-CSSB-32 [v.3]

5/15/2001 8:14:58 AM

Short Title: Family/Juvenile Drug Treatment Court Prgms. (Public)

Sponsors:

Referred to:

February 26, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ESTABLISHMENT OF A FAMILY DRUG TREATMENT COURT PROGRAM AND A JUVENILE DRUG TREATMENT COURT PROGRAM AND TO FUND THE FAMILY DRUG TREATMENT COURT PROGRAM, AS RECOMMENDED BY THE LEGISLATIVE STUDY COMMISSION ON CHILDREN AND YOUTH.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-791 reads as rewritten:

"**§ 7A-791. Purpose.**

The General Assembly recognizes that a critical need exists in this State for ~~criminal justice system~~ judicial programs that will reduce the incidence of ~~drug use and~~ alcohol and other drug abuse or dependence ~~drug addiction~~ and ~~crimes~~ crimes, delinquent acts, and child abuse and neglect committed as a result of ~~drug use~~ alcohol and other drug abuse or dependence, ~~and drug addiction.~~and child abuse and neglect where alcohol and other drug abuse or dependence are significant factors in the child abuse and neglect. It is the intent of the General Assembly by this Article to create a program to facilitate the creation of local drug treatment court programs."

SECTION 2. G.S. 7A-792 reads as rewritten:

"**§ 7A-792. Goals.**

The goals of the drug treatment court programs funded under this Article include the following:

(1) To reduce alcoholism and other drug dependencies among ~~offenders;~~adult and juvenile offenders and defendants and among respondents in juvenile petitions for abuse, neglect, or both;

(2) To reduce criminal and delinquent ~~recidivism;~~ recidivism and the incidence of child abuse and neglect;

(3) To reduce the alcohol- and other drug-related court workload;

(4) To increase the personal, familial, and societal accountability of ~~offenders;~~adult and juvenile offenders and defendants and respondents in juvenile petitions for abuse, neglect, or both; and

(5) To promote effective interaction and use of resources among criminal and juvenile justice ~~personnel~~ personnel, child protective services personnel, and community agencies."

SECTION 3. G.S. 7A-793 reads as rewritten:

"**§ 7A-793. Establishment of Program.**

The North Carolina Drug Treatment Court Program is established in the Administrative Office of the Courts to facilitate the creation and funding of local drug treatment court programs. The Director of the Administrative Office of the Courts shall provide any necessary staff for planning, organizing, and administering the program. Local drug treatment court programs funded pursuant to this Article shall be operated consistently with the guidelines adopted pursuant to G.S. 7A-795. Local drug treatment court programs established and funded pursuant to this Article may consist of adult drug treatment court programs, juvenile drug treatment court programs, family drug treatment court programs, or any combination of these programs."

SECTION 4. G.S. 7A-795 reads as rewritten:

"**§ 7A-795. State Drug Treatment Court Advisory Committee.**

The State Drug Treatment Court Advisory Committee is established to develop and recommend to the Director of the Administrative Office of the Courts guidelines for the drug treatment court program and to monitor local programs wherever they are implemented. The Committee shall be chaired by the Director or the Director's designee and shall consist of not less than seven members appointed by the Director and broadly representative of the courts, law enforcement, corrections, juvenile justice, child protective services, and substance abuse treatment communities. In developing guidelines, the Advisory Committee shall consider the Substance Abuse and the Courts Action Plan and other recommendations of the Substance Abuse and the Courts State Task Force."

SECTION 5. G.S. 7A-796 reads as rewritten:

"**§ 7A-796. Local drug treatment court management committee.**

Each judicial district choosing to establish a drug treatment court shall form a local drug treatment court management committee, which shall be comprised to assure representation appropriate to the type or types of drug treatment court operations to be conducted in the district and shall consist of ~~consisting of the following~~ persons, appointed by the senior resident superior court judge with the concurrence of the chief district court judge and the district attorney for that ~~district:~~district, chosen from the following list:

(1) A judge of the superior court;

(2) A judge of the district court;

(3) A district attorney or assistant district attorney;

(4) A public defender or assistant public defender in judicial districts served by a public defender;

(5) An attorney representing a county department of social services within the district;
(6) A representative of the guardian ad litem program;
~~(5)~~ (7) A member of the private criminal defense bar;
(8) A member of the private bar who represents respondents in department of social services juvenile matters;
~~(6)~~ (9) A clerk of superior court;
~~(7)~~ (10) The trial court administrator in judicial districts served by a trial court administrator;
(11) The director or member of the child welfare services division of a county department of social services within the district;
(12) The chief juvenile court counselor for the district;
~~(8)~~ (13) A probation officer;
~~(9)~~ (14) A local law enforcement officer;
(15) A representative of the local school administrative unit;
~~(10)~~ (16) A representative of the local community college;
~~(11)~~ (17) A representative of the treatment providers;
(18) A representative of the area mental health program;
~~(12)~~ (19) The local program director provided for in G.S. 7A-798; and
~~(13)~~ (20) Any other persons selected by the local management committee.

The local drug treatment court management committee shall develop local guidelines and procedures, not inconsistent with the State guidelines, that are necessary for the operation and evaluation of the local drug treatment court."

SECTION 6. G.S. 7A-799 reads as rewritten:

"**§ 7A-799. Treatment not guaranteed.**

Nothing contained in this Article shall confer a right or an expectation of a right to treatment for a defendant or offender within the criminal or juvenile justice ~~system.~~ system or a respondent in a juvenile petition for abuse, neglect, or both."

SECTION 7. G.S. 7A-800 reads as rewritten:

"**§ 7A-800. Payment of costs of treatment program.**

Each ~~defendant or~~ defendant, ~~offender~~ offender, or respondent in a juvenile petition for abuse, neglect, or both, who receives treatment under a local drug treatment court program shall contribute to the cost of the ~~substance~~alcohol and other drug abuse or dependency treatment received in the drug treatment court program, based upon guidelines developed by the local drug treatment court management committee."

SECTION 8. The sum of six hundred thousand dollars ($600,000) for the 2001-2002 fiscal year is appropriated from the General Fund to the Administrative Office of the Courts to be used solely to develop, implement, and evaluate one or more local family drug treatment court programs.

SECTION 9. This act becomes effective October 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 2

HOUSE BILL 241*

Committee Substitute Favorable 3/8/01

Short Title: Family Drug Treatment Court Program. (Public)

Sponsors:

Referred to:

February 26, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ESTABLISHMENT OF A FAMILY DRUG TREATMENT COURT PROGRAM IN NORTH CAROLINA AND TO FUND THE PROGRAM, AS RECOMMENDED BY THE LEGISLATIVE STUDY COMMISSION ON CHILDREN AND YOUTH.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-790 reads as rewritten:

"**§ 7A-790. Short title.**

This Article shall be known and may be cited as the 'North Carolina Drug Treatment Court ~~Act of 1995~~ Act'. "

SECTION 2. G.S. 7A-791 reads as rewritten:

"**§ 7A-791. Purpose.**

The General Assembly recognizes that a critical need exists in this State for ~~criminal justice system~~ judicial programs that will reduce the incidence of ~~drug use and~~ substance abuse, drug and alcohol addiction, ~~addiction and~~ crimes committed as a result of ~~drug use and~~ substance abuse or drug and alcohol ~~addiction.~~ addiction, and child abuse and neglect that occurs as a result of substance abuse or drug and alcohol addiction. It is the intent of the General Assembly by this Article to create a program to facilitate the creation of local drug treatment court programs."

SECTION 3. G.S. 7A-792 reads as rewritten:

"**§ 7A-792. Goals.**

The goals of the drug treatment court programs funded under this Article include the following:

(1) To reduce alcoholism and other drug dependencies among ~~offenders;~~offenders and respondents in juvenile petitions for abuse, neglect, or both;

(2) To reduce criminal ~~recidivism;~~ recidivism and the incidence of child abuse and neglect;

(3) To reduce the alcohol-and drug-related court workload;

(4) To increase the personal, familial, and societal accountability of ~~offenders;~~offenders and respondents in juvenile petitions for abuse, neglect, or both; and

(5) To promote effective interaction and use of resources among criminal justice ~~personnel~~ personnel, child protective services personnel, and community agencies."

SECTION 4. G.S. 7A-793 reads as rewritten:

"**§ 7A-793. Establishment of Program.**

The North Carolina Drug Treatment Court Program is established in the Administrative Office of the Courts to facilitate the creation and funding of local drug treatment court programs. The Director of the Administrative Office of the Courts shall provide any necessary staff for planning, organizing, and administering the program. Local drug treatment court programs funded pursuant to this Article shall be operated consistently with the guidelines adopted pursuant to G.S. 7A-795. Local drug treatment court programs established and funded pursuant to this Article may consist of adult drug treatment court programs, juvenile drug treatment court programs, family drug treatment court programs, or any combination of these programs."

SECTION 5. G.S. 7A-795 reads as rewritten:

"**§ 7A-795. State Drug Treatment Court Advisory Committee.**

The State Drug Treatment Court Advisory Committee is established to develop and recommend to the Director of the Administrative Office of the Courts guidelines for the drug treatment court program and to monitor local programs wherever they are implemented. The Committee shall be chaired by the Director or the Director's designee and shall consist of not less than seven members appointed by the Director and broadly representative of the courts, law enforcement, corrections, child protective services, and substance abuse treatment communities. In developing guidelines, the Advisory Committee shall consider the Substance Abuse and the Courts Action Plan and other recommendations of the Substance Abuse and the Courts State Task Force."

SECTION 6. G.S. 7A-796 reads as rewritten:

"**§ 7A-796. Local drug treatment court management committee.**

Each judicial district choosing to establish a drug treatment court shall form a local drug treatment court management committee, which shall be comprised to assure representation appropriate to the type or types of drug treatment court operations to be conducted in the district and shall consist of ~~consisting of the following persons,~~ persons appointed by the senior resident superior court judge with the concurrence of the chief district court judge and the district attorney for that ~~district:~~district, chosen from the following list:

(1) A judge of the superior court;

(2) A judge of the district court;

(3) A district attorney or assistant district attorney;

(4) A public defender or assistant public defender in judicial districts served by a public defender;

(5) An attorney representing a county department of social services within the district;
(6) A representative of the guardian ad litem program;
~~(5)~~ (7) A member of the private criminal defense bar;
(8) A member of the private bar who represents respondents in county department of social services juvenile matters;
~~(6)~~ (9) A clerk of superior court;
~~(7)~~ (10) The trial court administrator in judicial districts served by a trial court administrator;
(11) The director or member of the child welfare services division of a county department of social services within the district;
~~(8)~~ (12) A probation officer;
~~(9)~~ (13) A local law enforcement officer;
(14) A representative of the local school administrative unit;
~~(10)~~ (15) A representative of the local community college;
~~(11)~~ (16) A representative of the treatment providers;
(17) A representative of the area mental health program;
~~(12)~~ (18) The local program director provided for in G.S. 7A-798; and
~~(13)~~ (19) Any other persons selected by the local management committee.

The local drug treatment court management committee shall develop local guidelines and procedures, not inconsistent with the State guidelines, that are necessary for the operation and evaluation of the local drug treatment court program."

SECTION 7. G.S. 7A-799 reads as rewritten:

"**§ 7A-799. Treatment not guaranteed.**

Nothing contained in this Article shall confer a right or an expectation of a right to treatment for a defendant or offender within the criminal justice ~~system.~~ system or a respondent in a juvenile petition for abuse, neglect, or both."

SECTION 8. G.S. 7A-800 reads as rewritten:

"**§ 7A-800. Payment of costs of treatment program.**

Each ~~defendant or~~ defendant, ~~offender~~ offender, or respondent in a juvenile petition for abuse, neglect, or both, who receives treatment under a local drug treatment court program shall contribute to the cost of the substance abuse treatment received in the drug treatment court program, based upon guidelines developed by the local drug treatment court management committee."

SECTION 9. The sum of six hundred thousand dollars ($600,000) for the 2001-2002 fiscal year is appropriated from the General Fund to the Administrative Office of the Courts to be used solely to develop, implement, and evaluate one or more local family drug treatment court programs.

SECTION 10. This act becomes effective October 1, 2001.

HOUSE BILL 241:
Family/Juvenile Drug Treatment Court Program

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Warner
Date:	May 15, 2001	**Summary by:**	Jeff Hudson
Version:	Proposed Committee Substitute H241-CSSB-32 [v.3]		Committee Counsel

SUMMARY: ***The proposed committee substitute for House Bill 241 would broaden the North Carolina Drug Treatment Court Act to authorize the Administrative Office of the Courts (AOC) to develop family drug treatment court programs and juvenile drug treatment court programs within the existing framework of the North Carolina Drug Treatment Court Program in order to reduce incidents of child abuse and neglect caused by substance abuse or drug or alcohol addiction and incidents of juvenile delinquency. The proposed committee substitute would also appropriate six hundred thousand dollars ($600,000) to the AOC for the development, implementation, and evaluation of one or more local family drug treatment court programs. The act would become effective October 1, 2001.***

NOTE: The proposed committee substitute for House Bill 241 adds authorization for the development of juvenile drug treatment court programs, while the Second Edition of House Bill 241 only contained authorization for the development of family drug treatment court programs.

BILL ANALYSIS:

Section 1 would expand the stated purpose of the North Carolina Drug Treatment Court Act (hereinafter "the Act") to include reduction of delinquent acts and incidents of child abuse and neglect resulting from substance abuse and addiction.

Section 2 would broaden the goals of the Act to include:

- Reduction of substance abuse and addiction among juvenile offenders and respondents in juvenile petitions for abuse, neglect, or both;
- Reduction of delinquent recidivism and the incidence of child abuse and neglect;
- Reduction of alcohol-related court workload;
- Increased accountability of juvenile offenders and respondents in juvenile petitions for abuse, neglect or both;
- Promotion of interaction and resource sharing among criminal and juvenile justice personnel, child protective services, and community agencies.

Section 3 would specifically allow for family drug treatment court programs and juvenile drug treatment court programs to be developed locally, as stand-alone programs, or part of larger drug treatment court programs.

Section 4 would require that the juvenile justice and child protective services communities be broadly represented on the State Drug Treatment Court Advisory Committee.

Section 5 would require that each local drug treatment court management committee appropriately represents the parties and entities involved in the type or types of drug court program operations to be conducted, provide that the chief district court judge concur in the senior resident superior court judge's committee membership selection, and mandate that each committee membership be selected from the list provided, to which would be added:

- A department of social services attorney;
- A guardian ad litem representative;
- An attorney who represents parents and caretakers in department of social services juvenile matters;
- A county department of social services director or child welfare services division member
- The chief juvenile court counselor for the district
- A local school representative; and
- A mental health agency representative.

Sections 6 and 7 would make conforming changes to the statutes governing right to treatment and payment of treatment costs.

Section 8 would appropriate $600,000 from the General Fund to AOC to develop, implement, and evaluate one or more local family drug treatment court programs.

Section 9 would make the act effective October 1, 2001.

BACKGROUND: House Bill 241 and its companion bill, Senate Bill 279, were recommended by the Legislative Study Commission on Children and Youth. Senate Bill 279 is currently in the Senate Appropriations Committee.

The North Carolina Drug Treatment Court Act was enacted in 1995. It established the North Carolina Drug Treatment Court Program, which addresses substance abuse as the source of crime. As a derivative or part of its local drug court treatment program, Mecklenburg County has implemented a family drug treatment court program, which addresses substance abuse problems that lead to child abuse and neglect that ultimately requires removal of children from the custody of the substance abuser. The family substance abuse treatment court program is part of a therapeutic court concept being explored nationwide.

Note: Frank Folger and Wendy Graf, attorneys in the Research Division, contributed to the preparation of this summary.

H241-SMSB-001

VISITOR REGISTRATION SHEET

J-H
Name of Committee

5/17/01
Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Richard Barnett	DOC
John Bowdish	Alley Associates
Rep Alex Warner	~~ED~~
Randy Mancha	DOC
~~Peggy Ford~~	~~DOC~~
Spencer Clark	DMH/DD/SAS
Rachel Stockburger	~~IAR~~ House intern
Jim Drennan	Inst. of Govt.
Ruth Cobb	CAM

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

May 22, 2001 – 10:00 a.m.

The House Committee on Judiciary II met on Tuesday, May 22, 2001, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairman Phil Haire, Representatives Bowie, Decker, Gulley, Hall, Jeffus, Justus, Miller, Pope, Sherrill, and Weiss. Robin Johnson, Esther Manheimer, Jeff Hudson, Staff Attorneys, were also present. The Visitor Registration Sheet indicates visitors present and is attached for the record.

The Chairman called the meeting to order, and called for consideration of the following bills:

HB 241 Family Drug Treatment Court Program. Rep. Bowie was recognized to offer an amendment that address the appropriation portion of the bill, and she moved the adoption of the amendment. Motion passed. Following brief comments from the committee, Rep. Bowie moved that the amendment be rolled into a new committee substitute and that committee substitute #2 be given a favorable report, unfavorable as to committee substitute #1, and recommendation that the committee substitute #2 be re-referred to the Committee on Appropriations.

SB 7 Add Juvenile Members. Rep. Weiss moved that the proposed committee substitute be before the committee for purposes of discussion, and without objection, the bill was before the committee. Sen. Jordan, bill sponsor, was recognized to explain the bill. Larry Dix, Department of Juvenile Justice and Delinquency Prevention, spoke in support of the bill. Rep. Miller questioned the reasoning behind the bill, and Sen. Jordan said that there was a desire to give juveniles a voice on these councils. The committee raised concern over where the per diem would come from for these members. Rep. Haire questioned whether or not it was appropriate to have juveniles on the State Council on Juvenile Justice and Delinquency Prevention. Rep. Baddour noted that this council was advisory in nature. Pam Deardorff, State Youth Council, spoke in support of having youth on these councils. Rep. Sherrill moved to amend the bill to include a member of the State Youth Council. Motion passed. Rep. Sherrill moved that the amendment be rolled into a new committee substitute, and that the House committee substitute be given a favorable report, unfavorable as to Senate committee substitute.

SB 67 Juvenile Justice Under Corrections Oversight. Sen. Jordan, bill sponsor, was recognized to explain the bill. Larry Dix spoke in support of the bill, and members of the committee offered brief comments. Rep. Justus moved that the bill be given a favorable report. Motion passed unanimously.

The meeting adjourned at 10:35 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

HOUSE JUDICIARY II COMMITTEE
AGENDA

May 22, 2001
10:00 A.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Jeff Hudson
Elizabeth Kirkland (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDERED:

HB 241 Family Drug Treatment Court Program – Rep. Warner
SB 7 Add Juvenile Members – Sen. Jordan
SB 67 Juvenile Justice Under Corrections Oversight – Sen. Jordan
SB 68 Criminal Justice Standards Commission Change – Sen. Ballance & Sen. Jordan

ADJOURNMENT

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** (Chair/Chairs) for the Committee on **Judiciar y II.**

☒ Committee Substitute for
H.B. 241 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE ESTABLISHMENT OF A FAMILY DRUG TREATMENT COURT PROGRAM IN NORTH CAROLINA AND TO FUND THE PROGRAM, AS RECOMMENDED BY THE LEGISLATIVE STUDY COMMISSION ON CHILDREN AND YOUTH.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill # 2, which changes the title, unfavorable as to committee substitute bill #1, and recommendation that the committee substitute bill # 2 be re-referred to the Committee on Appropriations.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 241*

Committee Substitute Favorable 3/8/01

PROPOSED COMMITTEE SUBSTITUTE H241-CSSB-32 [v.3]

5/15/2001 8:14:58 AM

Short Title: Family/Juvenile Drug Treatment Court Prgms. (Public)

Sponsors:

Referred to:

February 26, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ESTABLISHMENT OF A FAMILY DRUG TREATMENT COURT PROGRAM AND A JUVENILE DRUG TREATMENT COURT PROGRAM AND TO FUND THE FAMILY DRUG TREATMENT COURT PROGRAM, AS RECOMMENDED BY THE LEGISLATIVE STUDY COMMISSION ON CHILDREN AND YOUTH.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-791 reads as rewritten:

"**§ 7A-791. Purpose.**

The General Assembly recognizes that a critical need exists in this State for ~~criminal justice system~~ judicial programs that will reduce the incidence of ~~drug use and~~ alcohol and other drug abuse or dependence ~~drug addiction~~ and ~~crimes~~ crimes, delinquent acts, and child abuse and neglect committed as a result of ~~drug use~~ alcohol and other drug abuse or dependence, ~~and drug addiction.~~ and child abuse and neglect where alcohol and other drug abuse or dependence are significant factors in the child abuse and neglect. It is the intent of the General Assembly by this Article to create a program to facilitate the creation of local drug treatment court programs."

SECTION 2. G.S. 7A-792 reads as rewritten:

"**§ 7A-792. Goals.**

The goals of the drug treatment court programs funded under this Article include the following:

(1) To reduce alcoholism and other drug dependencies among ~~offenders;~~ adult and juvenile offenders and defendants and among respondents in juvenile petitions for abuse, neglect, or both;

(2) To reduce criminal and delinquent ~~recidivism;~~ recidivism and the incidence of child abuse and neglect;

(3) To reduce the alcohol- and other drug-related court workload;

(4) To increase the personal, familial, and societal accountability of ~~offenders;~~adult and juvenile offenders and defendants and respondents in juvenile petitions for abuse, neglect, or both; and

(5) To promote effective interaction and use of resources among criminal and juvenile justice ~~personnel~~personnel, child protective services personnel, and community agencies."

SECTION 3. G.S. 7A-793 reads as rewritten:

"**§ 7A-793. Establishment of Program.**

The North Carolina Drug Treatment Court Program is established in the Administrative Office of the Courts to facilitate the creation and funding of local drug treatment court programs. The Director of the Administrative Office of the Courts shall provide any necessary staff for planning, organizing, and administering the program. Local drug treatment court programs funded pursuant to this Article shall be operated consistently with the guidelines adopted pursuant to G.S. 7A-795. Local drug treatment court programs established and funded pursuant to this Article may consist of adult drug treatment court programs, juvenile drug treatment court programs, family drug treatment court programs, or any combination of these programs."

SECTION 4. G.S. 7A-795 reads as rewritten:

"**§ 7A-795. State Drug Treatment Court Advisory Committee.**

The State Drug Treatment Court Advisory Committee is established to develop and recommend to the Director of the Administrative Office of the Courts guidelines for the drug treatment court program and to monitor local programs wherever they are implemented. The Committee shall be chaired by the Director or the Director's designee and shall consist of not less than seven members appointed by the Director and broadly representative of the courts, law enforcement, corrections, juvenile justice, child protective services, and substance abuse treatment communities. In developing guidelines, the Advisory Committee shall consider the Substance Abuse and the Courts Action Plan and other recommendations of the Substance Abuse and the Courts State Task Force."

SECTION 5. G.S. 7A-796 reads as rewritten:

"**§ 7A-796. Local drug treatment court management committee.**

Each judicial district choosing to establish a drug treatment court shall form a local drug treatment court management committee, which shall be comprised to assure representation appropriate to the type or types of drug treatment court operations to be conducted in the district and shall consist of ~~consisting of the following~~ persons, appointed by the senior resident superior court judge with the concurrence of the chief district court judge and the district attorney for that ~~district:~~district, chosen from the following list:

(1) A judge of the superior court;

(2) A judge of the district court;

(3) A district attorney or assistant district attorney;

(4) A public defender or assistant public defender in judicial districts served by a public defender;

(5) An attorney representing a county department of social services within the district;
(6) A representative of the guardian ad litem program;
~~(5)~~ (7) A member of the private criminal defense bar;
(8) A member of the private bar who represents respondents in department of social services juvenile matters;
~~(6)~~ (9) A clerk of superior court;
~~(7)~~ (10) The trial court administrator in judicial districts served by a trial court administrator;
(11) The director or member of the child welfare services division of a county department of social services within the district;
(12) The chief juvenile court counselor for the district;
~~(8)~~ (13) A probation officer;
~~(9)~~ (14) A local law enforcement officer;
(15) A representative of the local school administrative unit;
~~(10)~~ (16) A representative of the local community college;
~~(11)~~ (17) A representative of the treatment providers;
(18) A representative of the area mental health program;
~~(12)~~ (19) The local program director provided for in G.S. 7A-798; and
~~(13)~~ (20) Any other persons selected by the local management committee.

The local drug treatment court management committee shall develop local guidelines and procedures, not inconsistent with the State guidelines, that are necessary for the operation and evaluation of the local drug treatment court."

SECTION 6. G.S. 7A-799 reads as rewritten:

"**§ 7A-799. Treatment not guaranteed.**

Nothing contained in this Article shall confer a right or an expectation of a right to treatment for a defendant or offender within the criminal or juvenile justice ~~system.~~ system or a respondent in a juvenile petition for abuse, neglect, or both."

SECTION 7. G.S. 7A-800 reads as rewritten:

"**§ 7A-800. Payment of costs of treatment program.**

Each ~~defendant or~~ defendant, ~~offender~~ offender, or respondent in a juvenile petition for abuse, neglect, or both, who receives treatment under a local drug treatment court program shall contribute to the cost of the ~~substance~~alcohol and other drug abuse or dependency treatment received in the drug treatment court program, based upon guidelines developed by the local drug treatment court management committee."

SECTION 8. The sum of six hundred thousand dollars ($600,000) for the 2001-2002 fiscal year is appropriated from the General Fund to the Administrative Office of the Courts to be used solely to develop, implement, and evaluate one or more local family drug treatment court programs.

SECTION 9. This act becomes effective October 1, 2001.

HOUSE BILL 241:
Family/Juvenile Drug Treatment Court Program

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Warner
Date:	May 15, 2001	**Summary by:**	Jeff Hudson
Version:	Proposed Committee Substitute H241-CSSB-32 [v.3]		Committee Counsel

SUMMARY: ***The proposed committee substitute for House Bill 241 would broaden the North Carolina Drug Treatment Court Act to authorize the Administrative Office of the Courts (AOC) to develop family drug treatment court programs and juvenile drug treatment court programs within the existing framework of the North Carolina Drug Treatment Court Program in order to reduce incidents of child abuse and neglect caused by substance abuse or drug or alcohol addiction and incidents of juvenile delinquency. The proposed committee substitute would also appropriate six hundred thousand dollars ($600,000) to the AOC for the development, implementation, and evaluation of one or more local family drug treatment court programs. The act would become effective October 1, 2001.***

NOTE: The proposed committee substitute for House Bill 241 adds authorization for the development of juvenile drug treatment court programs, while the Second Edition of House Bill 241 only contained authorization for the development of family drug treatment court programs.

BILL ANALYSIS:

Section 1 would expand the stated purpose of the North Carolina Drug Treatment Court Act (hereinafter "the Act") to include reduction of delinquent acts and incidents of child abuse and neglect resulting from substance abuse and addiction.

Section 2 would broaden the goals of the Act to include:

- Reduction of substance abuse and addiction among juvenile offenders and respondents in juvenile petitions for abuse, neglect, or both;
- Reduction of delinquent recidivism and the incidence of child abuse and neglect;
- Reduction of alcohol-related court workload;
- Increased accountability of juvenile offenders and respondents in juvenile petitions for abuse, neglect or both;
- Promotion of interaction and resource sharing among criminal and juvenile justice personnel, child protective services, and community agencies.

Section 3 would specifically allow for family drug treatment court programs and juvenile drug treatment court programs to be developed locally, as stand-alone programs, or part of larger drug treatment court programs.

Section 4 would require that the juvenile justice and child protective services communities be broadly represented on the State Drug Treatment Court Advisory Committee.

Section 5 would require that each local drug treatment court management committee appropriately represents the parties and entities involved in the type or types of drug court program operations to be conducted, provide that the chief district court judge concur in the senior resident superior court judge's committee membership selection, and mandate that each committee membership be selected from the list provided, to which would be added:

- A department of social services attorney;
- A guardian ad litem representative;
- An attorney who represents parents and caretakers in department of social services juvenile matters;
- A county department of social services director or child welfare services division member
- The chief juvenile court counselor for the district
- A local school representative; and
- A mental health agency representative.

Sections 6 and 7 would make conforming changes to the statutes governing right to treatment and payment of treatment costs.

Section 8 would appropriate $600,000 from the General Fund to AOC to develop, implement, and evaluate one or more local family drug treatment court programs.

Section 9 would make the act effective October 1, 2001.

BACKGROUND: House Bill 241 and its companion bill, Senate Bill 279, were recommended by the Legislative Study Commission on Children and Youth. Senate Bill 279 is currently in the Senate Appropriations Committee.

The North Carolina Drug Treatment Court Act was enacted in 1995. It established the North Carolina Drug Treatment Court Program, which addresses substance abuse as the source of crime. As a derivative or part of its local drug court treatment program, Mecklenburg County has implemented a family drug treatment court program, which addresses substance abuse problems that lead to child abuse and neglect that ultimately requires removal of children from the custody of the substance abuser. The family substance abuse treatment court program is part of a therapeutic court concept being explored nationwide.

Note: Frank Folger and Wendy Graf, attorneys in the Research Division, contributed to the preparation of this summary.

H241-SMSB-001

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 7 A BILL TO BE ENTITLED AN ACT TO ADD TWO MEMBERS WHO ARE JUVENILES TO THE JUVENILE LOCAL CRIME PREVENTION COUNCILS AND TO THE STATE ADVISORY COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION, AND BY ADDING THE ATTORNEY GENERAL TO THE STATE ADVISORY COUNCIL.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ With a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 7

Judiciary II Committee Substitute Adopted 2/21/01

PROPOSED HOUSE COMMITTEE SUBSTITUTE S7-CSSK-37 [v.1]

5/21/2001 1:57:30 PM

Short Title: Add Juvenile Members. (Public)

Sponsors:

Referred to:

January 25, 2001

A BILL TO BE ENTITLED

AN ACT TO ADD TWO MEMBERS WHO ARE JUVENILES TO THE JUVENILE LOCAL CRIME PREVENTION COUNCILS AND TO THE STATE ADVISORY COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION, AND BY ADDING THE ATTORNEY GENERAL TO THE STATE ADVISORY COUNCIL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-544 reads as rewritten:

"**§ 143B-544. 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~~ 26 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;~~ Two persons under the age of 18 years;
(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. "

SECTION 2. G.S. 143B-545 reads as rewritten:

"**§ 143B-545. 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-544(a) were appointed for an initial term ending on June 30, 2000. The initial term of the second member added to each County Council pursuant to G.S. 143B-544(a)(12) shall begin on July 1, 2001, and end on June 30, 2002. After the initial terms, persons appointed for the positions designated in subdivisions (9), (10), (12), (15), (17), and (18) of G.S. 143B-544(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. "

SECTION 3. G.S. 143B-556 reads as rewritten:

"**§ 143B-556. 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~~ 23 members as follows:

(1) The Governor shall appoint ~~five~~ six persons, one of whom is a private citizen who has demonstrated an interest in and commitment to juvenile justice ~~issues.~~ issues; and one of whom is a person under the age of 18 years.

(2) The Chief Justice of the Supreme Court shall appoint ~~four persons.~~ five persons, one of whom is a person under the age of 18 years.

(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.
l. The Attorney General.

(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.

The initial members who are under the age of 18 years shall serve for terms of one year, beginning on January 1, 2002.

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."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 2

SENATE BILL 7

Judiciary II Committee Substitute Adopted 2/21/01

Short Title: Add Juvenile Members. (Public)

Sponsors:

Referred to:

January 25, 2001

A BILL TO BE ENTITLED

AN ACT TO ADD TWO MEMBERS WHO ARE JUVENILES TO THE JUVENILE LOCAL CRIME PREVENTION COUNCILS AND TO THE STATE ADVISORY COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION, AND BY ADDING THE ATTORNEY GENERAL TO THE STATE ADVISORY COUNCIL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-544 reads as rewritten:

"**§ 143B-544. 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~~ 26 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;~~ Two persons under the age of 18 years;

(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. "

SECTION 2. G.S. 143B-545 reads as rewritten:

"**§ 143B-545. 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-544(a) were appointed for an initial term ending on June 30, 2000. The initial term of the second member added to each County Council pursuant to G.S. 143B-544(a)(12) shall begin on July 1, 2001, and end on June 30, 2002. After the initial terms, persons appointed for the positions designated in subdivisions (9), (10), (12), (15), (17), and (18) of G.S. 143B-544(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. "

SECTION 3. G.S. 143B-556 reads as rewritten:

"**§ 143B-556. 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~~ 23 members as follows:

(1) The Governor shall appoint ~~five~~ six persons, one of whom is a private citizen who has demonstrated an interest in and commitment to juvenile justice ~~issues.~~ issues; and one of whom is a person under the age of 18 years.

(2) The Chief Justice of the Supreme Court shall appoint ~~four persons.~~ five persons, one of whom is a person under the age of 18 years.

(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.
l. The Attorney General.

(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.

The initial members who are under the age of 18 years shall serve for terms of one year, beginning on January 1, 2002.

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."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 3

SENATE BILL 7

Judiciary II Committee Substitute Adopted 2/21/01
House Committee Substitute Favorable 5/23/01

Short Title: Add Juvenile Members. (Public)

Sponsors:

Referred to:

January 25, 2001

A BILL TO BE ENTITLED

AN ACT TO ADD TWO MEMBERS WHO ARE JUVENILES TO THE JUVENILE LOCAL CRIME PREVENTION COUNCILS AND TO THE STATE ADVISORY COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION, AND BY ADDING THE ATTORNEY GENERAL TO THE STATE ADVISORY COUNCIL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-544 reads as rewritten:

"**§ 143B-544. 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~~ 26 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;~~ Two persons under the age of 18 years, one of whom is a member of the State Youth Council;
(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."

SECTION 2. G.S. 143B-545 reads as rewritten:

"**§ 143B-545. 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-544(a) were appointed for an initial term ending on June 30, 2000. The initial term of the second member added to each County Council pursuant to G.S. 143B-544(a)(12) shall begin on July 1, 2001, and end on June 30, 2002. After the initial terms, persons appointed for the positions designated in subdivisions (9), (10), (12), (15), (17), and (18) of G.S. 143B-544(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."

SECTION 3. G.S. 143B-556 reads as rewritten:

"**§ 143B-556. 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~~ 23 members as follows:

(1) The Governor shall appoint ~~five~~ six persons, one of whom is a private citizen who has demonstrated an interest in and commitment to juvenile justice ~~issues.~~ issues; and one of whom is a person under the age of 18 years that is a member of the State Youth Council.

(2) The Chief Justice of the Supreme Court shall appoint ~~four persons.~~ five persons, one of whom is a person under the age of 18 years.

(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.
l. The Attorney General.

(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.

The initial members who are under the age of 18 years shall serve for terms of one year, beginning on January 1, 2002. 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."

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

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
S.B. 67 A BILL TO BE ENTITLED AN ACT TO ALLOW THE JOINT LEGISLATIVE CORRECTIONS AND CRIME CONTROL OVERSIGHT COMMITTEE TO STUDY ISSUES RELATED TO THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION AND TO CHANGE THE NAME OF THAT COMMITTEE ACCORDINGLY, AS RECOMMENDED BY THE JOINT LEGISLATIVE CORRECTIONS AND CRIME CONTROL OVERSIGHT COMMITTEE.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

S 1

SENATE BILL 67

Short Title:	Juvenile Justice Under Corrections Oversight.	(Public)
Sponsors:	Senators Jordan; Ballance and Lee.	
Referred to:	Judiciary I.	

February 6, 2001

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE JOINT LEGISLATIVE CORRECTIONS AND CRIME CONTROL OVERSIGHT COMMITTEE TO STUDY ISSUES RELATED TO THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION AND TO CHANGE THE NAME OF THAT COMMITTEE ACCORDINGLY, AS RECOMMENDED BY THE JOINT LEGISLATIVE CORRECTIONS AND CRIME CONTROL OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-70.94 reads as rewritten:

"**§ 120-70.94. Purpose and powers of Committee.**

(a) The Joint Legislative ~~Corrections and Crime Control~~ Corrections, Crime Control, and Juvenile Justice Oversight Committee shall examine, on a continuing basis, the ~~correctional and law enforcement~~ correctional, law enforcement, and juvenile justice systems in North Carolina, in order to make ongoing recommendations to the General Assembly on ways to improve ~~the correctional and law enforcement~~ those systems and to assist those systems in realizing their objectives of protecting the public and of punishing and rehabilitating offenders. In this examination, the Committee shall:

(1) Study the budget, programs, and policies of the Departments of ~~Correction and Crime Control and Public Satfey,~~ Correction, Crime Control and Public Safety, and Juvenile Justice and Delinquency Prevention to determine ways in which the General Assembly may improve the effectiveness of those Departments;

(2) Examine the effectiveness of the Department of Correction in implementing the public policy stated in G.S. 148-26 of providing work assignments and employment for inmates as a means of reducing the cost of maintaining the inmate population while enabling inmates to acquire or retain skills and work habits needed to secure honest employment after their release;

(2a) Examine the effectiveness of the Department of Crime Control and Public Safety in implementing the duties and responsibilities charged to the Department in G.S. 143B-474 and the overall effectiveness and efficiency of law enforcement in the State; ~~and~~

(2b) Examine the effectiveness of the Department of Juvenile Justice and Delinquency Prevention in implementing the duties and responsibilities charged to the Department in Article 12 of Chapter 143B of the General Statutes and the overall effectiveness and efficiency of the juvenile justice system in the State; and

(3) Study any other matters that the Committee considers necessary.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee."

SECTION 2. Except for the section of the General Statutes amended in this act, the Revisor of Statutes shall substitute the term "Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee" for the term "Joint Legislative Corrections and Crime Control Oversight Committee" everywhere that term appears in the General Statutes.

SECTION 3. This act becomes effective July 1, 2001.

SENATE BILL 67:
Juvenile Justice Under Corrections Oversight

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Jordan
Date:	May 22, 2001	**Summary by:**	Esther Manheimer*
Version:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 67 expands the oversight responsibility of the Joint Legislative Corrections and Crime Control Oversight Committee to include the study of issues related to the Department of Juvenile Justice and Delinquency Prevention and the juvenile justice system, and to change the name of the committee to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee. This bill is effective July 1, 2001.***

BACKGROUND AND BILL ANALYSIS:

Senate Bill 67 is a recommendation of the Joint Legislative Corrections and Crime Control Oversight Committee.

The Department of Juvenile Justice and Delinquency Prevention was established in July, 2000 to take over the powers and duties of the Office of Juvenile Justice which had been housed in the Governor's Office. Senate Bill 67 would provide for legislative oversight of the newly created department and examination of the overall effectiveness and efficiency of the juvenile justice system. The bill would also change the name of the Joint Legislative Corrections and Crime Control Oversight Committee to reflect the addition of the Department of Juvenile Justice and Delinquency Prevention to its purview.

The Joint Legislative Corrections and Crime Control Oversight Committee is comprised of 16 legislators appointed for two-year terms, eight Senators appointed by the President Pro Tempore, of which two must be of the minority party, and eight Representatives appointed by the Speaker, of which three must be of the minority party.

*Wendy Graf, Counsel to Senate Judiciary I, substantially contributed to this summary.

VISITOR REGISTRATION SHEET

~~APPROPRIATIONS-JUSTICE AND PUBLIC SAFETY~~

Name of Committee

JUDICIARY II

Date

5-22-01

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Eddie Caldwell	NC Law Enf. Off. Assn / NC Sheriffs Assn
Charles Wilkins	NC Assoc. Chiefs of Police
Carey Dix	DJJDP
James Bowden	DJJDP
Cindy Thacker	DJJDP
Guy McLeod	CCPS
Pam Deardorff	YA10 / DOA
Thomas V. Bennett	NCCFTF
Paula L. Wolf	Covenant w/NC's Children
Meg Jongewaard	Covenant w/NC's children

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

May 24, 2001 – 10:00 a.m.

The House Committee on Judiciary II met on Thursday, May 24, 2001, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairman Phil Haire, Representatives Bowie, Decker, Gulley, Hall, Jeffus, Justus, Miller, Pope, Sherrill, and Weiss. Robin Johnson, Esther Manheimer, Jeff Hudson, Staff Attorneys, were also present.

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

SB 829 Government Security Interests Clarified. In Sen. Rand's absence, Rep. Baddour handled the bill. William McBride was recognized to explain the bill. Following brief comments from the committee, Rep. Sherrill moved that the bill be given a favorable report. Motion passed.

SB 352 Extend Lien for Public Health Nuisance. Sen. Kerr, bill sponsor, was recognized to present the bill. He noted that the need for this bill was brought to his attention by the Goldsboro City Council. Sen. Kerr explained that the bill extended the scope of collection for liens, but it excluded an individual's principal residence. Rep. Miller voiced his desire to expand the bill to include an individual's primary residence. The committee exchanged several comments on this issue, and then Rep. Sherrill moved that the bill be given a favorable report. Motion passed.

SB 257 UCC Article 9 Amendments-AB. Rep. Hall moved that the committee reconsider the vote by which the committee substitute received a favorable report. Motion passed. Rep. Baddour explained that the change that needed to be made to the bill was technical in nature. Rep. Bowie moved that the technical amendment be adopted. Motion passed. Rep. Bowie moved that the amendment be rolled into a new committee substitute bill, and that the House committee substitute bill be given a favorable report, unfavorable as to Senate committee substitute bill. Motion passed.

SB 912 Penalty for Filing False Statutory Lien. Rep. Jeffus moved that the proposed committee substitute be before the committee for purposes of discussion, and without objection, the PCS was before the committee. In Sen. Rand's absence, Rep. Baddour handled the bill. Tom Andrews from the Administrative Office of the Courts explained the bill. Rep. Bowie questioned the need for the legislation, and Mr. Andrews noted that it was not currently in the statutes. The committee raised concerns with regard to the process of stamping a document as filed when there is no intention of docketing the item. With questions remaining before the committee on this issue, no vote was taken.

The meeting adjourned at 10:50 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

HOUSE JUDICIARY II COMMITTEE
AGENDA

May 24, 2001
10:00 A.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Jeff Hudson
Elizabeth Kirkland (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDERED:

SB 829	Government Security Interests Clarified – Sen. Rand
SB 352	Extend Lien for Public Health Nuisance – Sen. Kerr
SB 257	UCC Article 9 Amendments-AB – Sen. Hartsell
SB 68	Criminal Justice Standards Commission Change – Sen. Jordan & Sen. Ballance
SB 912	Penalty for Filing False Statutory Lien – Sen. Rand

ADJOURNMENT

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 829 A BILL TO BE ENTITLED AN ACT TO CLARIFY TREATMENT OF CERTAIN SECURITY INTERESTS CREATED BY THE STATE OR GOVERNMENTAL UNITS OF THE STATE UNDER ARTICLE 9 OF THE NORTH CAROLINA UNIFORM COMMERCIAL CODE.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 2

SENATE BILL 829
Finance Committee Substitute Adopted 4/19/01

Short Title: Government Security Interests Clarified. (Public)

Sponsors:

Referred to:

April 3, 2001

A BILL TO BE ENTITLED

AN ACT TO CLARIFY TREATMENT OF CERTAIN SECURITY INTERESTS CREATED BY THE STATE OR GOVERNMENTAL UNITS OF THE STATE UNDER ARTICLE 9 OF THE NORTH CAROLINA UNIFORM COMMERCIAL CODE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 25-9-102(45) reads as rewritten:

"(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 (i) is eligible to issue debt on which interest is exempt from income taxation under the laws of the United ~~States.~~States, or (ii) was created to facilitate the issuance of notes, bonds, other evidences of indebtedness or payment obligations for borrowed money by, or in conjunction with, installment or lease purchase financings for, this State or any county, municipality, or other agency or political subdivision thereof as evidenced by the documents creating the organization."

SECTION 2. G.S. 25-9-109 reads as rewritten:

"**§ 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)~~(2) 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)~~(3) 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.~~proceeds; or

(14) The creation, perfection, priority, or enforcement of any lien on, assignment of, pledge of, or security in, any revenues, rights, funds, or other tangible or intangible assets created, made, or granted by this State or a governmental unit in this State, including the assignment of rights as secured party in security interests granted by any party subject to the provisions of this Article to this State or a governmental unit in this State, to secure, directly or indirectly, any bond, note, other evidence of indebtedness, or other payment obligations for borrowed money issued by, or in connection with, installment or lease purchase financings by, this State or a governmental unit in this State. However, notwithstanding this subdivision, this Article does apply to the creation, perfection, priority, and enforcement of security interests created by this State or a governmental unit in this State in equipment or fixtures."

SECTION 3. G.S. 25-9-310(b)(11) is repealed.

SECTION 4. G.S. 25-9-702 reads as rewritten:

"**§ 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 July 1, 2001.

(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 July 1, 2001, and would be subject to this act if they had been entered into or created after July 1, 2001, and the rights, duties, and interests flowing from those transactions and liens remain valid after July 1, 2001; 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 July 1, 2001.

(d) Special rule for certain governmental transactions. – Notwithstanding any other provision of this act, security interests that were excluded under former Article 9 pursuant to former G.S. 25-9-104(e) or as to which the filing requirements of former Article 9 did not apply pursuant to former G.S. 25-9-302(6), and which are effective prior to July 1, 2001, but for which the applicable requirements for creation, perfection, or enforceability under this act are not satisfied on July 1, 2001, shall nonetheless be treated as valid, enforceable, and perfected security interests under this act for the duration of those security interests."

SECTION 5. G.S. 63A-11(e), 143B-456.1(f), 159C-28, and 159D-23 are repealed.

SECTION 6. The Revisor of Statutes shall cause to be printed along with the portions of this act amending Article 9 of Chapter 25 of the General Statutes, such North Carolina official comments explaining the amendments made by this act as the Revisor deems appropriate.

SECTION 7. This act becomes effective July 1, 2001.

SENATE BILL 829:
Government Security Interests Clarified

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Sen. Rand
Date:	May 24, 2001	**Summary by:**	Esther Manheimer*
Version:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 829 provides that most governmental security interests are not subject to Article 9 of the Uniform Commercial Code. The bill becomes effective July 1, 2001.***

CURRENT LAW: Article 9 of the Uniform Commercial Code governs the creation, perfection, priority, and enforcement of a security interest. It provides that security interests created by a governmental entity are not subject to Article 9 to the extent that another statute expressly governs the creation, perfection, priority, and enforcement of the security interests. Currently, some security interests created by governmental entities are subject to Article 9, some are questionable, and some are not.

Also, the term "governmental unit", as defined by Article 9 of the UCC does not encompass every type of conduit agency financing, which is a method of financing the General Assembly expanded last session for special purpose projects, such as water systems and facilities, public transportation systems, and recreational facilities. In a conduit financing, a governmental entity issues its bonds to finance facilities for itself through a separate entity or for a private party, with the payments on the bonds made by the party for which the facilities are financed. In those instances, the security interests created are often those of the nongovernmental entity.

BILL ANALYSIS:

Section 1 expands the definition of governmental unit to include separate entities created and controlled by local governments for the purpose of facilitating the financing of a governmental project. This change in the definition recognizes the increasing use of "conduit" financings, where the owner of the facility financed grants a security interest in various collateral to secure its obligations to the governmental unit incurred in connection with the financing transaction.

Sections 2, 3, and 5 create uniformity in the Article's application to governmental units. Section 2 expressly provides that Article 9 does not apply to the creation, perfection, priority, or enforcement of a security interest unless the security interest is created in equipment or fixtures. Sections 3 and 5 repeal statutes that provide otherwise so that all governmental security interests are treated the same. The bill only affects security interests created by governmental units. It does not change the filing or other requirements of Article 9 for security interests created by nongovernmental entities in connection with governmental financing transactions.

Several different statutes allow governmental units to borrow money, such as the Local Government Bond Act and the Capital Facilities Financing Act, as well as more narrowly tailored bonds for the Global Transpark and the Medical Care Commission. These statutes generally provide that a first lien on the pledged revenues and the right to receive them is created at the time the pledge is made and that no other action is necessary to perfect the pledge. However, the statutes providing for security interests in equipment and fixtures do not generally have specific statutory provisions addressing the procedures for the creation, perfection, priority, and enforcement of the security interest created. Therefore, these security interests will continue to be governed by Article 9.

Section 4 clarifies that governmental security interests created prior to July 1, 2001, in compliance with current law remain effective.

* Cindy Avrette, Counsel to Senate Finance, substantially contributed to this summary.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 352 A BILL TO BE ENTITLED AN ACT TO EXTEND TO ADDITIONAL REAL PROPERTY THE LIEN THAT ATTACHES IF A PERSON FAILS TO REMEDY A PUBLIC HEALTH NUISANCE.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 2

SENATE BILL 352

Finance Committee Substitute Adopted 4/19/01

Short Title: Extend Lien for Public Health Nuisance. (Public)

Sponsors:

Referred to:

March 6, 2001

A BILL TO BE ENTITLED

AN ACT TO EXTEND TO ADDITIONAL REAL PROPERTY THE LIEN THAT ATTACHES IF A PERSON FAILS TO REMEDY A PUBLIC HEALTH NUISANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-193 reads as rewritten:

"**§ 160A-193. Abatement of public health nuisances.**

A city shall have authority to summarily remove, abate, or remedy everything in the city limits, or within one mile thereof, that is dangerous or prejudicial to the public health or public safety. The expense of the action shall be paid by the person in ~~default, and, if not paid, shall be a lien upon the land or premises where the trouble arose, and shall be collected as unpaid taxes.~~default. If the expense is not paid, it is a lien on the land or premises where the nuisance occurred. It is also a lien on any other real property owned by the person within the city limits or within one mile thereof, except for the person's primary residence. The expense shall be collected as unpaid taxes."

SECTION 2. G.S. 160A-432 reads as rewritten:

"**§ 160A-432. Civil and equitable enforcement.**

(a) Civil Enforcement. – Whenever any violation is denominated a misdemeanor under the provisions of this Part, the city, either in addition to or in lieu of other remedies, may initiate any appropriate action or proceedings to prevent, restrain, correct, or abate the violation or to prevent the occupancy of the building or structure involved.

(b) Equitable Enforcement. – In the case of a nonresidential building or structure declared unsafe under G.S. 160A-426(b), a city may, in lieu of taking action under subsection (a), cause the building or structure to be removed or demolished. The amounts incurred by the city in connection with the removal or demolition shall be a lien against the real property upon which the cost was ~~incurred.~~incurred and upon any other real property owned by the owner of the building or structure and located within the city limits or within one mile thereof, except for the owner's primary residence. The

lien shall be filed, have the same priority, and be collected in the same manner as liens for special assessments provided in Article 10 of this Chapter. If the building or structure is removed or demolished by the city, the city shall sell the usable materials of the building and any personal property, fixtures, or appurtenances found in or attached to the building. The city shall credit the proceeds of the sale against the cost of the removal or demolition. Any balance remaining from the sale shall be deposited with the clerk of superior court of the county where the property is located and shall be disbursed by the court to the person found to be entitled thereto by final order or decree of the court.

(c) Nothing in this section shall be construed to impair or limit the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise."

SECTION 3. G.S. 160A-443(6) reads as rewritten:

"**§ 160A-443. Ordinance authorized as to repair, closing, and demolition; order of public officer.**

Upon the adoption of an ordinance finding that dwelling conditions of the character described in G.S. 160A-441 exist within a city, the governing body of the city is hereby authorized to adopt and enforce ordinances relating to dwellings within the city's territorial jurisdiction that are unfit for human habitation. These ordinances shall include the following provisions:

...

(6) That the amount of the cost of repairs, alterations or improvements, or vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of this Chapter. <u>If the real property upon which the cost was incurred is located in an incorporated city, then the amount of the cost is also a lien on any other real property of the owner located within the city limits or within one mile thereof except for the owner's primary residence.</u> If the dwelling is removed or demolished by the public officer, he shall sell the materials of the dwelling, and any personal property, fixtures or appurtenances found in or attached to the dwelling, and shall credit the proceeds of the sale against the cost of the removal or demolition and any balance remaining shall be deposited in the superior court by the public officer, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise.

...."

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

SENATE BILL 352:
Extend Lien for Public Health Nuisance.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Kerr
Date:	May 24, 2001	**Summary by:**	Jeff Hudson,
Version:	Second Edition		Committee Counsel

SUMMARY: Senate Bill 352 broadens a city's lien authority to cover additional real property owned by a person who fails to pay the expense for abating or removing a public nuisance. The additional real property may not be the person's primary residence.

BILL ANALYSIS:

Section 1. Under current G.S. 160A-193, a city may abate a public nuisance within the city or within one mile of the city limits and, if the owner of the property where the nuisance occurred does not pay for the expense of the abatement, the expense is a lien on the property.

Section 1 amends G.S. 160A-193 to authorize a city to place a lien, not only on the land where the public nuisance occurred, but also on any other real property owned by the person who fails to pay for the abatement of the public nuisance on the person's property. This additional real property must be located within the city or within one mile of the city limits and may not be the person's primary residence.

Section 2. Under current G.S. 160A-432, a city may remove or demolish a nonresidential building or structure in a community development target area if the building or structure has been declared unsafe and the cost of the removal or demolition shall be a lien against the real property upon which the cost was incurred. A nonresidential building or structure may be declared "unsafe" if it appears to be vacant or abandoned, and it is so dilapidated as to cause blight, disease, vagrancy, fire or safety hazard, to be a danger to children, to attract criminals, or to otherwise constitute a public nuisance.

Section 2 amends G.S. 160A-432 to authorize a city to place a lien, not only on the property from which the unsafe building or structure was removed, but also on any other real property owned by the owner of the unsafe building or structure. This additional real property must be located within the city or within one mile of the city limits and may not be the person's primary residence.

Section 3. Under current G.S. 160A-443, a city or county may adopt an ordinance for the repair, closing, or demolition of a dwelling that is unfit for human habitation. The cost of the repair, closing, or demolition shall be a lien on the real property upon which the cost was incurred. A dwelling is "unfit for human habitation" if the public officer finds that conditions exist in the dwelling that render it dangerous or injurious to the health, safety, or morals of the city.

Section 3 amends G.S. 160A-443(6) to provide that if the real property upon which the cost was incurred is in an incorporated city, then the city may also place a lien on the other real property owned by the owner of building or structure. This additional real property must be located within the city or within one mile of the city limits and may not be the person's primary residence.

Note: Martha Walston, Fiscal Research Division, contributed to the preparation of this summary.

S352-SMSB-001

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 257 A BILL TO BE ENTITLED AN ACT TO AMEND ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE TO GIVE THE SECRETARY OF STATE THE AUTHORITY TO PREVENT FRAUDULENT FILINGS AND TO MAKE CLARIFYING CHANGES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ With a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 257

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

S257-ASK-17 [v.1]

Date _____,2001

Comm. Sub. [YES]
Amends Title [NO]
S257-PCS3841-SK-32

Representative

moves to amend the bill on page 1, line 11, by rewriting the line to read:
"communication authorized by the filing office;";
on page 1, line 13, by rewriting the line to read:
"tendered;";
on page 2, line 3, by rewriting the line to read:
"description of the real property to which it relates;";
on page 2, line 6, by rewriting the line to read:
"mailing address for the secured party of record;";
on page 2, line 19, by rewriting the line to read:
"indicate that the debtor has none;";
on page 2, line 23, be rewriting the line to read:
"assignee; ~~or~~"; and
on page 2, line 25, by rewriting the line to read:
"the six-month period prescribed by ~~G.S. 25-9-515(d).~~G.S. 25-9-515(d); or".

SIGNED _____
Amendment Sponsor

SIGNED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 257

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

S257-ASK-17 [v.1]

Committee Chair if Senate Committee Amendment

ADOPTED FAILED TABLED

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 257

Judiciary I Committee Substitute Adopted 3/29/01

PROPOSED COMMITTEE SUBSTITUTE S257-PCS3841-SK-32

Short Title: UCC Article 9 Amendments-AB. (Public)

Sponsors:

Referred to:

February 27, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE TO GIVE THE SECRETARY OF STATE THE AUTHORITY TO PREVENT FRAUDULENT FILINGS AND TO MAKE CLARIFYING CHANGES.

The General Assembly of North Carolina enacts:

PART I. PREVENT FRAUDULENT FILINGS.

SECTION 1. G.S. 25-9-516(b) reads as rewritten:

"(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;~~office.

(2) An amount equal to or greater than the applicable filing fee is not ~~tendered;~~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;~~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;~~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;~~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~~assignee.

(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).

(8) In the case of a record presented for filing at the Department of the Secretary of State, the Secretary of State determines that the record is not created pursuant to this Chapter or is otherwise intended for an improper purpose, such as to hinder, harass, or otherwise wrongfully interfere with any person."

SECTION 2. G.S. 25-9-518(b)(3) reads as rewritten:

"(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. A correction statement that is subject to the provisions of subsection (b1) of this section shall include a written certification, under oath, by the person that the contents of the correction statement are true and accurate to the best of the person's knowledge."

SECTION 3. G.S. 25-9-518 is amended by adding a new subsection to read:

"(b1) In the case of a correction statement alleging that a previously filed record was wrongfully filed and that it should have been rejected under G.S. 25-9-516(b)(8),

the Secretary of State shall, without undue delay, determine whether the contested record was wrongfully filed and should have been rejected. In order to determine whether the record was wrongfully filed, the Secretary of State may require the person filing the correction statement and the secured party to provide any additional relevant information requested by the Secretary of State, including an original or a copy of any security agreement that is related to the record. If the Secretary of State finds that the record was wrongfully filed and should have been rejected under G.S. 25-9-516(b)(8), the Secretary of State shall cancel the record and it shall be void and of no effect."

SECTION 4. G.S. 25-9-520 reads as rewritten:

"**§ 25-9-520. ~~Acceptance and refusal to accept record.~~Acceptance, refusal to accept record, and cancellation of 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,~~ filing or cancels a record under G.S. 25-9-518(b1), it shall communicate to the person that presented the record the fact of and reason for the refusal or cancellation 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 or cancels 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.

(e) Appeal.

(1) If the Secretary of State refuses to accept a record for filing pursuant to G.S. 25-9-516(b)(8) or cancels a wrongfully filed record pursuant to G.S. 25-9-518(b1), the secured party may file an appeal within 30 days after the refusal or cancellation in the Superior Court of Wake County. Filing a petition requesting to be allowed to file the document commences the appeal. The petition shall be filed with the court and with the Secretary of State and shall have the record attached to it. Upon the commencement of an appeal, it shall be set for hearing at the earliest possible time and shall take precedence over all matters except older matters of the same character. The appeal to the Superior Court is not governed by Article 3, 3A, or 4 of Chapter 150B of the General Statutes and shall be determined upon such further notice and

opportunity to be heard, if any, as the court may deem appropriate under the circumstances. The court shall permit the joinder of any interested party that would be allowed under the Rules of Civil Procedure.

(2) Upon consideration of the petition and other appropriate pleadings, the court may order the Secretary of State to file the record or take other action the court considers appropriate, including the entry of orders affirming, reversing, or otherwise modifying the decision of the Secretary of State. The court may order any other relief, including equitable relief, as may be appropriate.

(3) The court's final decision may be appealed as in other civil proceedings."

SECTION 5. Article 52 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-401.19. Filing false security agreements.**

It shall be unlawful for any person, firm, corporation, or any other association of persons in this State, under whatever name styled, to present a record for filing under the provisions of Article 9 of Chapter 25 of the General Statutes with knowledge that the record is not related to a valid security agreement or with the intention that the record be filed for an improper purpose, such as to hinder, harass, or otherwise wrongfully interfere with any person. A violation of this section shall be a Class 2 misdemeanor."

PART II. CLARIFY PROVISIONS OF ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

SECTION 6. G.S. 25-9-707 reads as rewritten:

"**§ 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 July 1, 2001.

(b) Applicable law. – After July 1, 2001, 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 July 1, 2001 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) Method of amending: additional termination rule. – Whether or not the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this State may be terminated after July 1, 2001, by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies G.S. 25-9-706(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Part 3 of this Article as the office in which to file a financing statement. However, a termination statement shall not be filed under this section in the register of deeds office unless it is the office specified in G.S. 25-9-501.

(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 July 1, 2001 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.~~

No additional fee. – No separate fee shall be charged for the filing or indexing of a concurrently filed termination statement under subdivision (c)(2) of this section."

SECTION 7. G.S. 25-9-710 reads as rewritten:

"**§ 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. This subsection 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.

(c) Until July 1, 2008, each local-filing office must maintain all ~~former Article 9~~ former-Article-9 records in accordance with former Article 9. A ~~former Article 9~~ 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~~ 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.~~"

PART III. EFFECTIVE DATE.

SECTION 8. Section 5 of this act becomes effective December 1, 2001, and applies to documents presented for filing on or after that date. The remainder of this act becomes effective July 1, 2001. Sections 1 through 4 of this act apply to documents filed on or after July 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 912

Judiciary I Committee Substitute Adopted 4/23/01

PROPOSED HOUSE COMMITTEE SUBSTITUTE S912-CSRH-42 [v.1]

5/23/2001 10:56:43 AM

Short Title: Penalty for Filing False Statutory Lien. (Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CLERK OF SUPERIOR COURT TO REFUSE TO INDEX, DOCKET, OR RECORD FRAUDULENT CLAIMS OF LIEN AND TO PROVIDE FOR PENALTIES FOR FILING FALSE STATUTORY LIENS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2 of Chapter 44A of the General Statutes is amended by adding a new section to read:

"**§ 44A-12.1. No docketing of lien unless authorized by statute.**

(a) The clerk of superior court or the register of deeds shall not index, docket, or record a claim of lien or other document purporting to claim or assert a lien on real property in such a way as to affect the title to any real property unless the document:

(1) Is offered for filing under this Article or another statute that provides for indexing and docketing of claims of lien on real property; and

(2) Appears on its face to contain all of the information required by the statute under which it is offered for filing.

(b) Any person who causes or attempts to cause a claim of lien or other document to be filed, knowing that the filing is not authorized by statute, or with the intent that the filing is made for an improper purpose such as to hinder, harass, or otherwise wrongfully interfere with any person, shall be guilty of a Class 1 misdemeanor."

SECTION 2. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 2

SENATE BILL 912

Judiciary I Committee Substitute Adopted 4/23/01

Short Title: Penalty for Filing False Statutory Lien. (Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CLERK OF SUPERIOR COURT TO REFUSE TO INDEX, DOCKET, OR RECORD FRAUDULENT CLAIMS OF LIEN AND TO PROVIDE FOR PENALTIES FOR FILING FALSE STATUTORY LIENS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2 of Chapter 44A of the General Statutes is amended by adding a new section to read:

"**§ 44A-25. No docketing of lien unless authorized by statute.**

(a) No claim of lien or other document purporting to claim or assert a lien on real property shall be indexed, docketed, or recorded by the clerk of superior court or by the register of deeds in such a way as to affect the title to any real property unless the document:

(1) Is offered for filing pursuant to this Article or to another statute of this State that provides for indexing and docketing of claims of lien on real property; and

(2) Appears on its face to contain all of the information required by the statute pursuant to which it is offered for filing.

(b) Any person who causes or attempts to cause a claim of lien or other document to be filed, knowing that the filing is not authorized by statute, or with the intent that the filing is made for an improper purpose such as to hinder, harass, or otherwise wrongfully interfere with any person, shall be guilty of a Class 1 misdemeanor."

SECTION 2. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

SENATE BILL 912:
Penalty for Filing False Statutory Lien.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Rand
Date:	May 24, 2001	**Summary by:**	Robin Johnson
Version:	S912-CSRH-42[1]		Committee Counsel

The PCS corrects the statute number being created and makes technical changes.

SUMMARY: ***The bill would prohibit the clerk of superior court or register of deed from indexing, docketing, or recording an unauthorized claim of lien. A person who causes or attempts to file a claim knowing the filing is not authorized or with an improper intent is guilty of a Class 1 misdemeanor.***

The bill would take effect December 1, 2001, and apply to offenses committed on or after that date.

BILL ANALYSIS: The bill would amend Article 2 of Chapter 44A of the General Statutes (Statutory Liens on Real Property) by creating a new G.S. 44A-12.1. This new section would specifically prohibit the clerk of superior court or register of deed from indexing, docketing, or recording a claim of lien or other document that purports to claim or assert a lien on real property in a way that would affect the title to any real property unless the filing is authorized by statute and the document on its face appears to contain the required information.

Generally, a claim of lien against real property must be filed with the clerk of the superior court in the county where the property is located. In addition to other required information, a claim must include: the name and address of the person claiming the lien, the name and address of the record owner of the property claimed to be subject to the lien, and a description of the property. When the claim is filed, the clerk records the claim on the judgment docket, indexes it under the name of the record owner of the property, and (when requested by an interested party) certifies the claim to the register of deeds. The register of deeds then records notice of the lien on the record copy of the certificate of title, which creates a valid encumbrance on the property. After the lien is filed, an action to enforce it may be instituted.

The bill also would make it a Class 1 misdemeanor for any person who files or attempts to file a lien with knowledge that it is not authorized by statute, or when the filing is made for an improper purpose, such as to hinder, harass, or otherwise wrongfully interfere with any person. Conviction of a Class 1 misdemeanor, assuming no prior convictions, is punishable by 1-45 days of community punishment, a fine in an amount in the discretion of the court, or both.

S912-SMRH-001: Wendy Graf, Committee Counsel for Senate Judiciary I, contributed to this summary.

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

May 31, 2001 – 10:00 a.m.

The House Committee on Judiciary II met on Thursday, May 31, 2001, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairman Phil Haire, Representatives Bowie, Culpepper, Decker, Gulley, Hall, Jeffus, Justus, Miller, Pope, Sherrill, and Weiss. Robin Johnson, Esther Manheimer, Jeff Hudson, Staff Attorneys, were also present.

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

SB 220 Define Time Stock Abandoned for Escheats. Sen. Hartsell, bill sponsor, was recognized to explain the bill. Rep. Haire moved that the bill be given a favorable report. Motion passed.

SB 912 Penalty for Filing False Statutory Lien. Rep. Miller moved that the new proposed committee substitute be before the committee for purposes of discussion, and without objection, the PCS was before the committee. In Sen. Rand's absence, Rep. Baddour handled the bill. Tom Andrews from the Administrative Office of the Courts explained that the changes made to the bill address the concerns raised at the previous meeting. Rep. Bowie moved that the House committee substitute be given a favorable report, unfavorable as to Senate committee substitute bill. Motion passed.

The meeting adjourned at 10:20 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

HOUSE JUDICIARY II COMMITTEE
AGENDA

May 31, 2001
10:00 A.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Jeff Hudson
Elizabeth Kirkland (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDERED:

SB 912	Penalty for Filing False Statutory Lien – Sen. Rand
SB 220	Define Time Stock Abandoned for Escheats – Sen. Hartsell

ADJOURNMENT

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 220 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW DEFINING THE TIME STOCK AND OTHER EQUITY INTERESTS IN BUSINESS ASSOCIATIONS ARE PRESUMED ABANDONDED FOR PURPOSES OF THE NORTH CAROLINA UNCLAIMED PROPERTY ACT AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 2

SENATE BILL 220

Judiciary I Committee Substitute Adopted 4/3/01

Short Title: Define Time Stock Abandoned for Escheats. (Public)

Sponsors:

Referred to:

February 22, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW DEFINING THE TIME STOCK AND OTHER EQUITY INTERESTS IN BUSINESS ASSOCIATIONS ARE PRESUMED ABANDONED FOR PURPOSES OF THE NORTH CAROLINA UNCLAIMED PROPERTY ACT AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 116B-53(c)(4) reads as rewritten:

"(c) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

...

(4) Stock or other equity interest in a business association, including a security entitlement under Article 8 of the Uniform Commercial Code, Chapter 25 of the General Statutes, five years after the earlier of:

a. The date of a cash dividend or other cash distribution unclaimed by the apparent owner, or

b. ~~The date of the second mailing of a stock certificate or other evidence of ownership, a statement of account, or other notification or communication which second mailing was returned as undeliverable or the date the holder discontinued mailings, notifications, or communications to the apparent owner;~~The date a second consecutive mailing, notification, or communication from the holder to the apparent owner is returned to the holder as unclaimed by or undeliverable to the apparent owner;

...."

SECTION 2. This act becomes effective October 1, 2001.

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

MEMORANDUM

TO: House Judiciary II Committee

FROM: General Statutes Commission

DATE: April 30, 2001

RE: Senate Bill 220 (Define Time Stock Abandoned for Escheats)

Senate Bill 220 amends subdivision 116B-53(c)(4) of the North Carolina Unclaimed Property Act. The Act generally provides that property held by someone other than the owner that is unclaimed, or dormant, for a certain period of time must be turned over to the State (the State then holds either the property or its value for the owner should this person ever appear and claim it). Subdivision 116B-53(c)(4) sets the dormancy period under the Act at five years for stock and other equity interests in a business association and lists the events that trigger the running of the period. Senate Bill 220 deletes language currently in subdivision 116B-53(c)(4) that allows a business association to start the period running by discontinuing mailings to an apparent owner and otherwise clarifies that two returned mailings must be consecutive and that the second mailing need not be a second mailing of the same item.

§ 116B-53. Presumptions of abandonment.

(a) Property is unclaimed if the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held, and has not otherwise indicated an interest in the property. A communication with an owner by a person (other than the holder or its representative) who has not, in writing, identified the property to the owner is not an indication of interest in the property by the owner.

(b) An indication of an interest in property includes:

(1) The presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(2) The presentment of a check or other instrument of payment of interest made with respect to debt of a business association or, in the case of an interest payment made by electronic or similar means, evidence that the interest payment has been received;

(3) Owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease, or change the amount or type of property held in the account;

(4) The making of a deposit to or withdrawal from an account in a financial organization;

(5) Owner activity in another account with the holder of a deposit described in subdivisions (c)(2) and (c)(6) of this section; and

(6) The payment of a premium with respect to a property interest in an insurance policy; but the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

(c) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(1) Traveler's check, 15 years after issuance;

(2) Time deposit, including a deposit that is automatically renewable, 10 years after the later of initial maturity or the date of the last indication by the owner of interest in the property;

(3) Money order, cashier's check, teller's check, and certified check, seven years after issuance;

(4) Stock or other equity interest in a business association, including a security entitlement

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under Article 8 of the Uniform Commercial Code, Chapter 25 of the General Statutes, five years after the earlier of:

a. The date of a cash dividend or other cash distribution unclaimed by the apparent owner, or

b. The date of the second mailing of a stock certificate or other evidence of ownership, a statement of account, or other notification or communication which second mailing was returned as undeliverable or the date the holder discontinued mailings, notifications, or communications to the apparent owner;

(5) Debt of a business association, other than a bearer bond or an original issue discount bond, five years after the date of an interest payment unclaimed by the apparent owner;

(6) Demand or savings deposit, five years after the date of the last indication by the owner of interest in the property;

(7) Money or credits owed to a customer as a result of a retail business transaction, three years after the obligation accrued;

(8) Any gift certificate or electronic gift card bearing an expiration date and remaining unredeemed or dormant for more than three years after the gift certificate or electronic gift card was sold is deemed abandoned. The amount abandoned is deemed to be sixty percent (60%) of the unredeemed portion of the face value of the gift certificate or the electronic gift card;

(9) Amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

(10) Property distributable by a business association in a course of dissolution, one year after the property becomes distributable;

(11) Property received by a court as proceeds of a class action, and not distributed pursuant to the judgment, one year after the distribution date;

(12) Property held by a court, government, governmental subdivision, agency, or instrumentality, one year after the property becomes distributable;

(13) Wages or other compensation for personal services, two years after the compensation becomes payable;

(14) Deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes payable;

(15) Property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the

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date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty; and

(16) All other property, five years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(d) At the time that an interest in property is presumed abandoned under subsection (c) of this section, any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(e) Property is payable or distributable for purposes of this Chapter notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment or distribution, except as otherwise provided by the Uniform Commercial Code.

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2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 912 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE CLERK OF SUPERIOR COURT TO REFUSE TO INDEX, DOCKET, OR RECORD FRAUDULENT CLAIMS OF LIEN AND TO PROVIDE FOR PENALTIES FOR FILING FALSE STATUTORY LIENS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 912

Judiciary I Committee Substitute Adopted 4/23/01

PROPOSED HOUSE COMMITTEE SUBSTITUTE S912-CSRH-42 [v.3]

5/25/2001 2:59:01 PM

Short Title: Penalty for Filing Unauthorized Statutory Lien. (Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE INDEXING, DOCKETING, OR RECORDING OF UNAUTHORIZED CLAIMS OF LIEN AND TO PROVIDE FOR PENALTIES FOR FILING UNAUTHORIZED STATUTORY LIENS. .

The General Assembly of North Carolina enacts:

SECTION 1. Article 2 of Chapter 44A of the General Statutes is amended by adding a new section to read:

"**§ 44A-12.1. No docketing of lien unless authorized by statute.**

(a) The clerk of superior court or the register of deeds shall not index, docket, or record a claim of lien or other document purporting to claim or assert a lien on real property in such a way as to affect the title to any real property unless the document:

(1) Is offered for filing under this Article or another statute that provides for indexing and docketing of claims of lien on real property; and

(2) Appears on its face to contain all of the information required by the statute under which it is offered for filing.

(b) The clerk may accept, for filing only, any document that does not meet the criteria established for indexing, docketing, or recording under subsection (a) of this section. If the clerk does accept this document, the clerk shall inform the person offering the document that it will not be indexed, docketed, or recorded in any way as to affect the title to any real property.

(c) Any person who causes or attempts to cause a claim of lien or other document to be filed, knowing that the filing is not authorized by statute, or with the intent that the filing is made for an improper purpose such as to hinder, harass, or otherwise wrongfully interfere with any person, shall be guilty of a Class 1 misdemeanor."

SECTION 2. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

SENATE BILL 912:
Penalty for Filing False Statutory Lien.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Rand
Date:	May 29, 2001	**Summary by:**	Robin Johnson
Version:	S912-CSRH-42[3]		Committee Counsel

The PCS corrects the statute number being created and makes technical changes. It also adds language directing the clerk to inform a person when the clerk accepts a document for filing only.

SUMMARY: The bill would prohibit the clerk of superior court or register of deed from indexing, docketing, or recording an unauthorized claim of lien. A person who causes or attempts to file a claim knowing the filing is not authorized or with an improper intent is guilty of a Class 1 misdemeanor.

The bill would take effect December 1, 2001, and apply to offenses committed on or after that date.

BILL ANALYSIS: The bill would amend Article 2 of Chapter 44A of the General Statutes (Statutory Liens on Real Property) by creating a new G.S. 44A-12.1. This new section would specifically prohibit the clerk of superior court or register of deed from indexing, docketing, or recording a claim of lien or other document that purports to claim or assert a lien on real property in a way that would affect the title to any real property unless the filing is authorized by statute and the document on its face appears to contain the required information. The clerk may accept this document for filing only, but then the clerk must inform the person offering the document that it will not be indexed, docketed, or recorded.

Generally, a claim of lien against real property must be filed with the clerk of the superior court in the county where the property is located. In addition to other required information, a claim must include: the name and address of the person claiming the lien, the name and address of the record owner of the property claimed to be subject to the lien, and a description of the property. When the claim is filed, the clerk records the claim on the judgment docket, indexes it under the name of the record owner of the property, and (when requested by an interested party) certifies the claim to the register of deeds. The register of deeds then records notice of the lien on the record copy of the certificate of title, which creates a valid encumbrance on the property. After the lien is filed, an action to enforce it may be instituted.

The bill also would make it a Class 1 misdemeanor for any person who files or attempts to file a lien with knowledge that it is not authorized by statute, or when the filing is made for an improper purpose, such as to hinder, harass, or otherwise wrongfully interfere with any person. Conviction of a Class 1 misdemeanor, assuming no prior convictions, is punishable by 1-45 days of community punishment, a fine in an amount in the discretion of the court, or both.

S912-SMRH-002: Wendy Graf, Committee Counsel for Senate Judiciary I, contributed to this summary.

VISITOR REGISTRATION SHEET

Judiciary II — 5/31/01
Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ken Kirkton	American General
Tom Andrews	AOC
Floyd Lewis	General Statutes Commission
Michelle Frazier	NC Bar Assoc.
Larry Dix	DJJDP
Scott Perry	DOJ - CJ Standards Commission
Henry Gorhes	Attorney - Raleigh
Eddie Caldwell	Hafer Caldwell & Ferrell, P.A.

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

June 5, 2001 – 10:00 a.m.

The House Committee on Judiciary II met on Tuesday, June 5, 2001, in Room 421 LOB at 10:00 a.m. The following members were present: Chairman Phil Baddour, Vice Chairman Phil Haire, Representatives Bowie, Culpepper, Decker, Gulley, Hall, Jeffus, Justus, Pope, Sherrill, and Weiss. Robin Johnson, Esther Manheimer, Jeff Hudson, Staff Attorneys, were also present.

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

SB 68 Criminal Justice Standards Commission Change. Sen. Jordan, bill sponsor, was recognized to explain the bill. Rep. Culpepper moved that the new proposed committee substitute be before the committee for purposes of discussion, and without objection the PCS was before the committee. Sen. Ballance handled the bill. Scott Perry from the Department of Justice, Criminal Justice Standards Division, explained the different positions on the Commission. Rep. Bowie offered an amendment to recommend the bill to the Joint Oversight Committee to study the size and membership. Motion passes. Amendment applied. Rep. Decker moved that the amendment be rolled into a new Committee Substitute and the House committee substitute bill be given a favorable report, which changed the title, unfavorable as to Senate committee substitute bill. Motion passes.

HB 1070. Removal / Resignation of Trustees. Rep. Haire, bill sponsor, was recognized to explain the bill. Rep. Hall moved that the new proposed committee substitute be before the committee for purposes of discussion, and without objection, the PCS was before the committee. Bill Kratt, from the North Carolina Bar Association, explained the purpose of the bill. Rep. Pope moved that the House committee substitute be given a favorable report, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on Finance. Motion passed.

The meeting adjourned at 10:50 a.m.

Phil Baddour

Representative Philip A. Baddour, Jr.
Chairman

Elizabeth Kirkland
Committee Assistant

HOUSE JUDICIARY II COMMITTEE
AGENDA

June 5, 2001
10:00 A.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Jeff Hudson
Elizabeth Kirkland (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDERED:

SB 68 Criminal Justice Standards Commission Change – Sens. Jordan & Ballance
HB 1070 Removal/Resignation of Trustees – Rep. Haire
~~SB 746 Sentencing Enhancement Changes/ Sent. Comm. – Sen. Miller~~

ADJOURNMENT

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 68 A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES TO THE MEMBERSHIP OF THE NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION, TO CLARIFY THE ENFORCEMENT POWERS OF THE COMMISSION, TO REPEAL THE REMOVAL OF THE DEPARTMENT OF CORRECTION FROM THE COMMISSION, AS RECOMMENDED BY THE JOINT LEGISLATIVE CORRECTIONS AND CRIME CONTROL OVERSIGHT COMMITTEE, AND TO MAKE CONFORMING CHANGES FOR THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 68
Judiciary I Committee Substitute Adopted 3/28/01
Corrected Copy 3/29/01
Judiciary II Committee Substitute #2 Adopted 4/24/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S68-PCS3485-RH-41

Short Title: Criminal Justice Standards Commission Change. (Public)

Sponsors:

Referred to:

February 6, 2001

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE MEMBERSHIP OF THE NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION, TO CLARIFY THE ENFORCEMENT POWERS OF THE COMMISSION, TO REPEAL THE REMOVAL OF THE DEPARTMENT OF CORRECTION FROM THE COMMISSION, AS RECOMMENDED BY THE JOINT LEGISLATIVE CORRECTIONS AND CRIME CONTROL OVERSIGHT COMMITTEE, TO MAKE CONFORMING CHANGES FOR THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, AND TO DIRECT THE JOINT LEGISLATIVE CORRECTIONS AND CRIME CONTROL OVERSIGHT COMMITTEE TO STUDY THE COMPOSITION OF THE COMMISSION.

The General Assembly of North Carolina enacts:

PART I. CHANGES TO NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

SECTION 1.1. G.S. 17C-2(3) reads as rewritten:

"(3) Criminal justice officers. – The administrative and subordinate personnel of all the departments, agencies, units or entities comprising the criminal justice agencies who are sworn law-enforcement officers, both State and local, with the power of arrest; ~~revenue law enforcement officers;~~ State correctional officers; State probation/parole officers; State probation/parole officers-surveillance; officers, supervisory and administrative personnel of local confinement facilities; ~~State youth services officers; State~~

~~probation/parole intake officers; State probation/parole officers surveillance; State probation/parole intensive officers; and State parole case analysts.~~ State juvenile justice officers; chief court counselors; and juvenile court counselors."

SECTION 1.2. G.S. 17C-3 reads as rewritten:

"(a) There is established the North Carolina Criminal Justice Education and Training Standards Commission, hereinafter called 'the Commission.' The Commission shall be composed of ~~26~~ 31 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 ~~North Carolina System of Community Colleges.~~North Carolina Community Colleges System; the Secretary of Juvenile Justice and Delinquency Prevention.

~~(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.

(6) Correctional Officers. – Four correctional officers in management positions employed by the Department of Correction shall be appointed, two from the Division of Community Corrections upon the recommendation of the Speaker of the House of Representatives and two from the Division of Prisons 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. The Governor shall appoint one correctional officer employed by the Department of Correction and assigned to the Office of Staff Development and Training. The Governor's appointment shall serve a three-year term.

(b) The members shall be appointed for staggered terms. The initial appointments shall be made prior to September 1, 1983, and the appointees shall hold office until July 1 of the year in which their respective terms expire and until their successors are appointed and qualified as provided hereafter:

For the terms of one year: one member from subdivision (1) of subsection (a) of this section, serving as a police chief; three members from subdivision (2) of subsection (a) of this section, one serving as a police official, and two criminal justice officers; one member from subdivision (4) of subsection (a) of this section, appointed by the North Carolina Law-Enforcement Training Officers' Association; and two members from subdivision (5) of subsection (a) of this section, one appointed by the Governor and one appointed by the Attorney General.

For the terms of two years: one member from subdivision (1) of subsection (a) of this section, serving as a police chief; one member from subdivision (2) of subsection (a) of this section, serving as a police official; and two members from subdivision (4) of subsection (a) of this section, one appointed by the League of Municipalities and one appointed by the North Carolina Association of District Attorneys.

For the terms of three years: two members from subdivision (1) of subsection (a) of this section, one police chief appointed by the North Carolina Association of Chiefs of Police and one police chief appointed by the Governor; one member from subdivision (2) of subsection (a) of this section, serving as a police official; and three members from subdivision (4) of subsection (a) of this section, one appointed by the North Carolina Law-Enforcement Women's Association, one appointed by the North Carolina Criminal Justice Association, and one appointed by the North State Law-Enforcement Officers' Association.

Thereafter, as the term of each member expires, his successor shall be appointed for a term of three years. Notwithstanding the appointments for a term of years, each member shall serve at the will of the appointing authority.

The Attorney General, the Secretary ~~of the Department~~ of Crime Control and Public Safety, the Secretary ~~of the Department~~ of Correction, the President of The University of North Carolina, the Director of the Institute of Government, ~~and~~ the President of the ~~Department of Community Colleges~~ North Carolina Community Colleges System, and

the Secretary of Juvenile Justice and Delinquency Prevention shall be continuing members of the Commission during their tenure. These members of the Commission shall serve ex officio and shall perform their duties on the Commission in addition to the other duties of their offices. The ex officio members may elect to serve personally at any or all meetings of the Commission or may designate, in writing, one member of their respective office, department, university or agency to represent and vote for them on the Commission at all meetings the ex officio members are unable to attend.

Vacancies in the Commission occurring for any reason shall be filled, for the unexpired term, by the authority making the original appointment of the person causing the vacancy. A vacancy may be created by removal of a Commission member by majority vote of the Commission for misconduct, incompetence, or neglect of duty. A Commission member may be removed only pursuant to a hearing, after notice, at which the member subject to removal has an opportunity to be heard."

SECTION 1.3. G.S. 17C-11 reads as rewritten:

"**§ 17C-11. ~~Power of the Commission to seek injunction.~~Compliance; enforcement.**

(a) Any criminal justice officer who the Commission determines does not comply with this Chapter or any rules adopted under this Chapter shall not exercise the powers of a criminal justice officer and shall not exercise the power of arrest unless the Commission waives that certification or deficiency. The Commission shall enforce this section by the entry of appropriate orders effective upon service on either the criminal justice agency or the criminal justice officer.

(b) Any person who desires to appeal the proposed denial, suspension, or revocation of any certification authorized to be issued by the Commission shall file a written appeal with the Commission not later than 30 days following notice of denial, suspension, or revocation.

(c) The Commission may appear in its own name and apply to courts having jurisdiction for injunctions to prevent violations of this Chapter or of rules issued pursuant thereto; specifically, the performance of criminal justice officer functions by officers or individuals who are not in compliance with the standards and requirements of G.S. 17C-6(a) and G.S. 17C-10. A single act of performance of a criminal justice officer function by an officer or individual who is performing such function in violation of this Chapter is sufficient, if shown, to invoke the injunctive relief of this section."

SECTION 1.4. G.S. 17E-9(a) reads as rewritten:

"(a) Any justice officer who the Commission determines does not comply with ~~the provisions of~~ this Chapter or any rules adopted under this Chapter shall not ~~be authorized to~~ exercise the powers of a justice officer and shall not ~~be authorized to~~ exercise the power of arrest unless ~~such certification or deficiency has been waived by the Commission.~~ the Commission waives that certification or deficiency. The Commission shall enforce ~~the provisions of~~ this section by the entry of appropriate ~~orders.~~ orders effective upon service on either the department or the justice officer."

SECTION 1.5. Section 17.3 of S.L. 2000-67 is repealed.

PART II. CONFORMING CHANGES TO LAWS GOVERNING UNDISCIPLINED AND DELINQUENT JUVENILES

SECTION 2.1. 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 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.~~

(13) Intake. – The process of screening and evaluating 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.

(18a) Juvenile court counselor. – A person responsible for intake services and court supervision services to juveniles under the supervision of the chief court counselor.

(19) Repealed by Session Laws 2000, c. 137, s. 2.

(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 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 juvenile 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 juvenile 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 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 2.2. G.S. 7B-1601(e) reads as rewritten:

"(e) The court has jurisdiction over delinquent juveniles in the custody of the Department and over proceedings to determine whether a juvenile who is under the post-release supervision of the juvenile court counselor has violated the terms of the juvenile's post-release supervision."

SECTION 2.3. G.S. 7B-1700 reads as rewritten:

"**§ 7B-1700. Intake services.**

The chief court counselor, under the direction of the Department, shall establish intake services in each judicial district of the State for all delinquency and undisciplined cases.

The purpose of intake services shall be to determine from available evidence whether there are reasonable grounds to believe the facts alleged are true, to determine whether the facts alleged constitute a delinquent or undisciplined offense within the jurisdiction of the court, to determine whether the facts alleged are sufficiently serious to warrant court action, and to obtain assistance from community resources when court referral is not necessary. The ~~intake~~ juvenile court counselor shall not engage in field investigations to substantiate complaints or to produce supplementary evidence but may refer complainants to law enforcement agencies for those purposes."

SECTION 2.4. G.S. 7B-1701 reads as rewritten:

"**§ 7B-1701. Preliminary inquiry.**

When a complaint is received, the ~~intake~~ juvenile court counselor shall make a preliminary determination as to whether the juvenile is within the jurisdiction of the court as a delinquent or undisciplined juvenile. If the ~~intake~~ juvenile court counselor finds that the facts contained in the complaint do not state a case within the jurisdiction of the court, that legal sufficiency has not been established, or that the matters alleged are frivolous, the ~~intake~~ juvenile court counselor, without further inquiry, shall refuse authorization to file the complaint as a petition.

When requested by the ~~intake~~ juvenile court counselor, the prosecutor shall assist in determining the sufficiency of evidence as it affects the quantum of proof and the elements of offenses.

The ~~intake~~ juvenile court counselor, without further inquiry, shall authorize the complaint to be filed as a petition if the ~~intake~~ juvenile court counselor finds reasonable grounds to believe that the juvenile has committed one of the following nondivertible offenses:

(1) Murder;
(2) First-degree rape or second degree rape;
(3) First-degree sexual offense or second degree sexual offense;
(4) Arson;
(5) Any violation of Article 5, Chapter 90 of the General Statutes that would constitute a felony if committed by an adult;
(6) First degree burglary;
(7) Crime against nature; or
(8) Any felony which involves the willful infliction of serious bodily injury upon another or which was committed by use of a deadly weapon."

SECTION 2.5. G.S. 7B-1702 reads as rewritten:

"**§ 7B-1702. Evaluation.**

Upon a finding of legal sufficiency, except in cases involving nondivertible offenses set out in G.S. 7B-1701, the ~~intake~~ juvenile court counselor shall determine whether a complaint should be filed as a petition, the juvenile diverted pursuant to G.S. 7B-1706, or the case resolved without further action. In making the decision, the counselor shall consider criteria provided by the Department. The intake process shall include the following steps if practicable:

(1) Interviews with the complainant and the victim if someone other than the complainant;
(2) Interviews with the juvenile and the juvenile's parent, guardian, or custodian;
(3) Interviews with persons known to have relevant information about the juvenile or the juvenile's family.

Interviews required by this section shall be conducted in person unless it is necessary to conduct them by telephone."

SECTION 2.6. G.S. 7B-1703 reads as rewritten:

"**§ 7B-1703. Evaluation decision.**

(a) The ~~intake~~ juvenile court counselor shall complete evaluation of a complaint within 15 days of receipt of the complaint, with an extension for a maximum of 15 additional days at the discretion of the chief court counselor. The ~~intake~~ juvenile court counselor shall decide within this time period whether a complaint shall be filed as a juvenile petition.

(b) Except as provided in G.S. 7B-1706, if the ~~intake~~ juvenile court counselor determines that a complaint should be filed as a petition, the counselor shall file the petition as soon as practicable, but in any event within 15 days after the complaint is received, with an extension for a maximum of 15 additional days at the discretion of the chief court counselor. The ~~intake~~ juvenile court counselor shall assist the complainant when necessary with the preparation and filing of the petition, shall include on it the date and the words "Approved for Filing", shall sign it, and shall transmit it to the clerk of superior court.

(c) If the ~~intake~~ juvenile court counselor determines that a petition should not be filed, the ~~intake~~ juvenile court counselor shall notify the complainant immediately in writing with reasons for the decision and shall include notice of the complainant's right to have the decision reviewed by the prosecutor. The ~~intake~~ juvenile court counselor shall sign the complaint after indicating on it:

(1) The date of the determination;

(2) The words "Not Approved for Filing"; and

(3) Whether the matter is "Closed" or "Diverted and Retained".

Except as provided in G.S. 7B-1706, any complaint not approved for filing as a juvenile petition shall be destroyed by the ~~intake~~ juvenile court counselor after holding the complaint for a temporary period to allow review as provided in G.S. 7B-1705."

SECTION 2.7. G.S. 7B-1704 reads as rewritten:

"**§ 7B-1704. Request for review by prosecutor.**

The complainant has five calendar days, from receipt of the ~~intake~~ juvenile court counselor's decision not to approve the filing of a petition, to request review by the prosecutor. The ~~intake~~ juvenile court counselor shall notify the prosecutor immediately of such request and shall transmit to the prosecutor a copy of the complaint. The prosecutor shall notify the complainant and the ~~intake~~ juvenile court counselor of the time and place for the review."

SECTION 2.8. G.S. 7B-1705 reads as rewritten:

"**§ 7B-1705. Review of determination that petition should not be filed.**

No later than 20 days after the complainant is notified, the prosecutor shall review the ~~intake~~ juvenile court counselor's determination that a juvenile petition should not be filed. Review shall include conferences with the complainant and the ~~intake~~ juvenile court counselor. At the conclusion of the review, the prosecutor shall: (i) affirm the decision of the ~~intake~~ juvenile court counselor or direct the filing of a petition and (ii) notify the complainant of the prosecutor's action."

SECTION 2.9. G.S. 7B-1706 reads as rewritten:

"**§ 7B-1706. Diversion plans and referral.**

(a) Unless the offense is one in which a petition is required by G.S. 7B-1701, upon a finding of legal sufficiency the ~~intake~~ juvenile court counselor may divert the juvenile pursuant to a diversion plan, which may include referring the juvenile to any of the following resources:

(1) An appropriate public or private resource;
(2) Restitution;
(3) Community service;
(4) Victim-offender mediation;
(5) Regimented physical training;
(6) Counseling;
(7) A teen court program, as set forth in subsection (c) of this section.

As part of a diversion plan, the ~~intake~~ juvenile court counselor may enter into a diversion contract with the juvenile and the juvenile's parent, guardian, or custodian.

(b) Unless the offense is one in which a petition is required by G.S. 7B-1701, upon a finding of legal sufficiency the ~~intake~~ juvenile court counselor may enter into a diversion contract with the juvenile and the parent, guardian, or custodian; provided, a diversion contract requires the consent of the juvenile and the juvenile's parent, guardian, or custodian. A diversion contract shall:

(1) State conditions by which the juvenile agrees to abide and any actions the juvenile agrees to take;
(2) State conditions by which the parent, guardian, or custodian agrees to abide and any actions the parent, guardian, or custodian agrees to take;
(3) Describe the role of the juvenile court counselor in relation to the juvenile and the parent, guardian, or custodian;
(4) Specify the length of the contract, which shall not exceed six months;
(5) Indicate that all parties understand and agree that:
    a. The juvenile's violation of the contract may result in the filing of the complaint as a petition; and
    b. The juvenile's successful completion of the contract shall preclude the filing of a petition.

After a diversion contract is signed by the parties, the ~~intake~~ juvenile court counselor shall provide copies of the contract to the juvenile and the juvenile's parent, guardian, or custodian. The ~~intake~~ juvenile court counselor shall notify any agency or other resource from which the juvenile or the juvenile's parent, guardian, or custodian will be seeking services or treatment pursuant to the terms of the contract. At any time during the term of the contract if the juvenile court counselor determines that the juvenile has failed to comply substantially with the terms of the contract, the juvenile court counselor may file the complaint as a petition. Unless the juvenile court counselor has filed the complaint as a petition, the ~~intake~~ juvenile court counselor shall close the juvenile's file in regard to the diverted matter within six months after the date of the contract.

(c) If a teen court program has been established in the district, the ~~intake~~ juvenile court counselor, upon a finding of legal sufficiency, may refer to a teen court program, any case in which a juvenile has allegedly committed an offense that would be an

infraction or misdemeanor if committed by an adult. However, the ~~intake~~ juvenile court counselor shall not refer a case to a teen court program (i) if the juvenile has been referred to a teen court program previously, or (ii) if the juvenile is alleged to have committed any of the following offenses:

(1) Driving while impaired under G.S. 20-138.1, 20-138.2, 20-138.3, 20-138.5, or 20-138.7, or any other motor vehicle violation;
(2) A Class A1 misdemeanor;
(3) An assault in which a weapon is used; or
(4) A controlled substance offense under Article 5 of Chapter 90 of the General Statutes, other than simple possession of a Schedule VI drug or alcohol.

(d) The ~~intake~~ juvenile court counselor shall maintain diversion plans and contracts entered into pursuant to this section to allow ~~intake~~ juvenile court counselors to determine when a juvenile has had a complaint diverted previously. Diversion plans and contracts are not public records under Chapter 132 of the General Statutes, shall not be included in the clerk's record pursuant to G.S. 7B-3000, and shall be withheld from public inspection or examination. Diversion plans and contracts shall be destroyed when the juvenile reaches the age of 18 years or when the juvenile is no longer under the jurisdiction of the court, whichever is longer.

(e) No later than 60 days after the ~~intake~~ juvenile court counselor diverts a juvenile, the ~~intake~~ juvenile court counselor shall determine whether the juvenile and the juvenile's parent, guardian, or custodian have complied with the terms of the diversion plan or contract. In making this determination, the ~~intake~~ juvenile court counselor shall contact any referral resources to determine whether the juvenile and the juvenile's parent, guardian, or custodian complied with any recommendations for treatment or services made by the resource. If the juvenile and the juvenile's parent, guardian, or custodian have not complied, the ~~intake~~ juvenile court counselor shall reconsider the decision to divert and may authorize the filing of the complaint as a petition within 10 days after making the determination. If the ~~intake~~ juvenile court counselor does not file a petition, the ~~intake~~ juvenile court counselor may continue to monitor the case for up to six months from the date of the diversion plan or contract. At any point during that time period if the juvenile and the juvenile's parent, guardian, or custodian fail to comply, the ~~intake~~ juvenile court counselor shall reconsider the decision to divert and may authorize the filing of the complaint as a petition. After six months, the ~~intake~~ juvenile court counselor shall close the diversion plan or contract file."

SECTION 2.10. G.S. 7B-1802 reads as rewritten:

"**§ 7B-1802. Petition.**

The petition shall contain the name, date of birth, and address of the juvenile and the name and last known address of the juvenile's parent, guardian, or custodian. The petition shall allege the facts that invoke jurisdiction over the juvenile. The petition shall not contain information on more than one juvenile.

A petition in which delinquency is alleged shall contain a plain and concise statement, without allegations of an evidentiary nature, asserting facts supporting every element of a criminal offense and the juvenile's commission thereof with sufficient precision clearly to apprise the juvenile of the conduct which is the subject of the allegation.

Sufficient copies of the petition shall be prepared so that copies will be available for the juvenile, for each parent if living separate and apart, for the guardian or custodian if any, for the juvenile court counselor, for the prosecutor, and for any person determined by the court to be a necessary party."

SECTION 2.11. G.S. 7B-1803 reads as rewritten:

"**§ 7B-1803. Receipt of complaints; filing of petition.**

(a) All complaints concerning a juvenile alleged to be delinquent or undisciplined shall be referred to the ~~intake~~ juvenile court counselor for screening and evaluation. Thereafter, if the ~~intake~~ juvenile court counselor determines that a petition should be filed, the petition shall be drawn by the ~~intake~~ juvenile court counselor or the clerk, signed by the complainant, and verified before an official authorized to administer oaths. If the circumstances indicate a need for immediate attachment of jurisdiction and if the ~~intake~~ juvenile court counselor is out of the county or otherwise unavailable to receive a complaint and to draw a petition when it is needed, the clerk shall assist the complainant in communicating the complaint to the ~~intake~~ juvenile court counselor by telephone and, with the approval of the ~~intake~~ juvenile court counselor, shall draw a petition and file it when signed and verified. A copy of the complaint and petition shall be transmitted to the ~~intake~~ juvenile court counselor. Procedures for receiving delinquency and undisciplined complaints and drawing petitions thereon, consistent with this Article and Article 17 of this Chapter, shall be established by administrative order of the chief judge in each judicial district.

(b) If review is requested pursuant to G.S. 7B-1704, the prosecutor shall review a complaint and any decision of the ~~intake~~ juvenile court counselor not to authorize that the complaint be filed as a petition. If the prosecutor, after review, authorizes a complaint to be filed as a petition, the prosecutor shall prepare the complaint to be filed by the clerk as a petition, recording the day of filing."

SECTION 2.12. G.S. 7B-1804(b) reads as rewritten:

"(b) When the office of the clerk is closed and ~~an intake~~ the juvenile court counselor requests a petition alleging a juvenile to be delinquent or undisciplined, a magistrate may draw and verify the petition and accept it for filing, which acceptance shall constitute filing. The magistrate's authority under this subsection is limited to emergency situations when a petition is required in order to obtain a secure or nonsecure custody order. Any petition accepted for filing under this subsection shall be delivered to the clerk's office for processing as soon as that office is open for business."

SECTION 2.13. G.S. 7B-1900 reads as rewritten:

"**§ 7B-1900. Taking a juvenile into temporary custody.**

Temporary custody means the taking of physical custody and providing personal care and supervision until a court order for secure or nonsecure custody can be obtained.

A juvenile may be taken into temporary custody without a court order under the following circumstances:

(1) By a law enforcement officer if grounds exist for the arrest of an adult in identical circumstances under G.S. 15A-401(b).

(2) By a law enforcement officer or a juvenile court counselor if there are reasonable grounds to believe that the juvenile is an undisciplined juvenile.

(3) By a law enforcement officer, by a juvenile court counselor, by a member of the Black Mountain Center, Alcohol Rehabilitation Center, and Juvenile Evaluation Center Joint Security Force established pursuant to G.S. 122C-421, or by personnel of the Department if there are reasonable grounds to believe the juvenile is an absconder from any residential facility operated by the Department or from an approved detention facility."

SECTION 2.14. G.S. 7B-1901(a) reads as rewritten:

"(a) A person who takes a juvenile into custody without a court order under G.S. 7B-1900(1) or (2) shall proceed as follows:

(1) Notify the juvenile's parent, guardian, or custodian that the juvenile has been taken into temporary custody and advise the parent, guardian, or custodian of the right to be present with the juvenile until a determination is made as to the need for secure or nonsecure custody. Failure to notify the parent, guardian, or custodian that the juvenile is in custody shall not be grounds for release of the juvenile.

(2) Release the juvenile to the juvenile's parent, guardian, or custodian if the person having the juvenile in temporary custody decides that continued custody is unnecessary. In the case of a juvenile unlawfully absent from school, if continued custody is unnecessary, the person having temporary custody may deliver the juvenile to the juvenile's school or, if the local city or county government and the local school board adopt a policy, to a place in the local school administrative unit.

(3) If the juvenile is not released, request that a petition be drawn pursuant to G.S. 7B-1803 or G.S. 7B-1804. Once the petition has been drawn and verified, the person shall communicate with the ~~intake~~ juvenile court counselor. If the ~~intake~~ juvenile court counselor approves the filing of the petition, the ~~intake~~ juvenile court counselor shall contact the judge or the person delegated authority pursuant to G.S. 7B-1902 if other than the ~~intake~~ juvenile court counselor, for a determination of the need for continued custody."

SECTION 2.15. G.S. 7B-1905(c) reads as rewritten:

"(c) A juvenile who has allegedly committed an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult may be detained in secure custody in a holdover facility up to 72 hours, if the court, based on information provided by the juvenile court counselor, determines that no acceptable alternative placement is

available and the protection of the public requires the juvenile be housed in a holdover facility."

SECTION 2.16. G.S. 7B-2102(e) reads as rewritten:

"(e) If a juvenile is fingerprinted and photographed pursuant to subsection (a) of this section, the custodian of records shall destroy all fingerprints and photographs at the earlier of the following:

(1) The ~~intake~~ juvenile court counselor or prosecutor does not file a petition against the juvenile within one year of fingerprinting and photographing the juvenile pursuant to subsection (a) of this section;

(2) The court does not find probable cause pursuant to G.S. 7B-2202; or

(3) The juvenile is not adjudicated delinquent of any offense that would be a felony or a misdemeanor if committed by an adult.

The chief court counselor shall notify the local custodian of records, and the local custodian of records shall notify any other record-holding agencies, when a decision is made not to file a petition, the court does not find probable cause, or the court does not adjudicate the juvenile delinquent."

SECTION 2.17. G.S. 7B-2408 reads as rewritten:

"**§ 7B-2408. Rules of evidence.**

If the juvenile denies the allegations of the petition, the court shall proceed in accordance with the rules of evidence applicable to criminal cases. In addition, no statement made by a juvenile to the ~~intake~~ juvenile court counselor during the preliminary inquiry and evaluation process shall be admissible prior to the dispositional hearing."

SECTION 2.18. G.S. 7B-2413 reads as rewritten:

"**§ 7B-2413. Predisposition investigation and report.**

The court shall proceed to the dispositional hearing upon receipt of the predisposition report. A risk and needs assessment, containing information regarding the juvenile's social, medical, psychiatric, psychological, and educational history, as well as any factors indicating the probability of the juvenile committing further delinquent acts, shall be conducted for the juvenile and shall be attached to the predisposition report. In cases where no predisposition report is available and the court makes a written finding that a report is not needed, the court may proceed with the dispositional hearing. No predisposition report or risk and needs assessment of any child alleged to be delinquent or undisciplined shall be made prior to an adjudication that the juvenile is within the juvenile jurisdiction of the court unless the juvenile, the juvenile's parent, guardian, or custodian, or the juvenile's attorney files a written statement with the juvenile court counselor granting permission and giving consent to the predisposition report or risk and needs assessment. No predisposition report shall be submitted to or considered by the court prior to the completion of the adjudicatory hearing. The court shall permit the juvenile to inspect any predisposition report, including any attached risk and needs assessment, to be considered by the court in making the disposition unless the court determines that disclosure would seriously harm the juvenile's treatment or rehabilitation or would violate a promise of confidentiality. Opportunity to offer

evidence in rebuttal shall be afforded the juvenile and the juvenile's parent, guardian, or custodian at the dispositional hearing. The court may order counsel not to disclose parts of the report to the juvenile or the juvenile's parent, guardian, or custodian if the court finds that disclosure would seriously harm the treatment or rehabilitation of the juvenile or would violate a promise of confidentiality given to a source of information."

SECTION 2.19. G.S. 7B-2503 reads as rewritten:

"**§ 7B-2503. Dispositional alternatives for undisciplined juveniles.**

The following alternatives for disposition shall be available to the court exercising jurisdiction over a juvenile who has been adjudicated undisciplined. The court may combine any of the applicable alternatives when the court finds it to be in the best interests of the juvenile:

(1) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the judge may:

a. Require that the juvenile be supervised in the juvenile's own home by a department of social services in the juvenile's county of residence, a juvenile court counselor, or other personnel as may be available to the court, subject to conditions applicable to the parent, guardian, or custodian or the juvenile as the judge may specify; or

b. Place the juvenile in the custody of a parent, guardian, custodian, relative, private agency offering placement services, or some other suitable person; or

c. Place the juvenile in the custody of a department of social services in the county of the juvenile's residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of a department of social services in the county where the juvenile is found so that agency may return the juvenile to the responsible authorities in the juvenile's home state. The director may, unless otherwise ordered by the judge, arrange for, provide, or consent to, needed routine or emergency medical or surgical care or treatment. In the case where the parent is unknown, unavailable, or unable to act on behalf of the juvenile or juveniles, the director may, unless otherwise ordered by the judge, arrange for, provide or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a judge or the judge's designee in the custody or physical custody of a county department of social services under the authority of this or any other Chapter of the General Statutes. Prior to exercising this authority, the director shall make reasonable efforts to obtain consent from a parent, guardian, or custodian of the affected juvenile. If the director cannot obtain consent, the director shall promptly notify the parent, guardian, or custodian

that care or treatment has been provided and shall give the parent, guardian, or custodian frequent status reports on the circumstances of the juvenile. Upon request of a parent, guardian, or custodian of the affected juvenile, the results or records of the aforementioned evaluations, findings, or treatment shall be made available to the parent, guardian, or custodian by the director unless prohibited by G.S. 122C-53(d).

(2) Place the juvenile under the protective supervision of a juvenile court counselor for a period of up to three months, with an extension of an additional three months in the discretion of the court.

(3) Excuse the juvenile from compliance with the compulsory school attendance law when the court finds that suitable alternative plans can be arranged by the family through other community resources for one of the following:

a. An education related to the needs or abilities of the juvenile including vocational education or special education;

b. A suitable plan of supervision or placement; or

c. Some other plan that the court finds to be in the best interests of the juvenile."

SECTION 2.20. G.S. 7B-2504 reads as rewritten:

"**§ 7B-2504. Conditions of protective supervision for undisciplined juveniles.**

The court may place a juvenile on protective supervision pursuant to G.S. 7B-2503 so that the juvenile court counselor may (i) assist the juvenile in securing social, medical, and educational services and (ii) visit and work with the family as a unit to ensure the juvenile is provided proper supervision and care. The court may impose any combination of the following conditions of protective supervision that are related to the needs of the juvenile, including:

(1) That the juvenile shall remain on good behavior and not violate any laws;

(2) That the juvenile attend school regularly;

(3) That the juvenile maintain passing grades in up to four courses during each grading period and meet with the juvenile court counselor and a representative of the school to make a plan for how to maintain those passing grades;

(4) That the juvenile not associate with specified persons or be in specified places;

(5) That the juvenile abide by a prescribed curfew;

(6) That the juvenile report to a juvenile court counselor as often as required by a juvenile court counselor;

(7) That the juvenile be employed regularly if not attending school; and

(8) That the juvenile satisfy any other conditions determined appropriate by the court."

SECTION 2.21. G.S. 7B-2505 reads as rewritten:

"**§ 7B-2505. Contempt of court for undisciplined juveniles.**

Upon motion of the juvenile court counselor or on the court's own motion, the court may issue an order directing a juvenile who has been adjudicated undisciplined to appear and show cause why the juvenile should not be held in contempt for willfully failing to comply with an order of the court. The first time the juvenile is held in contempt, the court may order the juvenile confined in an approved detention facility for a period not to exceed 24 hours. The second time the juvenile is held in contempt, the court may order the juvenile confined in an approved detention facility for a period not to exceed three days. The third time and all subsequent times the juvenile is held in contempt, the court may order the juvenile confined in an approved detention facility for a period not to exceed five days. The timing of any confinement under this section shall be determined by the court in its discretion. In no event shall a juvenile held in contempt pursuant to this section be confined for more than 14 days in one 12-month period."

SECTION 2.22. G.S. 7B-2506 reads as rewritten:

"**§ 7B-2506. Dispositional alternatives for delinquent juveniles.**

The court exercising jurisdiction over a juvenile who has been adjudicated delinquent may use the following alternatives in accordance with the dispositional structure set forth in G.S. 7B-2508:

(1) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the judge may:

a. Require that a juvenile be supervised in the juvenile's own home by the department of social services in the juvenile's county, a juvenile court counselor, or other personnel as may be available to the court, subject to conditions applicable to the parent, guardian, or custodian or the juvenile as the judge may specify; or

b. Place the juvenile in the custody of a parent, guardian, custodian, relative, private agency offering placement services, or some other suitable person; or

c. Place the juvenile in the custody of the department of social services in the county of his residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of a department of social services in the county where the juvenile is found so that agency may return the juvenile to the responsible authorities in the juvenile's home state. The director may, unless otherwise ordered by the judge, arrange for, provide, or consent to, needed routine or emergency medical or surgical care or treatment. In the case where the parent is unknown, unavailable, or unable to act on behalf of the juvenile or juveniles, the director may, unless otherwise ordered by the judge, arrange for, provide, or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a judge or

his designee in the custody or physical custody of a county department of social services under the authority of this or any other Chapter of the General Statutes. Prior to exercising this authority, the director shall make reasonable efforts to obtain consent from a parent, guardian, or custodian of the affected juvenile. If the director cannot obtain consent, the director shall promptly notify the parent, guardian, or custodian that care or treatment has been provided and shall give the parent, guardian, or custodian frequent status reports on the circumstances of the juvenile. Upon request of a parent, guardian, or custodian of the affected juvenile, the results or records of the aforementioned evaluations, findings, or treatment shall be made available to the parent, guardian, or custodian by the director unless prohibited by G.S. 122C-53(d).

...

(8) Place the juvenile on probation under the supervision of a juvenile court counselor, as specified in G.S. 7B-2510.

...

(15) Place the juvenile on intensive probation under the supervision of a juvenile court counselor.

...."

SECTION 2.23. G.S. 7B-2510(a) reads as rewritten:

"(a) In any case where a juvenile is placed on probation pursuant to G.S. 7B-2506(8), the juvenile court counselor shall have the authority to visit the juvenile where the juvenile resides. The court may impose conditions of probation that are related to the needs of the juvenile and that are reasonably necessary to ensure that the juvenile will lead a law-abiding life, including:

(1) That the juvenile shall remain on good behavior.
(2) That the juvenile shall not violate any laws.
(3) That the juvenile shall not violate any reasonable and lawful rules of a parent, guardian, or custodian.
(4) That the juvenile attend school regularly.
(5) That the juvenile maintain passing grades in up to four courses during each grading period and meet with the juvenile court counselor and a representative of the school to make a plan for how to maintain those passing grades.
(6) That the juvenile not associate with specified persons or be in specified places.

(7) That the juvenile:
a. Refrain from use or possession of any controlled substance included in any schedule of Article 5 of Chapter 90 of the General Statutes, the Controlled Substances Act;
b. Refrain from use or possession of any alcoholic beverage regulated under Chapter 18B of the General Statutes; and
c. Submit to random drug testing.
(8) That the juvenile abide by a prescribed curfew.
(9) That the juvenile submit to a warrantless search at reasonable times.
(10) That the juvenile possess no firearm, explosive device, or other deadly weapon.
(11) That the juvenile report to a juvenile court counselor as often as required by the juvenile court counselor.
(12) That the juvenile make specified financial restitution or pay a fine in accordance with G.S. 7B-2506(4), (5), and (22).
(13) That the juvenile be employed regularly if not attending school.
(14) That the juvenile satisfy any other conditions determined appropriate by the court."

SECTION 2.24. G.S. 7B-2510(d) reads as rewritten:

"(d) On motion of the juvenile court counselor or the juvenile, or on the court's own motion, the court may review the progress of any juvenile on probation at any time during the period of probation or at the end of probation. The conditions or duration of probation may be modified only as provided in this Subchapter and only after notice and a hearing."

SECTION 2.25. G.S. 7B-2511 reads as rewritten:

§ 7B-2511. Termination of probation.

At the end of or at any time during probation, the court may terminate probation by written order upon finding that there is no further need for supervision. The finding and order terminating probation may be entered in chambers in the absence of the juvenile and may be based on a report from the juvenile court counselor or, at the election of the court, the order may be entered with the juvenile present after notice and a hearing."

SECTION 2.26. G.S. 7B-2513(h) reads as rewritten:

"(h) Pending placement of a juvenile with the Department, the court may house a juvenile who has been adjudicated delinquent for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult in a holdover facility up to 72 hours if the court, based on the information provided by the juvenile court counselor, determines that no acceptable alternative placement is available and the protection of the public requires that the juvenile be housed in a holdover facility."

SECTION 2.27. G.S. 7B-2514(a) reads as rewritten:

"(a) The Department shall be responsible for evaluation of the progress of each juvenile at least once every six months as long as the juvenile remains in the care of the Department. Any determination that the juvenile should remain in the care of the Department for an additional period of time shall be based on the Department's

determination that the juvenile requires additional treatment or rehabilitation pursuant to G.S. 7B-2515. If the Department determines that a juvenile is ready for release, the Department shall initiate a post-release supervision planning process. The post-release supervision planning process shall be defined by rules and regulations of the Department, but shall include the following:

(1) Written notification shall be given to the court that ordered commitment.

(2) A post-release supervision planning conference shall be held involving as many as possible of the following: the juvenile, the juvenile's parent, guardian, or custodian, juvenile court counselors who have supervised the juvenile on probation or will supervise the juvenile on post-release supervision, and staff of the facility that found the juvenile ready for release. The planning conference shall include personal contact and evaluation rather than telephonic notification.

(3) The planning conference participants shall consider, based on the individual needs of the juvenile and pursuant to rules adopted by the Department, placement of the juvenile in any program under the auspices of the Department, including the juvenile court services programs that, in the judgment of the Department, would be appropriate transitional placement, pending release under G.S. 7B-2513."

SECTION 2.28. G.S. 7B-2514(g) reads as rewritten:

"(g) A juvenile on post-release supervision shall be supervised by a juvenile court counselor. Post-release supervision shall be terminated by order of the court."

SECTION 2.29. G.S. 7B-2516 reads as rewritten:

"(a) On motion of the juvenile court counselor providing post-release supervision or motion of the juvenile, or on the court's own motion, and after notice, the court may hold a hearing to review the progress of any juvenile on post-release supervision at any time during the period of post-release supervision. With respect to any hearing involving allegations that the juvenile has violated the terms of post-release supervision, the juvenile:

(1) Shall have reasonable notice in writing of the nature and content of the allegations in the motion, including notice that the purpose of the hearing is to determine whether the juvenile has violated the terms of post-release supervision to the extent that post-release supervision should be revoked;

(2) Shall be represented by an attorney at the hearing;

(3) Shall have the right to confront and cross-examine witnesses; and

(4) May admit, deny, or explain the violation alleged and may present proof, including affidavits or other evidence, in support of the juvenile's contentions. A record of the proceeding shall be made and preserved in the juvenile's record."

SECTION 2.30. G.S. 7B-2703(a) reads as rewritten:

"(a) The court may order the parent, guardian, or custodian, to the extent that person is able to do so, to provide transportation for a juvenile to keep an appointment with a juvenile court counselor or to comply with other orders of the court."

SECTION 2.31. G.S. 7B-2706 reads as rewritten:

"**§ 7B-2706. Contempt for failure to comply.**

Upon motion of the juvenile court counselor or prosecutor or upon the court's own motion, the court may issue an order directing the parent, guardian, or custodian to appear and show cause why the parent, guardian, or custodian should not be found or held in civil or criminal contempt for willfully failing to comply with an order of the court. Chapter 5A of the General Statutes shall govern contempt proceedings initiated pursuant to this Article."

SECTION 2.32. G.S. 7B-3001 reads as rewritten:

"**§ 7B-3001. Other records relating to juveniles.**

(a) The chief court counselor shall maintain a record of all cases of juveniles under supervision of juvenile court counselors, to be known as the juvenile court counselor's record. The juvenile court counselor's record shall include family background information; reports of social, medical, psychiatric, or psychological information concerning a juvenile or the juvenile's family; probation reports; interviews with the juvenile's family; or other information the court finds should be protected from public inspection in the best interests of the juvenile.

(b) Unless jurisdiction of the juvenile has been transferred to superior court, all law enforcement records and files concerning a juvenile shall be kept separate from the records and files of adults and shall be withheld from public inspection. The following persons may examine and obtain copies of law enforcement records and files concerning a juvenile without an order of the court:

(1) The juvenile;
(2) The juvenile's parent, guardian, custodian, or the authorized representative of the juvenile's parent, guardian, or custodian;
(3) The district attorney or prosecutor;
(4) ~~Court~~ Juvenile court counselors; and
(5) Law enforcement officers sworn in this State.

Otherwise, the records and files may be examined or copied only by order of the court.

(c) All records and files maintained by the Department pursuant to this Chapter shall be withheld from public inspection. The following persons may examine and obtain copies of the Department records and files concerning a juvenile without an order of the court:

(1) The juvenile and the juvenile's attorney;
(2) The juvenile's parent, guardian, custodian, or the authorized representative of the juvenile's parent, guardian, or custodian;
(3) Professionals in the agency who are directly involved in the juvenile's case; and
(4) ~~Court~~ Juvenile court counselors.

Otherwise, the records and files may be examined or copied only by order of the court. The court may inspect and order the release of records maintained by the Department."

SECTION 2.33. G.S. 7B-3200(f) reads as rewritten:

"(f) Records of a juvenile adjudicated delinquent or undisciplined being maintained by the chief court counselor, an intake counselor, or a juvenile court counselor shall be retained or disposed of as provided by the Department, except that no records shall be destroyed before the juvenile reaches the age of 18 or 18 months have elapsed since the person was released from juvenile court jurisdiction, whichever occurs last."

SECTION 2.34. G.S. 7B-3503 reads as rewritten:

"**§ 7B-3503. Hearing.**

The court, sitting without a jury, shall permit all parties to present evidence and to cross-examine witnesses. The petitioner has the burden of showing by a preponderance of the evidence that emancipation is in the petitioner's best interests. Upon finding that reasonable cause exists, the court may order the juvenile to be examined by a psychiatrist, a licensed clinical psychologist, a physician, or any other expert to evaluate the juvenile's mental or physical condition. The court may continue the hearing and order investigation by a juvenile court counselor or by the county department of social services to substantiate allegations of the petitioner or respondents.

No husband-wife or physician-patient privilege shall be grounds for excluding any evidence in the hearing."

SECTION 2.35. G.S. 14-16.10 reads as rewritten:

"**§ 14-16.10. Definitions.**

The following definitions apply in this Article:

(1) Court officer. – Magistrate, clerk of superior court, acting clerk, assistant or deputy clerk, judge, or justice of the General Court of Justice; district attorney, assistant district attorney, or any other attorney designated by the district attorney to act for the State or on behalf of the district attorney; public defender or assistant defender; court reporter; juvenile court counselor as defined in ~~G.S. 7B-1501(5).~~G.S. 7B-1501(18a).

(2) Executive officer. – A person named in G.S. 147-3(c).

(3) Legislative officer. – A person named in G.S. 147-2(1), (2), or (3)."

SECTION 2.36. G.S. 14-208.27 reads as rewritten:

"**§ 14-208.27. Change of address.**

If a juvenile who is adjudicated delinquent and required to register changes address, the juvenile court counselor for the juvenile shall provide written notice of the new address not later than the tenth day after the change to the sheriff of the county with whom the juvenile had last registered. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division. If the juvenile moves to another county in this State, the Division shall inform the sheriff of the new county of the juvenile's new residence."

SECTION 2.37. G.S. 14-208.28 reads as rewritten:

"**§ 14-208.28. Verification of registration information.**

The information provided to the sheriff shall be verified annually for each juvenile registrant as follows:

(1) Every year on the anniversary of a juvenile's initial registration date, the sheriff shall mail a verification form to the juvenile court counselor assigned to the juvenile.

(2) The juvenile court counselor for the juvenile shall return the verification form to the sheriff within 10 days after the receipt of the form.

(3) The verification form shall be signed by the juvenile court counselor and the juvenile and shall indicate whether the juvenile still resides at the address last reported to the sheriff. If the juvenile has a different address, then that fact and the new address shall be indicated on the form."

SECTION 2.38. G.S. 115C-378 reads as rewritten:

"**§ 115C-378. Children required to attend.**

Every parent, guardian or other person in this State having charge or control of a child between the ages of seven and 16 years shall cause such child to attend school continuously for a period equal to the time which the public school to which the child is assigned shall be in session. Every parent, guardian, or other person in this State having charge or control of a child under age seven who is enrolled in a public school in grades kindergarten through two shall also cause such child to attend school continuously for a period equal to the time which the public school to which the child is assigned shall be in session unless the child has withdrawn from school. No person shall encourage, entice or counsel any such child to be unlawfully absent from school. The parent, guardian, or custodian of a child shall notify the school of the reason for each known absence of the child, in accordance with local school policy.

The principal, superintendent, or teacher who is in charge of such school shall have the right to excuse a child temporarily from attendance on account of sickness or other unavoidable cause which does not constitute unlawful absence as defined by the State Board of Education. The term "school" as used herein is defined to embrace all public schools and such nonpublic schools as have teachers and curricula that are approved by the State Board of Education.

All nonpublic schools receiving and instructing children of a compulsory school age shall be required to keep such records of attendance and render such reports of the attendance of such children and maintain such minimum curriculum standards as are required of public schools; and attendance upon such schools, if the school refuses or neglects to keep such records or to render such reports, shall not be accepted in lieu of attendance upon the public school of the district to which the child shall be assigned: Provided, that instruction in a nonpublic school shall not be regarded as meeting the requirements of the law unless the courses of instruction run concurrently with the term of the public school in the district and extend for at least as long a term.

The principal or his designee shall notify the parent, guardian, or custodian of his child's excessive absences after the child has accumulated three unexcused absences in a school year. After not more than six unexcused absences, the principal shall notify the parent, guardian, or custodian by mail that he may be in violation of the Compulsory Attendance Law and may be prosecuted if the absences cannot be justified under the established attendance policies of the State and local boards of education. Once the parents are notified, the school attendance counselor shall work with the child and his family to analyze the causes of the absences and determine steps, including adjustment of the school program or obtaining supplemental services, to eliminate the problem. The attendance counselor may request that a law-enforcement officer accompany him if he believes that a home visit is necessary.

After 10 accumulated unexcused absences in a school year the principal shall review any report or investigation prepared under G.S. 115C-381 and shall confer with the student and his parent, guardian, or custodian if possible to determine whether the parent, guardian, or custodian has received notification pursuant to this section and made a good faith effort to comply with the law. If the principal determines that parent, guardian, or custodian has not, he shall notify the district attorney. If he determines that parent, guardian, or custodian has, he may file a complaint with the juvenile ~~intake~~ court counselor pursuant to Chapter 7B of the General Statutes that the child is habitually absent from school without a valid excuse. Evidence that shows that the parents, guardian, or custodian were notified and that the child has accumulated 10 absences which cannot be justified under the established attendance policies of the local board shall establish a prima facie case that the child's parent, guardian, or custodian is responsible for the absences."

SECTION 2.39. G.S. 143B-515 reads as rewritten:

"**§ 143B-515. 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-544.

(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.

(15a) Juvenile court counselor. – A person responsible for intake services and court supervision services to juveniles under the supervision of the chief court counselor.

(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 juvenile 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 juvenile 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-556.

(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."

SECTION 2.40. G.S. 143B-516(b) is amended by adding the following new subdivision to read:

"(18) Designate persons, as necessary, as State juvenile justice officers, to provide for the care and supervision of juveniles placed in the physical custody of the Department."

SECTION 2.41. G.S. 143B-536 reads as rewritten:

"**§ 143B-536. 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 juvenile 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) Screen and evaluate a complaint alleging that a juvenile is delinquent or undisciplined to determine whether the complaint should be filed as a petition.
(17) Have any other duties as the court may direct.
(18) Have any other duties as the Department may direct."

PART III. STUDY COMPOSITION OF NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND STANDARDS COMMISSION

SECTION 3.1. The Joint Legislative Corrections and Crime Control Oversight Committee shall study the composition of the North Carolina Criminal Justice Education and Standards Commission. The Committee shall determine whether the current number of members is sufficient or whether a smaller Commission would be more effective. The Committee also shall evaluate the representation by various appointing authorities or organizations, agencies, and individuals to determine whether the representation is appropriate. The Committee shall report its findings, including any recommended legislative changes, to the 2002 Regular Session of the 2001 General Assembly.

PART IV. EFFECTIVE DATE

SECTION 4.1. This act becomes effective June 30, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 68

Judiciary I Committee Substitute Adopted 3/28/01
Corrected Copy 3/29/01
Judiciary II Committee Substitute #2 Adopted 4/24/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S68-CSRH-41 [v.4]

6/5/2001 9:07:03 AM

Short Title: Criminal Justice Standards Commission Change. (Public)

Sponsors:

Referred to:

February 6, 2001

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE MEMBERSHIP OF THE NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION, TO CLARIFY THE ENFORCEMENT POWERS OF THE COMMISSION, TO REPEAL THE REMOVAL OF THE DEPARTMENT OF CORRECTION FROM THE COMMISSION, AS RECOMMENDED BY THE JOINT LEGISLATIVE CORRECTIONS AND CRIME CONTROL OVERSIGHT COMMITTEE, AND TO MAKE CONFORMING CHANGES FOR THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION.

The General Assembly of North Carolina enacts:

PART I. CHANGES TO NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

SECTION 1.1. G.S. 17C-2(3) reads as rewritten:

"(3) Criminal justice officers. – The administrative and subordinate personnel of all the departments, agencies, units or entities comprising the criminal justice agencies who are sworn law-enforcement officers, both State and local, with the power of arrest; ~~revenue law enforcement officers;~~ State correctional officers; State probation/parole officers; State probation/parole officers-surveillance; officers, supervisory and administrative personnel of local confinement facilities; ~~State youth services officers; State probation/parole intake officers; State probation/parole officers-surveillance; State probation/parole intensive officers; and State parole case analysts.~~ State juvenile justice officers; chief court counselors; and juvenile court counselors."

SECTION 1.2. G.S. 17C-3 reads as rewritten:

"(a) There is established the North Carolina Criminal Justice Education and Training Standards Commission, hereinafter called 'the Commission.' The Commission shall be composed of ~~26~~ 31 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 ~~North Carolina System of Community Colleges.~~Community College System; the Secretary of Juvenile Justice and Delinquency Prevention.

~~(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.

(6) Correctional Officers. –Four correctional officers in management positions employed by the Department of Correction shall be appointed, two from the Division of Community Corrections upon the recommendation of the Speaker of the House of Representatives and two from the Division of Prisons 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. The Governor shall appoint one correctional officer employed by the Department of Correction and assigned to the Office of Staff Development and Training. The Governor's appointment shall serve a three-year term.

(b) The members shall be appointed for staggered terms. The initial appointments shall be made prior to September 1, 1983, and the appointees shall hold office until July 1 of the year in which their respective terms expire and until their successors are appointed and qualified as provided hereafter:

For the terms of one year: one member from subdivision (1) of subsection (a) of this section, serving as a police chief; three members from subdivision (2) of subsection (a) of this section, one serving as a police official, and two criminal justice officers; one member from subdivision (4) of subsection (a) of this section, appointed by the North Carolina Law-Enforcement Training Officers' Association; and two members from subdivision (5) of subsection (a) of this section, one appointed by the Governor and one appointed by the Attorney General.

For the terms of two years: one member from subdivision (1) of subsection (a) of this section, serving as a police chief; one member from subdivision (2) of subsection (a) of this section, serving as a police official; and two members from subdivision (4) of subsection (a) of this section, one appointed by the League of Municipalities and one appointed by the North Carolina Association of District Attorneys.

For the terms of three years: two members from subdivision (1) of subsection (a) of this section, one police chief appointed by the North Carolina Association of Chiefs of Police and one police chief appointed by the Governor; one member from subdivision (2) of subsection (a) of this section, serving as a police official; and three members from subdivision (4) of subsection (a) of this section, one appointed by the North Carolina Law-Enforcement Women's Association, one appointed by the North Carolina Criminal Justice Association, and one appointed by the North State Law-Enforcement Officers' Association.

Thereafter, as the term of each member expires, his successor shall be appointed for a term of three years. Notwithstanding the appointments for a term of years, each member shall serve at the will of the appointing authority.

The Attorney General, the Secretary ~~of the Department~~ of Crime Control and Public Safety, the Secretary ~~of the Department~~ of Correction, the President of The University of North Carolina, the Director of the Institute of Government, ~~and~~ the President of the ~~Department of Community Colleges~~ Community College System, and the Secretary of Juvenile Justice and Delinquency Prevention shall be continuing members of the Commission during their tenure. These members of the Commission shall serve ex officio and shall perform their duties on the Commission in addition to the other duties of their offices. The ex officio members may elect to serve personally at any or all meetings of the Commission or may designate, in writing, one member of their

respective office, department, university or agency to represent and vote for them on the Commission at all meetings the ex officio members are unable to attend.

Vacancies in the Commission occurring for any reason shall be filled, for the unexpired term, by the authority making the original appointment of the person causing the vacancy. A vacancy may be created by removal of a Commission member by majority vote of the Commission for misconduct, incompetence, or neglect of duty. A Commission member may be removed only pursuant to a hearing, after notice, at which the member subject to removal has an opportunity to be heard."

SECTION 1.3. G.S. 17C-11 reads as rewritten:

"**§ 17C-11. ~~Power of the Commission to seek injunction.~~Compliance; enforcement.**

(a) Any criminal justice officer who the Commission determines does not comply with this Chapter or any rules adopted under this Chapter shall not exercise the powers of a criminal justice officer and shall not exercise the power of arrest unless the Commission waives that certification or deficiency. The Commission shall enforce this section by the entry of appropriate orders effective upon service on either the criminal justice agency or the criminal justice officer.

(b) Any person who desires to appeal the proposed denial, suspension, or revocation of any certification authorized to be issued by the Commission shall file a written appeal with the Commission not later than 30 days following notice of denial, suspension, or revocation.

(c) The Commission may appear in its own name and apply to courts having jurisdiction for injunctions to prevent violations of this Chapter or of rules issued pursuant thereto; specifically, the performance of criminal justice officer functions by officers or individuals who are not in compliance with the standards and requirements of G.S. 17C-6(a) and G.S. 17C-10. A single act of performance of a criminal justice officer function by an officer or individual who is performing such function in violation of this Chapter is sufficient, if shown, to invoke the injunctive relief of this section."

SECTION 1.4. G.S. 17E-9(a) reads as rewritten:

"(a) Any justice officer who the Commission determines does not comply with ~~the provisions of~~ this Chapter or any rules adopted under this Chapter shall not ~~be authorized to~~ exercise the powers of a justice officer and shall not ~~be authorized to~~ exercise the power of arrest unless ~~such certification or deficiency has been waived by the Commission.~~ the Commission waives that certification or deficiency. The Commission shall enforce ~~the provisions of~~ this section by the entry of appropriate ~~orders.~~ orders effective upon service on either the department or the justice officer."

SECTION 1.5. Section 17.3 of S.L. 2000-67 is repealed.

PART II. CONFORMING CHANGES TO LAWS GOVERNING UNDISCIPLINED AND DELINQUENT JUVENILES

SECTION 2.1. 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 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.~~

(13) Intake. – The process of screening and evaluating 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.

(18a) Juvenile court counselor. – A person responsible for intake services and court supervision services to juveniles under the supervision of the chief court counselor.

(19) Repealed by Session Laws 2000, c. 137, s. 2.

(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 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 juvenile 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 juvenile 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 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 2.2.** G.S. 7B-1601(e) reads as rewritten:

"(e) The court has jurisdiction over delinquent juveniles in the custody of the Department and over proceedings to determine whether a juvenile who is under the post-release supervision of the juvenile court counselor has violated the terms of the juvenile's post-release supervision."

SECTION 2.2. G.S. 7B-1700 reads as rewritten:

"§ 7B-1700. Intake services.

The chief court counselor, under the direction of the Department, shall establish intake services in each judicial district of the State for all delinquency and undisciplined cases.

The purpose of intake services shall be to determine from available evidence whether there are reasonable grounds to believe the facts alleged are true, to determine whether the facts alleged constitute a delinquent or undisciplined offense within the jurisdiction of the court, to determine whether the facts alleged are sufficiently serious to warrant court action, and to obtain assistance from community resources when court referral is not necessary. The ~~intake~~ juvenile court counselor shall not engage in field investigations to substantiate complaints or to produce supplementary evidence but may refer complainants to law enforcement agencies for those purposes. "

SECTION 2.3. G.S. 7B-1701 reads as rewritten:

"§ 7B-1701. Preliminary inquiry.

When a complaint is received, the ~~intake~~ juvenile court counselor shall make a preliminary determination as to whether the juvenile is within the jurisdiction of the court as a delinquent or undisciplined juvenile. If the ~~intake~~ juvenile court counselor finds that the facts contained in the complaint do not state a case within the jurisdiction of the court, that legal sufficiency has not been established, or that the matters alleged

are frivolous, the ~~intake~~ juvenile court counselor, without further inquiry, shall refuse authorization to file the complaint as a petition.

When requested by the ~~intake~~ juvenile court counselor, the prosecutor shall assist in determining the sufficiency of evidence as it affects the quantum of proof and the elements of offenses.

The ~~intake~~ juvenile court counselor, without further inquiry, shall authorize the complaint to be filed as a petition if the ~~intake~~ juvenile court counselor finds reasonable grounds to believe that the juvenile has committed one of the following nondivertible offenses:

(1) Murder;
(2) First-degree rape or second degree rape;
(3) First-degree sexual offense or second degree sexual offense;
(4) Arson;
(5) Any violation of Article 5, Chapter 90 of the General Statutes that would constitute a felony if committed by an adult;
(6) First degree burglary;
(7) Crime against nature; or
(8) Any felony which involves the willful infliction of serious bodily injury upon another or which was committed by use of a deadly weapon. "

SECTION 2.4. G.S. 7B-1702 reads as rewritten:

"§ 7B-1702. Evaluation.

Upon a finding of legal sufficiency, except in cases involving nondivertible offenses set out in G.S. 7B-1701, the ~~intake~~ juvenile court counselor shall determine whether a complaint should be filed as a petition, the juvenile diverted pursuant to G.S. 7B-1706, or the case resolved without further action. In making the decision, the counselor shall consider criteria provided by the Department. The intake process shall include the following steps if practicable:

(1) Interviews with the complainant and the victim if someone other than the complainant;
(2) Interviews with the juvenile and the juvenile's parent, guardian, or custodian;
(3) Interviews with persons known to have relevant information about the juvenile or the juvenile's family.

Interviews required by this section shall be conducted in person unless it is necessary to conduct them by telephone."

SECTION 2.5. G.S. 7B-1703 reads as rewritten:

"§ 7B-1703. Evaluation decision.

(a) The ~~intake~~ juvenile court counselor shall complete evaluation of a complaint within 15 days of receipt of the complaint, with an extension for a maximum of 15 additional days at the discretion of the chief court counselor. The ~~intake~~ juvenile court counselor shall decide within this time period whether a complaint shall be filed as a juvenile petition.

(b) Except as provided in G.S. 7B-1706, if the ~~intake~~ juvenile court counselor determines that a complaint should be filed as a petition, the counselor shall file the petition as soon as practicable, but in any event within 15 days after the complaint is received, with an extension for a maximum of 15 additional days at the discretion of the chief court counselor. The ~~intake~~ juvenile court counselor shall assist the complainant when necessary with the preparation and filing of the petition, shall include on it the date and the words "Approved for Filing", shall sign it, and shall transmit it to the clerk of superior court.

(c) If the ~~intake~~ juvenile court counselor determines that a petition should not be filed, the ~~intake~~ juvenile court counselor shall notify the complainant immediately in writing with reasons for the decision and shall include notice of the complainant's right to have the decision reviewed by the prosecutor. The ~~intake~~ juvenile court counselor shall sign the complaint after indicating on it:

(1) The date of the determination;

(2) The words "Not Approved for Filing"; and

(3) Whether the matter is "Closed" or "Diverted and Retained".

Except as provided in G.S. 7B-1706, any complaint not approved for filing as a juvenile petition shall be destroyed by the ~~intake~~ juvenile court counselor after holding the complaint for a temporary period to allow review as provided in G.S. 7B-1705. "

SECTION 2.6. G.S. 7B-1704 reads as rewritten:

"§ 7B-1704. Request for review by prosecutor.

The complainant has five calendar days, from receipt of the ~~intake~~ juvenile court counselor's decision not to approve the filing of a petition, to request review by the prosecutor. The ~~intake~~ juvenile court counselor shall notify the prosecutor immediately of such request and shall transmit to the prosecutor a copy of the complaint. The prosecutor shall notify the complainant and the ~~intake~~ juvenile court counselor of the time and place for the review. "

SECTION 2.7. G.S. 7B-1705 reads as rewritten:

"§ 7B-1705. Review of determination that petition should not be filed.

No later than 20 days after the complainant is notified, the prosecutor shall review the ~~intake~~ juvenile court counselor's determination that a juvenile petition should not be filed. Review shall include conferences with the complainant and the ~~intake~~ juvenile court counselor. At the conclusion of the review, the prosecutor shall: (i) affirm the decision of the ~~intake~~ juvenile court counselor or direct the filing of a petition and (ii) notify the complainant of the prosecutor's action. "

SECTION 2.8. G.S. 7B-1706 reads as rewritten:

"§ 7B-1706. Diversion plans and referral.

(a) Unless the offense is one in which a petition is required by G.S. 7B-1701, upon a finding of legal sufficiency the ~~intake~~ juvenile court counselor may divert the juvenile pursuant to a diversion plan, which may include referring the juvenile to any of the following resources:

(1) An appropriate public or private resource;

(2) Restitution;

(3) Community service;
(4) Victim-offender mediation;
(5) Regimented physical training;
(6) Counseling;
(7) A teen court program, as set forth in subsection (c) of this section.

As part of a diversion plan, the ~~intake~~ juvenile court counselor may enter into a diversion contract with the juvenile and the juvenile's parent, guardian, or custodian.

(b) Unless the offense is one in which a petition is required by G.S. 7B-1701, upon a finding of legal sufficiency the ~~intake~~ juvenile court counselor may enter into a diversion contract with the juvenile and the parent, guardian, or custodian; provided, a diversion contract requires the consent of the juvenile and the juvenile's parent, guardian, or custodian. A diversion contract shall:

(1) State conditions by which the juvenile agrees to abide and any actions the juvenile agrees to take;
(2) State conditions by which the parent, guardian, or custodian agrees to abide and any actions the parent, guardian, or custodian agrees to take;
(3) Describe the role of the juvenile court counselor in relation to the juvenile and the parent, guardian, or custodian;
(4) Specify the length of the contract, which shall not exceed six months;
(5) Indicate that all parties understand and agree that:
a. The juvenile's violation of the contract may result in the filing of the complaint as a petition; and
b. The juvenile's successful completion of the contract shall preclude the filing of a petition.

After a diversion contract is signed by the parties, the ~~intake~~ juvenile court counselor shall provide copies of the contract to the juvenile and the juvenile's parent, guardian, or custodian. The ~~intake~~ juvenile court counselor shall notify any agency or other resource from which the juvenile or the juvenile's parent, guardian, or custodian will be seeking services or treatment pursuant to the terms of the contract. At any time during the term of the contract if the juvenile court counselor determines that the juvenile has failed to comply substantially with the terms of the contract, the juvenile court counselor may file the complaint as a petition. Unless the juvenile court counselor has filed the complaint as a petition, the ~~intake~~ juvenile court counselor shall close the juvenile's file in regard to the diverted matter within six months after the date of the contract.

(c) If a teen court program has been established in the district, the ~~intake~~ juvenile court counselor, upon a finding of legal sufficiency, may refer to a teen court program, any case in which a juvenile has allegedly committed an offense that would be an infraction or misdemeanor if committed by an adult. However, the ~~intake~~ juvenile court counselor shall not refer a case to a teen court program (i) if the juvenile has been referred to a teen court program previously, or (ii) if the juvenile is alleged to have committed any of the following offenses:

(1) Driving while impaired under G.S. 20-138.1, 20-138.2, 20-138.3, 20-138.5, or 20-138.7, or any other motor vehicle violation;

(2) A Class A1 misdemeanor;
(3) An assault in which a weapon is used; or
(4) A controlled substance offense under Article 5 of Chapter 90 of the General Statutes, other than simple possession of a Schedule VI drug or alcohol.

(d) The ~~intake~~ juvenile court counselor shall maintain diversion plans and contracts entered into pursuant to this section to allow ~~intake~~ juvenile court counselors to determine when a juvenile has had a complaint diverted previously. Diversion plans and contracts are not public records under Chapter 132 of the General Statutes, shall not be included in the clerk's record pursuant to G.S. 7B-3000, and shall be withheld from public inspection or examination. Diversion plans and contracts shall be destroyed when the juvenile reaches the age of 18 years or when the juvenile is no longer under the jurisdiction of the court, whichever is longer.

(e) No later than 60 days after the ~~intake~~ juvenile court counselor diverts a juvenile, the ~~intake~~ juvenile court counselor shall determine whether the juvenile and the juvenile's parent, guardian, or custodian have complied with the terms of the diversion plan or contract. In making this determination, the ~~intake~~ juvenile court counselor shall contact any referral resources to determine whether the juvenile and the juvenile's parent, guardian, or custodian complied with any recommendations for treatment or services made by the resource. If the juvenile and the juvenile's parent, guardian, or custodian have not complied, the ~~intake~~ juvenile court counselor shall reconsider the decision to divert and may authorize the filing of the complaint as a petition within 10 days after making the determination. If the ~~intake~~ juvenile court counselor does not file a petition, the ~~intake~~ juvenile court counselor may continue to monitor the case for up to six months from the date of the diversion plan or contract. At any point during that time period if the juvenile and the juvenile's parent, guardian, or custodian fail to comply, the ~~intake~~ juvenile court counselor shall reconsider the decision to divert and may authorize the filing of the complaint as a petition. After six months, the ~~intake~~ juvenile court counselor shall close the diversion plan or contract file. "

SECTION 2.9. G.S. 7B-1802 reads as rewritten:

"§ 7B-1802. Petition.

The petition shall contain the name, date of birth, and address of the juvenile and the name and last known address of the juvenile's parent, guardian, or custodian. The petition shall allege the facts that invoke jurisdiction over the juvenile. The petition shall not contain information on more than one juvenile.

A petition in which delinquency is alleged shall contain a plain and concise statement, without allegations of an evidentiary nature, asserting facts supporting every element of a criminal offense and the juvenile's commission thereof with sufficient precision clearly to apprise the juvenile of the conduct which is the subject of the allegation.

Sufficient copies of the petition shall be prepared so that copies will be available for the juvenile, for each parent if living separate and apart, for the guardian or custodian if

any, for the juvenile court counselor, for the prosecutor, and for any person determined by the court to be a necessary party. "

SECTION 2.10. G.S. 7B-1803 reads as rewritten:

"§ 7B-1803. Receipt of complaints; filing of petition.

(a) All complaints concerning a juvenile alleged to be delinquent or undisciplined shall be referred to the ~~intake~~ juvenile court counselor for screening and evaluation. Thereafter, if the ~~intake~~ juvenile court counselor determines that a petition should be filed, the petition shall be drawn by the ~~intake~~ juvenile court counselor or the clerk, signed by the complainant, and verified before an official authorized to administer oaths. If the circumstances indicate a need for immediate attachment of jurisdiction and if the ~~intake~~ juvenile court counselor is out of the county or otherwise unavailable to receive a complaint and to draw a petition when it is needed, the clerk shall assist the complainant in communicating the complaint to the ~~intake~~ juvenile court counselor by telephone and, with the approval of the ~~intake~~ juvenile court counselor, shall draw a petition and file it when signed and verified. A copy of the complaint and petition shall be transmitted to the ~~intake~~ juvenile court counselor. Procedures for receiving delinquency and undisciplined complaints and drawing petitions thereon, consistent with this Article and Article 17 of this Chapter, shall be established by administrative order of the chief judge in each judicial district.

(b) If review is requested pursuant to G.S. 7B-1704, the prosecutor shall review a complaint and any decision of the ~~intake~~ juvenile court counselor not to authorize that the complaint be filed as a petition. If the prosecutor, after review, authorizes a complaint to be filed as a petition, the prosecutor shall prepare the complaint to be filed by the clerk as a petition, recording the day of filing"

SECTION 2.11. G.S. 7B-1804(b) reads as rewritten:

"(b) When the office of the clerk is closed and an ~~intake~~ juvenile court counselor requests a petition alleging a juvenile to be delinquent or undisciplined, a magistrate may draw and verify the petition and accept it for filing, which acceptance shall constitute filing. The magistrate's authority under this subsection is limited to emergency situations when a petition is required in order to obtain a secure or nonsecure custody order. Any petition accepted for filing under this subsection shall be delivered to the clerk's office for processing as soon as that office is open for business. "

SECTION 2.12. G.S. 7B-1900 reads as rewritten:

"§ 7B-1900. Taking a juvenile into temporary custody.

Temporary custody means the taking of physical custody and providing personal care and supervision until a court order for secure or nonsecure custody can be obtained. A juvenile may be taken into temporary custody without a court order under the following circumstances:

(1) By a law enforcement officer if grounds exist for the arrest of an adult in identical circumstances under G.S. 15A-401(b).

(2) By a law enforcement officer or a juvenile court counselor if there are reasonable grounds to believe that the juvenile is an undisciplined juvenile.

(3) By a law enforcement officer, by a juvenile court counselor, by a member of the Black Mountain Center, Alcohol Rehabilitation Center, and Juvenile Evaluation Center Joint Security Force established pursuant to G.S. 122C-421, or by personnel of the Department if there are reasonable grounds to believe the juvenile is an absconder from any residential facility operated by the Department or from an approved detention facility."

SECTION 2.13. G.S. 7B-1901(a) reads as rewritten:

"(a) A person who takes a juvenile into custody without a court order under G.S. 7B-1900(1) or (2) shall proceed as follows:

(1) Notify the juvenile's parent, guardian, or custodian that the juvenile has been taken into temporary custody and advise the parent, guardian, or custodian of the right to be present with the juvenile until a determination is made as to the need for secure or nonsecure custody. Failure to notify the parent, guardian, or custodian that the juvenile is in custody shall not be grounds for release of the juvenile.

(2) Release the juvenile to the juvenile's parent, guardian, or custodian if the person having the juvenile in temporary custody decides that continued custody is unnecessary. In the case of a juvenile unlawfully absent from school, if continued custody is unnecessary, the person having temporary custody may deliver the juvenile to the juvenile's school or, if the local city or county government and the local school board adopt a policy, to a place in the local school administrative unit.

(3) If the juvenile is not released, request that a petition be drawn pursuant to G.S. 7B-1803 or G.S. 7B-1804. Once the petition has been drawn and verified, the person shall communicate with the ~~intake~~ juvenile court counselor. If the ~~intake~~ juvenile court counselor approves the filing of the petition, the ~~intake~~ juvenile court counselor shall contact the judge or the person delegated authority pursuant to G.S. 7B-1902 if other than the ~~intake~~ juvenile court counselor, for a determination of the need for continued custody."

SECTION 2.14. G.S. 7B-1905(c) reads as rewritten:

"(c) A juvenile who has allegedly committed an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult may be detained in secure custody in a holdover facility up to 72 hours, if the court, based on information provided by the juvenile court counselor, determines that no acceptable alternative placement is available and the protection of the public requires the juvenile be housed in a holdover facility."

SECTION 2.15. G.S. 7B-2102(e) reads as rewritten:

"(e) If a juvenile is fingerprinted and photographed pursuant to subsection (a) of this section, the custodian of records shall destroy all fingerprints and photographs at the earlier of the following:

(1) The ~~intake~~ juvenile court counselor or prosecutor does not file a petition against the juvenile within one year of fingerprinting and photographing the juvenile pursuant to subsection (a) of this section;
(2) The court does not find probable cause pursuant to G.S. 7B-2202; or
(3) The juvenile is not adjudicated delinquent of any offense that would be a felony or a misdemeanor if committed by an adult.

The chief court counselor shall notify the local custodian of records, and the local custodian of records shall notify any other record-holding agencies, when a decision is made not to file a petition, the court does not find probable cause, or the court does not adjudicate the juvenile delinquent. "

SECTION 2.16. G.S. 7B-2408 reads as rewritten:

"§ 7B-2408. Rules of evidence.

If the juvenile denies the allegations of the petition, the court shall proceed in accordance with the rules of evidence applicable to criminal cases. In addition, no statement made by a juvenile to the ~~intake~~ juvenile court counselor during the preliminary inquiry and evaluation process shall be admissible prior to the dispositional hearing. "

SECTION 2.17. G.S. 7B-2413 reads as rewritten:

"§ 7B-2413. Predisposition investigation and report.

The court shall proceed to the dispositional hearing upon receipt of the predisposition report. A risk and needs assessment, containing information regarding the juvenile's social, medical, psychiatric, psychological, and educational history, as well as any factors indicating the probability of the juvenile committing further delinquent acts, shall be conducted for the juvenile and shall be attached to the predisposition report. In cases where no predisposition report is available and the court makes a written finding that a report is not needed, the court may proceed with the dispositional hearing. No predisposition report or risk and needs assessment of any child alleged to be delinquent or undisciplined shall be made prior to an adjudication that the juvenile is within the juvenile jurisdiction of the court unless the juvenile, the juvenile's parent, guardian, or custodian, or the juvenile's attorney files a written statement with the juvenile court counselor granting permission and giving consent to the predisposition report or risk and needs assessment. No predisposition report shall be submitted to or considered by the court prior to the completion of the adjudicatory hearing. The court shall permit the juvenile to inspect any predisposition report, including any attached risk and needs assessment, to be considered by the court in making the disposition unless the court determines that disclosure would seriously harm the juvenile's treatment or rehabilitation or would violate a promise of confidentiality. Opportunity to offer evidence in rebuttal shall be afforded the juvenile and the juvenile's parent, guardian, or custodian at the dispositional hearing. The court may order counsel not to disclose parts of the report to the juvenile or the juvenile's parent, guardian, or custodian if the court finds that disclosure would seriously harm the treatment or rehabilitation of the juvenile or would violate a promise of confidentiality given to a source of information."

SECTION 2.18. G.S. 7B-2503 reads as rewritten:

"**§ 7B-2503. Dispositional alternatives for undisciplined juveniles.**

The following alternatives for disposition shall be available to the court exercising jurisdiction over a juvenile who has been adjudicated undisciplined. The court may combine any of the applicable alternatives when the court finds it to be in the best interests of the juvenile:

(1) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the judge may:

a. Require that the juvenile be supervised in the juvenile's own home by a department of social services in the juvenile's county of residence, a juvenile court counselor, or other personnel as may be available to the court, subject to conditions applicable to the parent, guardian, or custodian or the juvenile as the judge may specify; or

b. Place the juvenile in the custody of a parent, guardian, custodian, relative, private agency offering placement services, or some other suitable person; or

c. Place the juvenile in the custody of a department of social services in the county of the juvenile's residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of a department of social services in the county where the juvenile is found so that agency may return the juvenile to the responsible authorities in the juvenile's home state. The director may, unless otherwise ordered by the judge, arrange for, provide, or consent to, needed routine or emergency medical or surgical care or treatment. In the case where the parent is unknown, unavailable, or unable to act on behalf of the juvenile or juveniles, the director may, unless otherwise ordered by the judge, arrange for, provide or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a judge or the judge's designee in the custody or physical custody of a county department of social services under the authority of this or any other Chapter of the General Statutes. Prior to exercising this authority, the director shall make reasonable efforts to obtain consent from a parent, guardian, or custodian of the affected juvenile. If the director cannot obtain consent, the director shall promptly notify the parent, guardian, or custodian that care or treatment has been provided and shall give the parent, guardian, or custodian frequent status reports on the circumstances of the juvenile. Upon request of a parent, guardian, or custodian of the affected juvenile, the results or records of the aforementioned evaluations, findings, or

treatment shall be made available to the parent, guardian, or custodian by the director unless prohibited by G.S. 122C-53(d).

(2) Place the juvenile under the protective supervision of a juvenile court counselor for a period of up to three months, with an extension of an additional three months in the discretion of the court.

(3) Excuse the juvenile from compliance with the compulsory school attendance law when the court finds that suitable alternative plans can be arranged by the family through other community resources for one of the following:

a. An education related to the needs or abilities of the juvenile including vocational education or special education;

b. A suitable plan of supervision or placement; or

c. Some other plan that the court finds to be in the best interests of the juvenile."

SECTION 2.19. G.S. 7B-2504 reads as rewritten:

"§ 7B-2504. Conditions of protective supervision for undisciplined juveniles.

The court may place a juvenile on protective supervision pursuant to G.S. 7B-2503 so that the juvenile court counselor may (i) assist the juvenile in securing social, medical, and educational services and (ii) visit and work with the family as a unit to ensure the juvenile is provided proper supervision and care. The court may impose any combination of the following conditions of protective supervision that are related to the needs of the juvenile, including:

(1) That the juvenile shall remain on good behavior and not violate any laws;

(2) That the juvenile attend school regularly;

(3) That the juvenile maintain passing grades in up to four courses during each grading period and meet with the juvenile court counselor and a representative of the school to make a plan for how to maintain those passing grades;

(4) That the juvenile not associate with specified persons or be in specified places;

(5) That the juvenile abide by a prescribed curfew;

(6) That the juvenile report to a juvenile court counselor as often as required by a juvenile court counselor;

(7) That the juvenile be employed regularly if not attending school; and

(8) That the juvenile satisfy any other conditions determined appropriate by the court."

SECTION 2.20. G.S. 7B-2505 reads as rewritten:

"§ 7B-2505. Contempt of court for undisciplined juveniles.

Upon motion of the juvenile court counselor or on the court's own motion, the court may issue an order directing a juvenile who has been adjudicated undisciplined to appear and show cause why the juvenile should not be held in contempt for willfully failing to comply with an order of the court. The first time the juvenile is held in

contempt, the court may order the juvenile confined in an approved detention facility for a period not to exceed 24 hours. The second time the juvenile is held in contempt, the court may order the juvenile confined in an approved detention facility for a period not to exceed three days. The third time and all subsequent times the juvenile is held in contempt, the court may order the juvenile confined in an approved detention facility for a period not to exceed five days. The timing of any confinement under this section shall be determined by the court in its discretion. In no event shall a juvenile held in contempt pursuant to this section be confined for more than 14 days in one 12-month period."

SECTION 2.21. G.S. 7B-2506 reads as rewritten:

"§ 7B-2506. Dispositional alternatives for delinquent juveniles.

The court exercising jurisdiction over a juvenile who has been adjudicated delinquent may use the following alternatives in accordance with the dispositional structure set forth in G.S. 7B-2508:

(1) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the judge may:

a. Require that a juvenile be supervised in the juvenile's own home by the department of social services in the juvenile's county, a juvenile court counselor, or other personnel as may be available to the court, subject to conditions applicable to the parent, guardian, or custodian or the juvenile as the judge may specify; or

b. Place the juvenile in the custody of a parent, guardian, custodian, relative, private agency offering placement services, or some other suitable person; or

c. Place the juvenile in the custody of the department of social services in the county of his residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of a department of social services in the county where the juvenile is found so that agency may return the juvenile to the responsible authorities in the juvenile's home state. The director may, unless otherwise ordered by the judge, arrange for, provide, or consent to, needed routine or emergency medical or surgical care or treatment. In the case where the parent is unknown, unavailable, or unable to act on behalf of the juvenile or juveniles, the director may, unless otherwise ordered by the judge, arrange for, provide, or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a judge or his designee in the custody or physical custody of a county department of social services under the authority of this or any other Chapter of the General Statutes. Prior to exercising this authority, the director shall make reasonable efforts to obtain consent from a parent, guardian, or custodian of the affected

juvenile. If the director cannot obtain consent, the director shall promptly notify the parent, guardian, or custodian that care or treatment has been provided and shall give the parent, guardian, or custodian frequent status reports on the circumstances of the juvenile. Upon request of a parent, guardian, or custodian of the affected juvenile, the results or records of the aforementioned evaluations, findings, or treatment shall be made available to the parent, guardian, or custodian by the director unless prohibited by G.S. 122C-53(d).

.....

(8) Place the juvenile on probation under the supervision of a juvenile court counselor, as specified in G.S. 7B-2510.

.....

(15) Place the juvenile on intensive probation under the supervision of a juvenile court counselor.

....."

SECTION 2.22. G.S. 7B-2510(a) reads as rewritten:

"(a) In any case where a juvenile is placed on probation pursuant to G.S. 7B-2506(8), the juvenile court counselor shall have the authority to visit the juvenile where the juvenile resides. The court may impose conditions of probation that are related to the needs of the juvenile and that are reasonably necessary to ensure that the juvenile will lead a law-abiding life, including:

(1) That the juvenile shall remain on good behavior.

(2) That the juvenile shall not violate any laws.

(3) That the juvenile shall not violate any reasonable and lawful rules of a parent, guardian, or custodian.

(4) That the juvenile attend school regularly.

(5) That the juvenile maintain passing grades in up to four courses during each grading period and meet with the juvenile court counselor and a representative of the school to make a plan for how to maintain those passing grades.

(6) That the juvenile not associate with specified persons or be in specified places.

(7) That the juvenile:

a. Refrain from use or possession of any controlled substance included in any schedule of Article 5 of Chapter 90 of the General Statutes, the Controlled Substances Act;

b. Refrain from use or possession of any alcoholic beverage regulated under Chapter 18B of the General Statutes; and
c. Submit to random drug testing.

(8) That the juvenile abide by a prescribed curfew.
(9) That the juvenile submit to a warrantless search at reasonable times.
(10) That the juvenile possess no firearm, explosive device, or other deadly weapon.
(11) That the juvenile report to a juvenile court counselor as often as required by the juvenile court counselor.
(12) That the juvenile make specified financial restitution or pay a fine in accordance with G.S. 7B-2506(4), (5), and (22).
(13) That the juvenile be employed regularly if not attending school.
(14) That the juvenile satisfy any other conditions determined appropriate by the court."

SECTION 2.23. G.S. 7B-2510(d) reads as rewritten:

"(d) On motion of the juvenile court counselor or the juvenile, or on the court's own motion, the court may review the progress of any juvenile on probation at any time during the period of probation or at the end of probation. The conditions or duration of probation may be modified only as provided in this Subchapter and only after notice and a hearing."

SECTION 2.24. G.S. 7B-2511 reads as rewritten:

§ 7B-2511. Termination of probation.

At the end of or at any time during probation, the court may terminate probation by written order upon finding that there is no further need for supervision. The finding and order terminating probation may be entered in chambers in the absence of the juvenile and may be based on a report from the juvenile court counselor or, at the election of the court, the order may be entered with the juvenile present after notice and a hearing."

SECTION 2.25. G.S. 7B-2513(h) reads as rewritten:

"(h) Pending placement of a juvenile with the Department, the court may house a juvenile who has been adjudicated delinquent for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult in a holdover facility up to 72 hours if the court, based on the information provided by the juvenile court counselor, determines that no acceptable alternative placement is available and the protection of the public requires that the juvenile be housed in a holdover facility."

SECTION 2.26. G.S. 7B-2514(a) reads as rewritten:

"(a) The Department shall be responsible for evaluation of the progress of each juvenile at least once every six months as long as the juvenile remains in the care of the Department. Any determination that the juvenile should remain in the care of the Department for an additional period of time shall be based on the Department's determination that the juvenile requires additional treatment or rehabilitation pursuant to G.S. 7B-2515. If the Department determines that a juvenile is ready for release, the Department shall initiate a post-release supervision planning process. The post-release

supervision planning process shall be defined by rules and regulations of the Department, but shall include the following:

(1) Written notification shall be given to the court that ordered commitment.

(2) A post-release supervision planning conference shall be held involving as many as possible of the following: the juvenile, the juvenile's parent, guardian, or custodian, juvenile court counselors who have supervised the juvenile on probation or will supervise the juvenile on post-release supervision, and staff of the facility that found the juvenile ready for release. The planning conference shall include personal contact and evaluation rather than telephonic notification.

(3) The planning conference participants shall consider, based on the individual needs of the juvenile and pursuant to rules adopted by the Department, placement of the juvenile in any program under the auspices of the Department, including the juvenile court services programs that, in the judgment of the Department, would be appropriate transitional placement, pending release under G.S. 7B-2513."

SECTION 2.27. G.S. 7B-2514(g) reads as rewritten:

"(g) A juvenile on post-release supervision shall be supervised by a juvenile court counselor. Post-release supervision shall be terminated by order of the court."

SECTION 2.28. G.S. 7B-2516 reads as rewritten:

"(a) On motion of the juvenile court counselor providing post-release supervision or motion of the juvenile, or on the court's own motion, and after notice, the court may hold a hearing to review the progress of any juvenile on post-release supervision at any time during the period of post-release supervision. With respect to any hearing involving allegations that the juvenile has violated the terms of post-release supervision, the juvenile:

(1) Shall have reasonable notice in writing of the nature and content of the allegations in the motion, including notice that the purpose of the hearing is to determine whether the juvenile has violated the terms of post-release supervision to the extent that post-release supervision should be revoked;

(2) Shall be represented by an attorney at the hearing;

(3) Shall have the right to confront and cross-examine witnesses; and

(4) May admit, deny, or explain the violation alleged and may present proof, including affidavits or other evidence, in support of the juvenile's contentions. A record of the proceeding shall be made and preserved in the juvenile's record."

SECTION 2.29. G.S. 7B-2703(a) reads as rewritten:

"(a) The court may order the parent, guardian, or custodian, to the extent that person is able to do so, to provide transportation for a juvenile to keep an appointment with a juvenile court counselor or to comply with other orders of the court."

SECTION 2.30. G.S. 7B-2706 reads as rewritten:

"§ 7B-2706. Contempt for failure to comply.

Upon motion of the juvenile court counselor or prosecutor or upon the court's own motion, the court may issue an order directing the parent, guardian, or custodian to appear and show cause why the parent, guardian, or custodian should not be found or held in civil or criminal contempt for willfully failing to comply with an order of the court. Chapter 5A of the General Statutes shall govern contempt proceedings initiated pursuant to this Article."

SECTION 2.31. G.S. 7B-3001 reads as rewritten:

"§ 7B-3001. Other records relating to juveniles.

(a) The chief court counselor shall maintain a record of all cases of juveniles under supervision of juvenile court counselors, to be known as the juvenile court counselor's record. The juvenile court counselor's record shall include family background information; reports of social, medical, psychiatric, or psychological information concerning a juvenile or the juvenile's family; probation reports; interviews with the juvenile's family; or other information the court finds should be protected from public inspection in the best interests of the juvenile.

(b) Unless jurisdiction of the juvenile has been transferred to superior court, all law enforcement records and files concerning a juvenile shall be kept separate from the records and files of adults and shall be withheld from public inspection. The following persons may examine and obtain copies of law enforcement records and files concerning a juvenile without an order of the court:

(1) The juvenile;
(2) The juvenile's parent, guardian, custodian, or the authorized representative of the juvenile's parent, guardian, or custodian;
(3) The district attorney or prosecutor;
(4) ~~Court~~ Juvenile court counselors; and
(5) Law enforcement officers sworn in this State.

Otherwise, the records and files may be examined or copied only by order of the court.

(c) All records and files maintained by the Department pursuant to this Chapter shall be withheld from public inspection. The following persons may examine and obtain copies of the Department records and files concerning a juvenile without an order of the court:

(1) The juvenile and the juvenile's attorney;
(2) The juvenile's parent, guardian, custodian, or the authorized representative of the juvenile's parent, guardian, or custodian;
(3) Professionals in the agency who are directly involved in the juvenile's case; and
(4) ~~Court~~ Juvenile court counselors.

Otherwise, the records and files may be examined or copied only by order of the court. The court may inspect and order the release of records maintained by the Department."

SECTION 2.32. G.S. 7B-3200(f) reads as rewritten:

"(f) Records of a juvenile adjudicated delinquent or undisciplined being maintained by the chief court counselor, an intake counselor, or a juvenile court counselor shall be retained or disposed of as provided by the Department, except that no records shall be destroyed before the juvenile reaches the age of 18 or 18 months have elapsed since the person was released from juvenile court jurisdiction, whichever occurs last."

SECTION 2.33. G.S. 7B-3503 reads as rewritten:

"§ 7B-3503. Hearing.

The court, sitting without a jury, shall permit all parties to present evidence and to cross-examine witnesses. The petitioner has the burden of showing by a preponderance of the evidence that emancipation is in the petitioner's best interests. Upon finding that reasonable cause exists, the court may order the juvenile to be examined by a psychiatrist, a licensed clinical psychologist, a physician, or any other expert to evaluate the juvenile's mental or physical condition. The court may continue the hearing and order investigation by a juvenile court counselor or by the county department of social services to substantiate allegations of the petitioner or respondents.

No husband-wife or physician-patient privilege shall be grounds for excluding any evidence in the hearing."

SECTION 2.34. G.S. 14-16.10 reads as rewritten:

"§ 14-16.10. Definitions.

The following definitions apply in this Article:

(1) Court officer. – Magistrate, clerk of superior court, acting clerk, assistant or deputy clerk, judge, or justice of the General Court of Justice; district attorney, assistant district attorney, or any other attorney designated by the district attorney to act for the State or on behalf of the district attorney; public defender or assistant defender; court reporter; juvenile court counselor as defined in ~~G.S. 7B-1501(5).~~G.S. 7B-1501(18a).

(2) Executive officer. – A person named in G.S. 147-3(c).

(3) Legislative officer. – A person named in G.S. 147-2(1), (2), or (3)."

SECTION 2.35. G.S. 14-208.27 reads as rewritten

"§ 14-208.27. Change of address.

If a juvenile who is adjudicated delinquent and required to register changes address, the juvenile court counselor for the juvenile shall provide written notice of the new address not later than the tenth day after the change to the sheriff of the county with whom the juvenile had last registered. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division. If the juvenile moves to another county in this State, the Division shall inform the sheriff of the new county of the juvenile's new residence."

SECTION 2.36. G.S. 14-208.28 reads as rewritten:

"§ 14-208.28. Verification of registration information.

The information provided to the sheriff shall be verified annually for each juvenile registrant as follows:

(1) Every year on the anniversary of a juvenile's initial registration date, the sheriff shall mail a verification form to the juvenile court counselor assigned to the juvenile.

(2) The juvenile court counselor for the juvenile shall return the verification form to the sheriff within 10 days after the receipt of the form.

(3) The verification form shall be signed by the juvenile court counselor and the juvenile and shall indicate whether the juvenile still resides at the address last reported to the sheriff. If the juvenile has a different address, then that fact and the new address shall be indicated on the form."

SECTION 2.37. G.S. 115C-378 reads as rewritten:

"§ 115C-378. Children required to attend.

Every parent, guardian or other person in this State having charge or control of a child between the ages of seven and 16 years shall cause such child to attend school continuously for a period equal to the time which the public school to which the child is assigned shall be in session. Every parent, guardian, or other person in this State having charge or control of a child under age seven who is enrolled in a public school in grades kindergarten through two shall also cause such child to attend school continuously for a period equal to the time which the public school to which the child is assigned shall be in session unless the child has withdrawn from school. No person shall encourage, entice or counsel any such child to be unlawfully absent from school. The parent, guardian, or custodian of a child shall notify the school of the reason for each known absence of the child, in accordance with local school policy.

The principal, superintendent, or teacher who is in charge of such school shall have the right to excuse a child temporarily from attendance on account of sickness or other unavoidable cause which does not constitute unlawful absence as defined by the State Board of Education. The term "school" as used herein is defined to embrace all public schools and such nonpublic schools as have teachers and curricula that are approved by the State Board of Education.

All nonpublic schools receiving and instructing children of a compulsory school age shall be required to keep such records of attendance and render such reports of the attendance of such children and maintain such minimum curriculum standards as are required of public schools; and attendance upon such schools, if the school refuses or neglects to keep such records or to render such reports, shall not be accepted in lieu of attendance upon the public school of the district to which the child shall be assigned: Provided, that instruction in a nonpublic school shall not be regarded as meeting the requirements of the law unless the courses of instruction run concurrently with the term of the public school in the district and extend for at least as long a term.

The principal or his designee shall notify the parent, guardian, or custodian of his child's excessive absences after the child has accumulated three unexcused absences in a school year. After not more than six unexcused absences, the principal shall notify the parent, guardian, or custodian by mail that he may be in violation of the Compulsory Attendance Law and may be prosecuted if the absences cannot be justified under the established attendance policies of the State and local boards of education. Once the parents are notified, the school attendance counselor shall work with the child and his family to analyze the causes of the absences and determine steps, including adjustment of the school program or obtaining supplemental services, to eliminate the problem. The attendance counselor may request that a law-enforcement officer accompany him if he believes that a home visit is necessary.

After 10 accumulated unexcused absences in a school year the principal shall review any report or investigation prepared under G.S. 115C-381 and shall confer with the student and his parent, guardian, or custodian if possible to determine whether the parent, guardian, or custodian has received notification pursuant to this section and made a good faith effort to comply with the law. If the principal determines that parent, guardian, or custodian has not, he shall notify the district attorney. If he determines that parent, guardian, or custodian has, he may file a complaint with the juvenile ~~intake~~ court counselor pursuant to Chapter 7B of the General Statutes that the child is habitually absent from school without a valid excuse. Evidence that shows that the parents, guardian, or custodian were notified and that the child has accumulated 10 absences which cannot be justified under the established attendance policies of the local board shall establish a prima facie case that the child's parent, guardian, or custodian is responsible for the absences. "

SECTION 2.38. G.S. 143B-515 reads as rewritten:

"§ 143B-515. 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-544.

(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.

(15a) Juvenile court counselor. - A person responsible for intake services and court supervision services to juveniles under the supervision of the chief court counselor.

(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 juvenile 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 juvenile 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-556.

(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."

SECTION 2.39. G.S. 143B-516(b) is amended by adding the following new subdivision to read:

"(18) Designate persons, as necessary, as State juvenile justice officers, to provide for the care and supervision of juveniles placed in the physical custody of the Department."

SECTION 2.40. G.S. 143B-536 reads as rewritten:

"**§ 143B-536. 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 juvenile 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) Screen and evaluate a complaint alleging that a juvenile is delinquent or undisciplined to determine whether the complaint should be filed as a petition.
(17) Have any other duties as the court may direct.
(18) Have any other duties as the Department may direct."

PART III. EFFECTIVE DATE

SECTION 3.1. This act becomes effective June 30, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 4

SENATE BILL 68

Judiciary I Committee Substitute Adopted 3/28/01
Corrected Copy 3/29/01
Judiciary II Committee Substitute #2 Adopted 4/24/01

Short Title: Criminal Justice Standards Commission Change. (Public)

Sponsors:

Referred to:

February 6, 2001

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE MEMBERSHIP OF THE NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION, TO CLARIFY THE ENFORCEMENT POWERS OF THE COMMISSION, TO REPEAL THE REMOVAL OF THE DEPARTMENT OF CORRECTION FROM THE COMMISSION, AS RECOMMENDED BY THE JOINT LEGISLATIVE CORRECTIONS AND CRIME CONTROL OVERSIGHT COMMITTEE, AND TO MAKE CONFORMING CHANGES FOR THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION.

The General Assembly of North Carolina enacts:

SECTION 1. 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 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.~~

(13) Intake. – The process of screening and evaluating 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.

(18a) Juvenile Court Counselor. – A person responsible for intake services and court supervision services to juveniles under the supervision of the chief court counselor.

(19) Repealed by Session Laws 2000, c. 137, s. 2.

(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 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 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 2. G.S. 17C-2(3) reads as rewritten:

"(3) Criminal justice officers. – The administrative and subordinate personnel of all the departments, agencies, units or entities comprising the criminal justice agencies who are sworn law-enforcement officers, both State and local, with the power of arrest; ~~revenue law enforcement officers;~~ State correctional officers; State probation/parole officers; State probation/parole officers-surveillance; officers, supervisory and administrative personnel of local confinement facilities; ~~State youth services officers; State probation/parole intake officers; State probation/parole officers-surveillance; State probation/parole intensive officers; and State parole case analysts.~~ State juvenile justice officers; chief court counselors; and juvenile court counselors."

SECTION 3. G.S. 17C-3 reads as rewritten:

"(a) There is established the North Carolina Criminal Justice Education and Training Standards Commission, hereinafter called 'the Commission.' The Commission shall be composed of ~~26~~ 32 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 ~~North Carolina System of Community Colleges.~~ North Carolina Community Colleges System; the Secretary of the Department of Juvenile Justice and Delinquency Prevention.

~~(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~~ eight persons, ~~one~~ four upon the recommendation of the Speaker of the House of Representatives and ~~one~~ four upon the recommendation of the President Pro Tempore of the Senate. One of the persons appointed upon the recommendation of the Speaker of the House of Representatives and one of the persons appointed upon the recommendation of the President Pro Tempore of the Senate shall be correctional officers in management positions employed by the Department of Correction. 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.

(b) The members shall be appointed for staggered terms. The initial appointments shall be made prior to September 1, 1983, and the appointees shall hold office until July 1 of the year in which their respective terms expire and until their successors are appointed and qualified as provided hereafter:

For the terms of one year: one member from subdivision (1) of subsection (a), serving as a police chief; three members from subdivision (2) of subsection (a), one serving as a police official, and two criminal justice officers; one member from subdivision (4) of subsection (a), appointed by the North Carolina Law-Enforcement Training Officers' Association; and two members from subdivision (5) of subsection (a), one appointed by the Governor and one appointed by the Attorney General.

For the terms of two years: one member from subdivision (1) of subsection (a), serving as a police chief; one member from subdivision (2) of subsection (a), serving as a police official; and two members from subdivision (4) of subsection (a), one appointed by the League of Municipalities and one appointed by the North Carolina Association of District Attorneys.

For the terms of three years: two members from subdivision (1) of subsection (a), one police chief appointed by the North Carolina Association of Chiefs of Police and one police chief appointed by the Governor; one member from subdivision (2) of subsection (a), serving as a police official; and three members from subdivision (4) of subsection (a), one appointed by the North Carolina Law-Enforcement Women's Association, one appointed by the North Carolina Criminal Justice Association, and one appointed by the North State Law-Enforcement Officers' Association.

Thereafter, as the term of each member expires, his successor shall be appointed for a term of three years. Notwithstanding the appointments for a term of years, each member shall serve at the will of the appointing authority.

The Attorney General, the Secretary of the Department of Crime Control and Public Safety, the Secretary of the Department of Correction, the President of The University of North Carolina, the Director of the Institute of Government, ~~and~~ the President of the ~~Department of Community Colleges~~ North Carolina Community Colleges System, and the Secretary of the Department of Juvenile Justice and Delinquency Prevention shall be continuing members of the Commission during their tenure. These members of the Commission shall serve ex officio and shall perform their duties on the Commission in addition to the other duties of their offices. The ex officio members may elect to serve personally at any or all meetings of the Commission or may designate, in writing, one member of their respective office, department, university or agency to represent and vote for them on the Commission at all meetings the ex officio members are unable to attend.

Vacancies in the Commission occurring for any reason shall be filled, for the unexpired term, by the authority making the original appointment of the person causing the vacancy. A vacancy may be created by removal of a Commission member by majority vote of the Commission for misconduct, incompetence, or neglect of duty. A Commission member may be removed only pursuant to a hearing, after notice, at which the member subject to removal has an opportunity to be heard."

SECTION 4. G.S. 17C-11 reads as rewritten:

"**§ 17C-11. ~~Power of the Commission to seek injunction.~~Compliance; enforcement.**

(a) Any criminal justice officer who the Commission determines does not comply with the provisions of this Chapter or any rules promulgated hereunder shall not be authorized to exercise the powers of a criminal justice officer and shall not be authorized to exercise the power of arrest unless such certification or deficiency has been waived by the Commission. The Commission shall enforce the provisions of this section by the entry of appropriate orders effective upon service on either the criminal justice agency or the criminal justice officer.

(b) Any person who desires to appeal the proposed denial, suspension, or revocation of any certification authorized to be issued by the Commission shall file a written appeal with the Commission not later than 30 days following notice of denial, suspension, or revocation.

(c) The Commission may appear in its own name and apply to courts having jurisdiction for injunctions to prevent violations of this Chapter or of rules issued pursuant thereto; specifically, the performance of criminal justice officer functions by officers or individuals who are not in compliance with the standards and requirements of G.S. 17C-6(a) and G.S. 17C-10. A single act of performance of a criminal justice officer function by an officer or individual who is performing such function in violation of this Chapter is sufficient, if shown, to invoke the injunctive relief of this section."

SECTION 5. G.S. 17E-9(a) reads as rewritten:

"(a) Any justice officer who the Commission determines does not comply with the provisions of this Chapter or any rules promulgated hereunder shall not be authorized to exercise the powers of a justice officer and shall not be authorized to exercise the power of arrest unless such certification or deficiency has been waived by the Commission.

The Commission shall enforce the provisions of this section by the entry of appropriate ~~orders.~~ orders effective upon service on either the department or the justice officer."

SECTION 6. Section 17.3 of S.L. 2000-67 is repealed.

SECTION 7. G.S. 143B-515 reads as rewritten:

"**§ 143B-515. 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-544.

(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.

(15a) Juvenile Court Counselor. – A person responsible for intake services and court supervision services to juveniles under the supervision of the chief court counselor.

(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-556.

(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."

SECTION 8. G.S. 143B-516(b) reads as rewritten:

"(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.

(18) Designate persons, as necessary, as State juvenile justice officers, to provide for the care and supervision of juveniles placed in the physical custody of the Department."

SECTION 9. G.S. 143B-536 reads as rewritten:

"**§ 143B-536. 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) Screen and evaluate a complaint alleging that a juvenile is delinquent or undisciplined to determine whether the complaint should be filed as a petition.

(17) Have any other duties as the Department may direct.

~~(16)~~ (18) Have any other duties as the court may direct."

SECTION 10. This act becomes effective June 30, 2001.

SENATE BILL 68:
Criminal Justice Standards Commission Change.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Jordan
Date:	June 5, 2001	**Summary by:**	Robin Johnson
Version:	S68-CSRh-41[v.4]		Committee Counsel

The PCS reinstates the original bill's recommendations concerning who is to be appointed to the Commission, but changes the appointing authorities, and makes conforming changes to a number of statutes the bill affects.

SUMMARY: **The first part of this bill, recommended by the Joint Legislative Corrections and Crime Control Oversight Committee, increases the membership of the Criminal Justice Education and Training Standards Commission (Commission), clarifies the Commission's enforcement powers, and repeals legislation from the 2000 Session that would remove (effective June 30, 2001) the Department of Correction (DOC) and its officers from the Commission and its standards.**

Part II of the bill makes conforming changes for the Department of Juvenile Justice and Delinquency Prevention (DJJDP) as requested by that Department.

The bill would become effective June 30, 2001.

BILL ANALYSIS

PART I. CHANGES TO THE CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

BACKGROUND: The Commission is charged with setting and enforcing the minimum educational and training standards for employment and retention as a State or local criminal justice officer. Generally, DOC officers, law enforcement officers, and State youth services officers are subject to these standards. The Commission consists of 26 members; however, the only DOC representative is the Secretary of Correction or the Secretary's designee, even though approximately 43% of the officers subject to the standards are DOC officers.

For several years, there has been some disagreement between the Commission and DOC over DOC's lack of sufficient representation on the Commission and the rigor of its standards. Last year, the budget bill included a provision (see attached) that would remove DOC, effective June 30, 2001, from the Commission and its standards if a new system was recommended to the General Assembly at the beginning of this year's Session. This bill, while not recommending a new system, is a response.

Last summer, the Commission adopted new administrative rules setting standards. The Commission also agreed to pursue legislation to add five new members, all of whom would be DOC representatives, to the Commission. One of these new members was to be appointed by the Speaker; one by the President Pro Tempore, two by the Governor, and one by the Secretary of Correction. The Commission asked the Joint Legislative Corrections and Crime Control Oversight Committee to endorse this request. In addition, DJJDP asked that Committee to add juvenile court counselors to the officers subject to the Commission's standards.

Part I of the PCS represents the recommendations of the Corrections Oversight Committee. In the bill's original version, these recommendations included the Commission's requests and the DJJDP's requests,

plus the repeal of last year's budget provision. (The fourth edition of the bill, as received from the Senate amended the bill to add six new members to the Commission, only two of whom would represent DOC, but all of them appointed by the Speaker or the President Pro Tempore.)

The PCS adds the five members from the original version. Two are to be appointed by the Speaker, two by the President Pro Tempore, and one by the Governor. With other appointments, the result is the Governor, Speaker, and President Pro Tempore would each have a total of three appointments to this Commission.

SECTION-BY-SECTION ANALYSIS: Sec. 1.1 would amend G.S. 17C-2(3) to revise the types of officers subject to the Commission's minimum education and training standards by (1) deleting revenue law enforcement officers *{who are covered as State law enforcement officers}*; (2) reinstating the correctional and probation/parole officers, including surveillance officers (these will be removed if last year's budget provision takes effect); and (3) adding juvenile justice officers, chief court counselors, and juvenile court counselors.

Sec. 1.2 would add five members to the Commission, bringing the total to 31. The PCS would add four correctional officers and one Departmental employee. The officers would be appointed as follows: two by the Speaker, two by the President Pro Tempore, and one by the Governor.

In order to give the Commission enforcement powers comparable to the Sheriffs' Education and Training Standards Commission, Sec. 1.3 would clarify that the Commission's enforcement powers would include orders forbidding criminal justice officers who fail to comply with or meet the education and training standards from exercising their powers, including the power of arrest, unless the Commission waives that certification or deficiency. Persons who wish to appeal a proposed denial, suspension, or revocation of a certification, may file a written appeal with the Commission within 30 days following notice of the denial, suspension, or revocation. This section also specifies that Commission orders are upon service on either the criminal justice agency or the criminal justice officer. The intent of this section is to prevent someone from attempting to evade service. Sec. 1.4 makes parallel the comparable statute that applies to the Sheriffs' Education and Training Standards Commission statute.

Sec. 1.5 would repeal last year's budget bill provision (Section 17.3 of S.L. 2000-67).

PART II. CONFORMING CHANGES TO LAWS GOVERNING UNDISCIPLINED AND DELINQUENT JUVENILES

This part of the bill, added in the Senate at the request of DJJDP and amended by the PCS, amends a number of statutes by deleting the terms "intake counselor" and "court counselor" and substituting the term "juvenile court counselor"; expanding juvenile court counselors' duties to include both intake and supervision services; and granting to the Secretary the power to designate persons as juvenile justice officers.

S68-SMRH-003: Al Andrews, Committee Counsel for Senate Judiciary I, contributed to this summary.

S.L.2000-67, Section 17.3 (Repealed by Section 1.5 of the bill.

CERTIFICATION OF DEPARTMENT OF CORRECTION EMPLOYEES

Section 17.3.(a) G.S. 17C-2 reads as rewritten:

"**§ 17C-2. Definitions.**

Unless the context clearly otherwise requires, the following definitions apply in this Chapter:

(1) Commission. – The North Carolina Criminal Justice Education and Training Standards Commission.

(2) Criminal justice agencies. – The State and local law-enforcement agencies, ~~the State correctional agencies,~~ other correctional agencies maintained by local governments, and the juvenile justice agencies, but shall not include deputy sheriffs, special deputy sheriffs, sheriffs "jailers, or other sheriffs" department personnel governed by the provisions of Chapter 17E of these General Statutes.

(3) Criminal justice officers. – The administrative and subordinate personnel of all the departments, agencies, units or entities comprising the criminal justice agencies who are sworn law-enforcement officers, both State and local, with the power of arrest; revenue law enforcement officers; ~~State correctional officers; State probation/parole officers;~~ officers, supervisory and administrative personnel of local confinement facilities; ~~State youth services officers; State probation/parole intake officers; State probation/parole officers surveillance; State probation/parole intensive officers; and State parole case analysts.~~ and State youth services officers.

(4) Entry level. – The initial appointment or employment of any person by a criminal justice agency, or any appointment or employment of a person previously employed by a criminal justice agency who has not been employed by a criminal justice agency for the 12-month period preceding this appointment or employment, or any appointment or employment of a previously certified criminal justice officer to a position which requires a different type of certification."

Section 17.3.(b) G.S. 17C-3 reads as rewritten:

"**§ 17C-3. North Carolina Criminal Justice Education and Training Standards Commission established; members; terms; vacancies.**

(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~~ 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 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.

(b) The members shall be appointed for staggered terms. The initial appointments shall be made prior to September 1, 1983, and the appointees shall hold office until July 1 of the year in which their respective terms expire and until their successors are appointed and qualified as provided hereafter:

For the terms of one year: one member from subdivision (1) of subsection (a), serving as a police chief; three members from subdivision (2) of subsection (a), one serving as a police official, and two criminal justice officers; one member from subdivision (4) of subsection (a), appointed by the North Carolina Law-Enforcement Training Officers' Association; and two members from subdivision (5) of subsection (a), one appointed by the Governor and one appointed by the Attorney General.

For the terms of two years: one member from subdivision (1) of subsection (a), serving as a police chief; one member from subdivision (2) of subsection (a), serving as a police official; and two members from subdivision (4) of subsection (a), one appointed by the League of Municipalities and one appointed by the North Carolina Association of District Attorneys.

For the terms of three years: two members from subdivision (1)of subsection (a), one police chief appointed by the North Carolina Association of Chiefs of Police and one police chief appointed by the Governor; one member from subdivision (2) of subsection (a), serving as a police official; and three members from subdivision (4) of subsection (a), one appointed by the North Carolina Law-Enforcement Women's Association, one appointed by the North Carolina Criminal Justice Association, and one appointed by the North State Law-Enforcement Officers' Association.

Thereafter, as the term of each member expires, his successor shall be appointed for a term of three years. Notwithstanding the appointments for a term of years, each member shall serve at the will of the appointing authority.

The Attorney General, the Secretary of the Department of Crime Control and Public Safety, ~~the Secretary of the Department of Correction,~~ the President of The University of North Carolina, the Director of the Institute of Government, and the President of the Department of Community Colleges shall be continuing members of the Commission during their tenure. These members of the Commission shall serve ex officio and shall perform their duties on the Commission in addition to the other duties of their offices. The ex officio members may elect to serve personally at any or all meetings of the Commission or may designate, in writing, one member of their respective office, department, university or agency to represent and vote for them on the Commission at all meetings the ex officio members are unable to attend.

Vacancies in the Commission occurring for any reason shall be filled, for the unexpired term, by the authority making the original appointment of the person causing the vacancy. A vacancy may be created by removal of a Commission member by majority vote of the Commission for misconduct, incompetence,

or neglect of duty. A Commission member may be removed only pursuant to a hearing, after notice, at which the member subject to removal has an opportunity to be heard."

Section 17.3.(c) This section becomes effective June 30, 2001, unless the Criminal Justice Education and Training Standards Commission has established and implemented by the convening of the 2001 General Assembly a new certification system for employees in the Department of Correction, as originally requested of the Commission in Section 18.14 of S.L. 1999-237 for implementation no later than July 1, 2000. The Commission shall report on the new system to the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety by the convening of the 2001 General Assembly. If the system has not been established and implemented by the convening of the 2001 General Assembly, it is the intent of the General Assembly to develop a new system for the certification of employees of the Department of Correction and to enact that system to coincide with the repeal of the Commission's authority over the certification of correctional employees effective June 30, 2001.

SENATE BILL 68
NC CRIMINAL JUSTICE EDUCATION & TRAINING STANDARDS COMMISSION

APPOINTING AUTHORITY	CURRENT LAW	ORIGINAL BILL	BILL AS PASSED FROM SENATE
NC Assoc of Chiefs of Police	3 police chiefs	Same	Same
Governor	1 police chief; 1 citizen *Total of 2*	Same Same 2 DOC correctional officers in management position from (1) Div of Community Corrections and (1) Div of Prisons *Total of 4*	Same Same *Total of 2*
NC Police Executives Association	3 police officials	Same	Same
NC Law-Enforcement Officers' Association	2 certified criminal justice officers; 1 sworn law-enforcement officer *Total of 3*	Same Same *Total of 3*	Same Same *Total of 3*
League of Municipalities	1 mayor	Same	Same
NC Law-Enforcement Training Officers' Assoc	1 law-enforcement training officer	Same	Same
NC Criminal Justice Assoc	1 criminal justice professional	Same	Same
NC Law-Enforcement Women's Assoc	One member	Same	Same
NC Assoc of DA's	1 DA	Same	Same
Attorney General	1 citizen	Same	same

SENATE BILL 68
NC CRIMINAL JUSTICE EDUCATION & TRAINING STANDARDS COMMISSION

APPOINTING AUTHORITY	CURRENT LAW	ORIGINAL BILL	BILL AS PASSED FROM SENATE
Speaker	1 member *Total of 1*	Same 1 DOC correctional officer in management position from Div. Of Community Corrections *Total of 2*	4 members – one of whom is DOC officer in management position *Total of 4*
President Pro Tempore	1 member *Total of 1*	Same 1 DOC correctional officer in management position from Div of Prisons *Total of 2*	4 members – one of whom is DOC officer in management position *Total of 4*
Secretary of Correction	None *Total of 0*	1 DOC correctional officer assigned to Office of Staff Dev. & Training *Total of 1*	None *Total of 0*
TOTAL	**19**	**24**	**25**

EX OFFICIO MEMBERS (7)

1. Attorney General
2. Secretary of Crime Control & Public Safety
3. Secretary of Correction
4. President of NC Community Colleges System
5. Secretary of Juvenile Justice & Delinquency Prevention
6. President of The University of NC
7. Director of Institute of Government

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1070 A BILL TO BE ENTITLED AN ACT TO AMEND THE PROVISIONS FOR THE RESIGNATION, REMOVAL, AND RENUNCIATION OF TRUSTEES AND FOR THE APPOINTMENT OF SUCCESSOR TRUSTEES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill, unfavorable as to original bill, and recommendation that the committee substitute bill be re-referred to the Committee on Finance.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1070
PROPOSED COMMITTEE SUBSTITUTE H1070-PCS9164-SK-23

Short Title: Removal/Resignation of Trustees. (Public)

Sponsors:

Referred to:

April 10, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROVISIONS FOR THE RESIGNATION, REMOVAL, AND RENUNCIATION OF TRUSTEES AND FOR THE APPOINTMENT OF SUCCESSOR TRUSTEES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 36A of the General Statutes reads as rewritten:

"Article 3.

"~~Resignation, Removal, and Renunciation of Trustees.~~ Trust Administration.

"~~**§ 36A-22. Applicability of this Article.**~~

~~(a) Except when otherwise provided by law, the term "trustee," as used in this Article, includes "trustees," "guardians," and other fiduciaries.~~

~~(b) The resignation, removal, and renunciation of personal representatives and collectors shall be governed by the provisions of Articles 5, 9, and 10 of Chapter 28A.~~

~~(c) The substitution of trustees in mortgages and deeds of trust shall be governed by the provisions of G.S. 45-10.~~

"**§ 36A-22.1. Definitions.**

As used in this Article:

(1) "Beneficiary" means a person who has any present or future interest, vested or contingent, in a trust, including (i) the owner of an interest by assignment or other transfer; and (ii) any person entitled to enforce a charitable trust.

(2) "Fiduciary" includes personal representatives, guardians of the person, guardians of the estate, attorneys-in-fact, and trustees.

(3) "Interested person" includes creditors, beneficiaries, and any others having a property right in or a claim against a trust estate which may be affected by the proceeding. The term also includes fiduciaries representing interested persons. The meaning of the term as it relates to particular persons may vary from time to time and must be

determined according to the particular purposes of and matter involved in a particular proceeding.

(4) "Person" means an individual person, a corporation, an organization, or other legal entity.

(5) "Trust" includes any express trust, private or charitable, with additions to the trust, wherever and however created. The term includes both testamentary and inter vivos trusts, regardless of whether the trustee is required to account to the clerk. The term also includes a trust created for or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term does not include other constructive trusts, resulting trusts, conservatorships, personal representatives, trust accounts as defined in G.S. 53-146.2, 54-109.57, 54B-130, and 54C-166, trust funds subject to G.S. 90-210.61, custodial arrangements pursuant to G.S. 33A-1 through G.S. 33A-24 and G.S. 33B-1 through G.S. 33B-22, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, or any arrangement under which a person is nominee or escrowee for another.

(6) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court. The term does not include trustees in mortgages and deeds of trust. Substitution of trustees in mortgages and deeds of trust are governed by the provisions of G.S. 45-10.

"~~§36A-23. Clerk's power to accept resignations.~~

~~The clerks of superior courts of this State have power and jurisdiction to accept the resignation of trustees and to appoint their successors in the manner provided by this Article.~~

"**§ 36A-23.1. Court; jurisdiction of trusts.**

(a) The clerks of superior court of this State have original jurisdiction over all proceedings initiated by interested persons concerning the internal affairs of trusts except proceedings to modify or terminate trusts. Except as provided in subdivision (3) of this subsection, the clerk's jurisdiction is exclusive. Proceedings that may be maintained under this subsection are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and trust beneficiaries, to the extent that those matters are not otherwise provided for in the governing instrument. These include proceedings:

(1) To appoint or remove a trustee;

(2) To review trustees' fees pursuant to G.S. 32-50 and review and settle interim or final accounts; and

(3) To ascertain beneficiaries, to determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments, and to determine the existence or nonexistence of trusts created other than by will and the existence or nonexistence of any immunity, power, privilege, duty, or right. The clerk, on the clerk's own motion, may determine that a proceeding to determine an issue listed in this subdivision shall be originally heard by a superior court judge.

(b) The management and distribution of a trust estate, submission of accounts and reports to beneficiaries, payment of trustees' fees and other obligations of a trust, acceptance and change of trusteeship, and other aspects of the administration of a trust shall proceed expeditiously, consistent with the terms of the trust, free of judicial intervention and without order, approval, or other action of any court, subject to the jurisdiction of the clerk as invoked by interested parties or as otherwise exercised as provided by law. Nothing in this section shall be construed (i) to confer upon the clerk any authority to regulate or supervise the actions of a trustee except to the extent that the trustee's actions are inconsistent with the provisions of the governing instrument or of State law, or (ii) to confer upon any interested person any additional right, remedy, or cause of action not otherwise conferred by law.

(c) Nothing in this section affects the right of a person to file an action for declaratory relief under the provisions of Article 26 of Chapter 1 of the General Statutes.

"~~§ 36A-24. Petition; contents and verification.~~

~~When any trustee desires to resign his trust, he shall file his petition in the office of the clerk of superior court of the county in which he qualified or in which the instrument under which he claims is registered. The petition shall set forth all the facts in connection with the appointment and qualifications as such trustee, with a copy of the instrument under which he acts; shall state the names, ages, and residences of all the beneficiaries and other parties interested in the trust estate; shall contain a full and complete statement of all debts or liabilities due by the estate, and a full and complete statement of all assets belonging to said estate, and a full and complete statement of all moneys, securities, or assets in the hands of the trustee and due the estate, together with a full statement of the reasons the applicant should be permitted to resign his trust. The petition shall be verified by the oath of the applicant.~~

"**§ 36A-24.1. Trust proceedings; venue.**

(a) If the trustee is required to account to the clerk, then unless the terms of the governing instrument provide otherwise, venue for proceedings under G.S. 36A-23.1 involving trusts is the place where the accountings are filed.

(b) If the trustee is not required to account to the clerk, then unless the terms of the governing instrument provide otherwise, venue for proceedings under G.S. 36A-23.1 involving trusts is in any county of this State in which the trust has its principal place of administration or where any beneficiary resides.

(c) Unless otherwise designated in the governing instrument, the principal place of administration of the trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if the trustee has no such place of business. In the case of cotrustees, the principal place of administration, if not otherwise designated in the governing instrument, is:

(1) The usual place of business of the corporate trustee if there is but one corporate cotrustee; or

(2) The usual place of business or residence of any of the cotrustees.

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

~~Upon the filing of the petition, the clerk shall docket the cause as a special proceeding, with the trustee as plaintiff and the beneficiaries as defendants, and shall issue the summons for the defendants. Proceedings under this section are subject to Article 33 of Chapter 1 of the General Statutes. A beneficiary, creditor, or other person interested in the trust estate has the right to answer the petition and to offer evidence why the prayer of the petition should not be granted. The clerk shall then proceed to hear and determine the matter. If it appears to the clerk that the best interests of the creditors and the beneficiaries demand that the resignation of the trustee be accepted or if it appears to the clerk that sufficient reasons exist for allowing the resignation and that the resignation can be allowed without prejudice to the rights of creditors or the beneficiaries, the clerk may, in the exercise of the clerk's discretion, allow the applicant to resign. The clerk shall appoint the successor of the petitioner in the manner provided in this Article.~~

"**§ 36A-25.1. Trust proceedings; dismissal of matters relating to foreign trusts.**

The clerk of superior court shall not, over the objection of a party, entertain proceedings under G.S. 36A-23.1 involving a trust having its principal place of administration in another state, except:

(1) When all appropriate parties could not be bound by litigation in the courts of the state in which the trust had its principal place of administration; or

(2) When the interests of justice otherwise would be seriously impaired.

The clerk may condition a stay or dismissal of a proceeding under this section on the consent of any party to jurisdiction of the state in which the trust has its principal place of administration, or the clerk may grant a continuance or enter any other appropriate order.

"~~§ 36A-26. Resignation allowed; costs; judge's approval.~~

~~In making an order allowing the trustee to resign, the clerk shall make such order concerning the costs of the proceedings and commissions to the trustee as may be just. If there is no appeal from the decision and order of the clerk within the time prescribed by law, the proceedings shall be submitted to the judge of the superior court and approved by him before the same shall become effective.~~

"**§ 36A-26.1. Trust proceedings; necessary parties.**

Proceedings under G.S. 36A-23.1 are initiated by filing a petition or complaint in the office of the clerk of superior court. Upon the filing of the petition, the clerk shall docket the cause as an estate matter. All known beneficiaries, trustees, or cotrustees not joined as petitioners shall be joined as respondents. The clerk shall issue the summons for the respondents. The clerk may order notification of additional persons. An order is valid as to all persons who are given notice of the proceeding even if all interested persons are not notified. The beneficiaries, creditors, or any other persons interested in the trust estate have the right to answer the petition and to offer evidence against granting the petition. The clerk shall then proceed to hear and determine the matter as provided for in G.S. 1-301.3.

"**§ 36A-26.2. Waiver of notice.**

An interested person, or a person representing an interested person as provided in G.S. 36A-26.3, may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding.

"**§ 36A-26.3. When parties represented by others.**

In proceedings involving trusts, the following rules apply:

(1) Interests to be affected shall be described in pleadings that give reasonable information to interested persons by name or class, by reference to the instrument creating the interests, or in some other appropriate manner.

(2) Interested persons shall be represented by others in the following cases:

a. The sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, shall represent other persons to the extent that their interests, as objects, takers in default, or otherwise, are subject to the power.

b. If the clerk finds that there is no conflict of interest between the interested person and the person representing the interested person, or among persons represented, a guardian of the estate shall represent the person whose estate the guardian controls; a guardian of the person shall represent the ward if no guardian of the ward's estate has been appointed; a trustee shall represent beneficiaries of the trust in proceedings to probate a will establishing or adding to the trust, to review the acts or accounts of a prior fiduciary, and in other proceedings involving creditors or other third parties; and a personal representative shall represent persons interested in the undistributed assets of the decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no guardian of the estate or guardian of the person has been appointed, a parent shall represent a minor child.

c. If the clerk finds that another party has an interest in the proceeding substantially identical to the interest of an unborn or unascertained person who is not otherwise represented, that party shall represent the unborn or unascertained person.

d. At any point in a proceeding, a clerk shall allow an attorney-in-fact to represent the attorney-in-fact's principal, provided that, if the principal is incapacitated, the power of attorney is durable as defined in G.S. 32A-8, and provided that the power of attorney grants to the attorney-in-fact either (i) the authority to do, execute, or perform any act that the principal might or could do or otherwise evidences the principal's intent to give the attorney-in-fact full power to handle the principal's affairs or deal with the principal's property; (ii) the powers described under G.S. 32A-2(2) and G.S. 32A-2(8) and, if interests in real property are affected, the powers described in G.S. 32A-2(1); or (iii) other direct or indirect authority the clerk deems sufficient in the clerk's discretion.

(3) At any point in the proceeding, the clerk may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity is unknown, if the clerk determines that representation of the interest otherwise would be inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests. The clerk shall set forth the clerk's reasons for appointing a guardian ad litem as a part of the record of the proceedings.

Nothing in this section authorizes the disbursement of funds distributable to an interested person to a person authorized to represent that person under this section.

"**§ 36A-27. ~~Appeal; stay effected by appeal.~~ Appeal.**

Any party in interest may appeal from the decision of the clerk to ~~the judge at chambers, and in such event the procedure for appeal is governed by Article 27A of Chapter 1 of the General Statutes. If the clerk allows the resignation and an appeal is taken from the decision of the clerk, the appeal stays the judgment and order of the clerk until the cause is heard and determined by the judge upon the appeal taken.~~ a superior court judge as provided for in G.S. 1-301.3.

"**§ 36A-28:** Repealed by Session Laws 1999-216, s. 2.

"**§ 36A-29. Final accounting before resignation.**

~~No~~ If the trustee is required to account to the clerk of superior court, then unless the terms of the governing instrument provide otherwise, no trustee shall be ~~allowed or~~ permitted to resign ~~his trust~~ as trustee until ~~he shall first file with the court his~~ a final account of the trust ~~estate,~~ estate is filed with the clerk, and until the court shall be satisfied that the ~~said~~ account is true and correct.

~~**§ 36A-30. Resignation effective on settlement with successor.**~~

~~In case the resignation of the trustee is accepted by the court, the resignation shall not release or discharge the trustee from liability, until he shall have filed an account acceptable to his successor in full for all moneys, securities, property, or other assets or things of value in his possession or under his control or which should be in his possession or under his control belonging to the trust estate, and such account has been approved by the court.~~

"**§ 36A-31. ~~Court to appoint successor; when~~ When bond required.**

~~If the court shall allow any trustee to resign his trust upon compliance with the provisions of this Article, it shall be the duty of the court to proceed to appoint some fit and suitable person as the successor of such trustee; and the court shall require the person so appointed to give bond with sufficient surety, approved by the court,~~ A trustee need not provide bond to secure performance of the trustee's duties unless required by the terms of the governing instrument, reasonably requested by a beneficiary, or found by the clerk to be necessary to protect the interests of beneficiaries who are not able to protect themselves and whose interests otherwise are not adequately represented. However, in no event shall bond be required if the governing instrument directs otherwise. On petition of the trustee or other interested person, the clerk may excuse a requirement of bond, reduce the amount of the bond, release the surety, or permit the substitution of another bond with the same or different sureties. If the governing instrument is silent as to the requirement of a bond and the clerk finds that no bond is necessary, or if the clerk excuses or reduces the bond requirement, the clerk's decision must be approved by a superior court judge unless all beneficiaries have been notified of the decision. If bond is required, it shall be in a sum double the value of the personal property to come into ~~his~~ the trustee's hands when bond is executed by a personal ~~surety~~ surety, and in an amount not less than one and one-fourth times the value of all personal property of the ~~decedent~~ trust estate when the bond is secured by a suretyship bond executed by a corporate surety company authorized by the Commissioner of Insurance to do business in this State, provided that the clerk of superior court, when the value of the personal property exceeds one hundred thousand dollars ($100,000), may accept bond in an amount equal to the value of the personal property plus ten percent (10%) thereof, conditioned upon the faithful performance of ~~his~~ the trustee's duties ~~as such trustee~~ and for the payment to the persons entitled to receive ~~the same of~~ all moneys, assets, or other things of value which may come into ~~his hands; provided, that where by the terms of the creating instrument the trustee who has resigned was not required to give bond and did not give bond and an intent is expressed in the creating instrument that a successor trustee shall serve without bond, or where the clerk, upon due investigation finds that bond is not necessary for the protection of the estate, the clerk, with the approval of the judge, upon the petition of any party in interest, may waive the requirement of a bond for the successor trustee and permit said successor trustee to serve without bond.~~ the trustee's hands. All bonds executed under the provisions of this Article shall be filed with the clerk.

"**§ 36A-32. Rights and duties devolve on successor.**

~~Upon the acceptance by the court of the resignation of any trustee, and upon the appointment by the court of his successor in the manner provided by this Article, the~~ A successor trustee shall succeed to all the rights, powers, and privileges, and shall be subject to all the duties, liabilities, and responsibilities that were imposed upon the original trustee unless a contrary intent appears from the ~~creating~~ governing instrument.

"**§ 36A-33. Appointment of ~~successors to deceased or incapacitated trustees.~~ successor trustee on clerk's own motion.**

~~Upon the death or incapacity of a trustee, a new trustee may be appointed on application by a beneficiary or other interested person by petition to the clerk of the superior court of the county in which the instrument under which the deceased or incapacitated trustee claimed is registered. The petition shall make all necessary parties defendants. Proceedings under this section are special proceedings subject to Article 33 of Chapter 1 of the General Statutes. A beneficiary, creditor, or other person interested in the trust estate has the right to answer the petition and to offer evidence why the prayer of the petition should not be granted. After hearing the matter, the clerk may appoint the person named in the petition or some other fit and suitable person or corporation to act as the successor of the deceased or incapacitated trustee. The clerk shall require the person so appointed to give bond as required in G.S. 36A-31. If the instrument under which the deceased or incapacitated trustee claimed, however, does not require the trustee to give bond and expresses an intent that a successor trustee serve without bond, or if the clerk upon due investigation, finds that bond is not necessary for the protection of the estate, the requirement of a bond for the successor trustee may be waived as provided in G.S. 36A-31. Any party in interest may appeal from the order or judgment of the clerk as provided in Article 27A of Chapter 1 of the General Statutes.~~

~~Nothing~~ Unless the governing instrument provides otherwise, if the trustee is required to account to the clerk of court, nothing in this ~~section~~ Article shall be construed to limit the authority of the clerk ~~of superior court~~ to appoint a successor trustee to a deceased or incapacitated trustee upon the clerk's own motion.

"**~~§ 36A-34. Testamentary trustee may renounce.~~**

~~(a) Any person or corporation named as trustee in any will admitted to probate in this State, or any substitute trustee, may at any time prior to qualifying as required by G.S. 36A-107 or taking any action as trustee if such qualification is not required, and whether or not such person or corporation is entitled to so qualify or act, renounce such trusteeship by a writing filed with the clerk of superior court of the county in which the will is admitted to probate. Upon receipt of such renunciation the clerk shall give notice thereof to all persons interested in the trust, including successor or substitute trustees named in the will, which notice shall also comply with the requirements of subsection (e) of this section.~~

~~(b) If the will names or identifies a substitute trustee in case of renunciation, the provisions of the will shall be complied with, and the clerk shall enter an appropriate order appointing the substitute trustee in accordance therewith unless the substitute trustee also renounces. A substitute trustee so named shall succeed to the office of~~

~~trustee upon the date of the order of appointment by the clerk unless the will provides otherwise.~~

~~(c) If the will does not name or identify a substitute trustee in case of renunciation, and it appears that a substitute trustee should be appointed, the clerk shall appoint some fit and suitable person or corporation as substitute trustee. If the will does not name or identify a substitute trustee, but contains provisions regarding the selection of a substitute trustee, such provisions shall be complied with unless the clerk determines that such provisions would result in the selection of an unfit or unsuitable trustee. A substitute trustee so appointed shall succeed to the office of trustee upon the date of the order of appointment unless the will provides otherwise.~~

~~(d) A substitute trustee shall, upon succeeding to the office of trustee, unless the will provides otherwise, have such powers and duties and be vested with the title to the property included in the trust, as if the substitute trustee had been originally named in the will.~~

~~(e) Each notice required by this section shall be written notice, and shall identify the proceeding and apprise the person to be notified of the nature of the action to be taken. Service of such notice may be in the same manner as is provided for service of notice in civil actions, or by mailing the notice to the person to be notified at his last known address. Service of notice must be completed not less than 10 days prior to the date the hearing is held or the action is taken. Service by mail shall be complete upon deposit of the notice enclosed in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Post Office Department.~~

~~(f) The clerk of superior court shall file, docket, and index all proceedings pursuant to this section in the same manner as special proceedings, and shall also enter with the will a notation that the trustee has renounced and a reference to the file, or other place where the record may be found.~~

"~~**§ 36A-35. Removal of trustee.**~~

~~Any beneficiary, cotrustee or other person interested in the trust estate may file a petition in the office of the clerk of superior court of the county having jurisdiction over the administration of the trust for the removal of a trustee or cotrustee who fails to comply with the requirements of this Chapter or a court order, or who is otherwise unsuitable to continue in office. Upon the filing of the petition, the clerk shall docket the cause as a special proceeding, with the petitioner as plaintiff. All known beneficiaries, trustees, or cotrustees not joined as plaintiffs shall be joined as defendants. Upon proper notice and hearing, the clerk may, in the exercise of his discretion, order the removal of the trustee or cotrustee and proceed to appoint a successor. The procedure for notice, hearing, appeals, and the effective date of the order, shall be in accord with that provided for in the case of a resignation of a trustee and the appointment of a successor in G.S. 36A-24 through 36A-32.~~

~~Nothing in this section shall be construed to limit the authority of the clerk of superior court to remove a trustee or cotrustee for failure to comply with the~~

~~requirements of this Chapter or a court order, or who is otherwise unsuitable to continue in office.~~

"§ 36A-36. Appointment of special trustee.

If it appears necessary to the protection of the trust estate, the clerk of superior court having jurisdiction ~~of~~ over the administration of the trust may appoint a special trustee until a successor trustee can be appointed or, where a trust has terminated, to distribute the assets. A special trustee may be appointed without notice and may be removed whenever the court so orders. The special trustee shall give such bond, if any, as the court may require and shall have the powers conferred by the order of appointment.

"§ 36A-37. Consolidation, merger, reorganization, reincorporation, or transfer of assets and liabilities by a corporate trustee.

Whenever any corporate trustee doing business in this State shall consolidate or merge with or shall sell to and transfer its assets and liabilities to any other corporation, or where such corporate trustee is in any manner reorganized or ~~reincorporated~~ reincorporated, all existing rights, powers, duties, and liabilities of such consolidating, merging, transferring, reorganizing or reincorporating corporation as trustee shall, upon the effective date of such consolidation, merger, reorganization or reincorporation, or sale and transfer, vest in and devolve upon the transferee corporation or the consolidated, merged, reorganized or reincorporated corporation in the manner prescribed in G.S. 53-17.

~~**"§ 36A-38. Powers of successor trustee.**~~

~~Unless otherwise provided in the creating instrument, all powers conferred upon the trustee by such instrument attached to the office, as provided in G.S. 36A-72, and are exercisable by the trustee from time to time holding the office.~~

"§ 36A-39. Powers of cotrustees.

Unless otherwise provided in the ~~creating~~ governing instrument, if one of several trustees dies, resigns, or is removed, the remaining trustees shall have all rights, title, and powers of all the original trustees. If the ~~creating~~ governing instrument manifests an intent that a successor trustee be appointed to fill a vacancy, the remaining trustees may exercise the powers of all the original trustees until such time as a successor is ~~appointed.~~ appointed, except those powers which the remaining trustees are prohibited from exercising under the governing instrument or by law.

"§ 36A-40. Vesting of title.

A special or successor trustee is vested with the title of the ~~original~~ predecessor trustee. A predecessor trustee ~~who resigns, is removed, or is otherwise severed from his office~~ shall execute such documents transferring title to trust property as may be appropriate to facilitate administration of the trust and upon ~~his~~ the predecessor trustee's failure to do so, the clerk may order ~~him~~ the predecessor trustee to execute such documents, or the clerk may ~~himself~~ transfer title.

~~**"§ 36A-41. Applicability.**~~

~~The provisions of this Article shall not apply to proceedings begun before January 1, 1978.~~

"**§§ 36A-42 through 36A-46:** Reserved for future codification purposes."

SECTION 2. G.S. 7A-307(a) reads as rewritten:

"(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, and of trusts under wills and under powers of attorney, in trust proceedings under G.S. 36A-23.1, and in collections of personal property by affidavit, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of ten dollars ($10.00), to be remitted to the county. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(2) For support of the General Court of Justice, the sum of twenty-six dollars ($26.00), plus an additional forty cents (40¢) per one hundred dollars ($100.00), or major fraction thereof, of the gross estate, not to exceed three thousand dollars ($3,000). Gross estate shall include the fair market value of all personalty when received, and all proceeds from the sale of realty coming into the hands of the fiduciary, but shall not include the value of realty. In collections of personal property by affidavit, the fee based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information reported in the inventory and shall be paid when the inventory is filed with the clerk. If additional gross estate, including income, comes into the hands of the fiduciary after the filing of the inventory, the fee for such additional value shall be assessed and paid upon the filing of any account or report disclosing such additional value. For each filing the minimum fee shall be ten dollars ($10.00). Sums collected under this subsection shall be remitted to the State Treasurer.

(2a) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars ($100.00), or major fraction, of the gross estate, not to exceed three thousand dollars ($3,000), shall not be assessed on personalty received by a trust under a will when the estate of the decedent was administered under Chapters 28 or 28A of the General Statutes. Instead, a fee of fifteen dollars ($15.00) shall be assessed on the filing of each annual and final account.

(2b) Notwithstanding subdivisions (1) and (2) of this subsection, no costs shall be assessed when the estate is administered or settled pursuant to G.S. 28A-25-6.

(2c) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars ($100.00), or major fraction, of the gross estate shall not be assessed on the gross estate of a trust that is

the subject of a proceeding under G.S. 36A-23.1 if there is no requirement in the trust that accountings be filed with the clerk.

(3) For probate of a will without qualification of a personal representative, the clerk shall assess a facilities fee as provided in subdivision (1) of this subsection and shall assess for support of the General Court of Justice, the sum of seventeen dollars ($17.00)."

SECTION 3. This act becomes effective January 1, 2002, and applies to all trustees covered by the provisions of Article 36A of the General Statutes, whether administering trusts established on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1070
PROPOSED COMMITTEE SUBSTITUTE H1070-CSSK-23 [v.1]

4/18/2001 12:48:08 PM

Short Title: Removal/Resignation of Trustees. (Public)

Sponsors:

Referred to:

April 10, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROVISIONS FOR THE RESIGNATION, REMOVAL, AND RENUNCIATION OF TRUSTEES AND FOR THE APPOINTMENT OF SUCCESSOR TRUSTEES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 36A of the General Statutes reads as rewritten:

"Article 3.

"~~Resignation, Removal, and Renunciation of Trustees.~~ Trust Administration.

"~~**§ 36A-22. Applicability of this Article.**~~

~~(a) Except when otherwise provided by law, the term "trustee," as used in this Article, includes "trustees," "guardians," and other fiduciaries.~~

~~(b) The resignation, removal, and renunciation of personal representatives and collectors shall be governed by the provisions of Articles 5, 9, and 10 of Chapter 28A.~~

~~(c) The substitution of trustees in mortgages and deeds of trust shall be governed by the provisions of G.S. 45-10.~~

"**§ 36A –22.1. Definitions.**

As used in this Article:

(1) "Beneficiary" means a person who has any present or future interest, vested or contingent, in a trust, including (i) the owner of an interest by assignment or other transfer; and (ii) any person entitled to enforce a charitable trust.

(2) "Fiduciary" includes personal representatives, guardians of the person, guardians of the estate, attorneys-in-fact, and trustees.

(3) "Interested person" includes creditors, beneficiaries, and any others having a property right in or a claim against a trust estate which may be affected by the proceeding. The term also includes fiduciaries representing interested persons. The meaning of the term as it relates to particular persons may vary from time to time and must be

determined according to the particular purposes of and matter involved in a particular proceeding.

(4) "Person" means an individual person, a corporation, an organization, or other legal entity.

(5) "Trust"' includes any express trust, private or charitable, with additions to the trust, wherever and however created. The term includes both testamentary and inter vivos trusts, regardless of whether the trustee is required to account to the clerk. The term also includes a trust created for or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term does not include other constructive trusts, resulting trusts, conservatorships, personal representatives, trust accounts as defined in G.S. 53-146.2, 54-109.57, 54B-130, and 54C-166, trust funds subject to G.S. 90-210.61, custodial arrangements pursuant to G.S. 33A-1 through G.S. 33A-24 and G.S. 33B-1 through G.S. 33B-22, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, or any arrangement under which a person is nominee or escrowee for another.

(6) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court. The term does not include trustees in mortgages and deeds of trust. Substitution of trustees in mortgages and deeds of trust are governed by the provisions of G.S. 45-10.

~~"§36A-23. Clerk's power to accept resignations.~~

~~The clerks of superior courts of this State have power and jurisdiction to accept the resignation of trustees and to appoint their successors in the manner provided by this Article.~~

"§ 36A-23.1. Court; jurisdiction of trusts.

(a) The clerks of superior court of this State have original jurisdiction over all proceedings initiated by interested persons concerning the internal affairs of trusts except proceedings to modify or terminate trusts. Except as provided in subdivision (3) of this subsection, the clerk's jurisdiction is exclusive. Proceedings that may be maintained under this subsection are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and trust beneficiaries, to the extent that those matters are not otherwise provided for in the governing instrument. These include proceedings:

(1) To appoint or remove a trustee;

(2) To review trustees' fees pursuant to G.S. 32-50 and review and settle interim or final accounts; and

(3) To ascertain beneficiaries, to determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments, and to determine the existence or nonexistence of trusts created other than by will and the existence or nonexistence of any immunity, power, privilege, duty, or right. The clerk, on the clerk's own motion, may determine that a proceeding to determine an issue listed in this subdivision shall be originally heard by a superior court judge.

(b) The management and distribution of a trust estate, submission of accounts and reports to beneficiaries, payment of trustees' fees and other obligations of a trust, acceptance and change of trusteeship, and other aspects of the administration of a trust shall proceed expeditiously, consistent with the terms of the trust, free of judicial intervention and without order, approval, or other action of any court, subject to the jurisdiction of the clerk as invoked by interested parties or as otherwise exercised as provided by law. Nothing in this section shall be construed (i) to confer upon the clerk any authority to regulate or supervise the actions of a trustee except to the extent that the trustee's actions are inconsistent with the provisions of the governing instrument or of State law, or (ii) to confer upon any interested person any additional right, remedy, or cause of action not otherwise conferred by law.

(c) Nothing in this section affects the right of a person to file an action for declaratory relief under the provisions of Article 26 of Chapter 1 of the General Statutes.

~~"§ 36A-24. Petition; contents and verification.~~

~~When any trustee desires to resign his trust, he shall file his petition in the office of the clerk of superior court of the county in which he qualified or in which the instrument under which he claims is registered. The petition shall set forth all the facts in connection with the appointment and qualifications as such trustee, with a copy of the instrument under which he acts; shall state the names, ages, and residences of all the beneficiaries and other parties interested in the trust estate; shall contain a full and complete statement of all debts or liabilities due by the estate, and a full and complete statement of all assets belonging to said estate, and a full and complete statement of all moneys, securities, or assets in the hands of the trustee and due the estate, together with a full statement of the reasons the applicant should be permitted to resign his trust. The petition shall be verified by the oath of the applicant.~~

"**§ 36A-24.1. Trust proceedings; venue.**

(a) If the trustee is required to account to the clerk, then unless the terms of the governing instrument provide otherwise, venue for proceedings under G.S. 36A-23.1 involving trusts is the place where the accountings are filed.

(b) If the trustee is not required to account to the clerk, then unless the terms of the governing instrument provide otherwise, venue for proceedings under G.S. 36A-23.1 involving trusts is in any county of this State in which the trust has its principal place of administration or where any beneficiary resides.

(c) Unless otherwise designated in the governing instrument, the principal place of administration of the trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if the trustee has no such place of business. In the case of cotrustees, the principal place of administration, if not otherwise designated in the governing instrument, is:

(1) The usual place of business of the corporate trustee if there is but one corporate cotrustee; or

(2) The usual place of business or residence of any of the cotrustees.

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

~~Upon the filing of the petition, the clerk shall docket the cause as a special proceeding, with the trustee as plaintiff and the beneficiaries as defendants, and shall issue the summons for the defendants. Proceedings under this section are subject to Article 33 of Chapter 1 of the General Statutes. A beneficiary, creditor, or other person interested in the trust estate has the right to answer the petition and to offer evidence why the prayer of the petition should not be granted. The clerk shall then proceed to hear and determine the matter. If it appears to the clerk that the best interests of the creditors and the beneficiaries demand that the resignation of the trustee be accepted or if it appears to the clerk that sufficient reasons exist for allowing the resignation and that the resignation can be allowed without prejudice to the rights of creditors or the beneficiaries, the clerk may, in the exercise of the clerk's discretion, allow the applicant to resign. The clerk shall appoint the successor of the petitioner in the manner provided in this Article.~~

"**§ 36A-25.1. Trust proceedings; dismissal of matters relating to foreign trusts.**

The clerk of superior court shall not, over the objection of a party, entertain proceedings under G.S. 36A-23.1 involving a trust having its principal place of administration in another state, except:

(1) When all appropriate parties could not be bound by litigation in the courts of the state in which the trust had its principal place of administration; or

(2) When the interests of justice otherwise would be seriously impaired.

The clerk may condition a stay or dismissal of a proceeding under this section on the consent of any party to jurisdiction of the state in which the trust has its principal place of administration, or the clerk may grant a continuance or enter any other appropriate order.

~~"§ 36A-26. Resignation allowed; costs; judge's approval.~~

~~In making an order allowing the trustee to resign, the clerk shall make such order concerning the costs of the proceedings and commissions to the trustee as may be just. If there is no appeal from the decision and order of the clerk within the time prescribed by law, the proceedings shall be submitted to the judge of the superior court and approved by him before the same shall become effective.~~

"**§ 36A-26.1. Trust proceedings; necessary parties.**

Proceedings under G.S. 36A-23.1 are initiated by filing a petition or complaint in the office of the clerk of superior court. Upon the filing of the petition, the clerk shall docket the cause as an estate matter. All known beneficiaries, trustees, or cotrustees not joined as petitioners shall be joined as respondents. The clerk shall issue the summons for the respondents. The clerk may order notification of additional persons. An order is valid as to all persons who are given notice of the proceeding even if all interested persons are not notified. The beneficiaries, creditors, or any other persons interested in the trust estate have the right to answer the petition and to offer evidence against granting the petition. The clerk shall then proceed to hear and determine the matter as provided for in G.S. 1-301.3.

"**§ 36A-26.2. Waiver of notice.**

An interested person, or a person representing an interested person as provided in G.S. 36A-26.3, may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding.

"**§ 36A-26.3. When parties represented by others.**

In proceedings involving trusts, the following rules apply:

(1) Interests to be affected shall be described in pleadings that give reasonable information to interested persons by name or class, by reference to the instrument creating the interests, or in some other appropriate manner.

(2) Interested persons shall be represented by others in the following cases:

a. The sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, shall represent other persons to the extent that their interests, as objects, takers in default, or otherwise, are subject to the power.

b. If the clerk finds that there is no conflict of interest between the interested person and the person representing the interested person, or among persons represented, a guardian of the estate shall represent the person whose estate the guardian controls; a guardian of the person shall represent the ward if no guardian of the ward's estate has been appointed; a trustee shall represent beneficiaries of the trust in proceedings to probate a will establishing or adding to the trust, to review the acts or accounts of a prior fiduciary, and in other proceedings involving creditors or other third parties; and a personal representative shall represent persons interested in the undistributed assets of the decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no guardian of the estate or guardian of the person has been appointed, a parent shall represent a minor child.

c. If the clerk finds that another party has an interest in the proceeding substantially identical to the interest of an unborn or unascertained person who is not otherwise represented, that party shall represent the unborn or unascertained person.

d. At any point in a proceeding, a clerk shall allow an attorney-in-fact to represent the attorney-in-fact's principal, provided that, if the principal is incapacitated, the power of attorney is durable as defined in G.S. 32A-8, and provided that the power of attorney grants to the attorney-in-fact either (i) the authority to do, execute, or perform any act that the principal might or could do or otherwise evidences the principal's intent to give the attorney-in-fact full power to handle the principal's affairs or deal with the principal's property; (ii) the powers described under G.S. 32A-2(2) and G.S. 32A-2(8) and, if interests in real property are affected, the powers described in G.S. 32A-2(1); or (iii) other direct or indirect authority the clerk deems sufficient in the clerk's discretion.

(3) At any point in the proceeding, the clerk may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity is unknown, if the clerk determines that representation of the interest otherwise would be inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests. The clerk shall set forth the clerk's reasons for appointing a guardian ad litem as a part of the record of the proceedings.

Nothing in this section authorizes the disbursement of funds distributable to an interested person to a person authorized to represent that person under this section.

"**§ 36A-27. ~~Appeal; stay effected by appeal.~~ Appeal.**

Any party in interest may appeal from the decision of the clerk to ~~the judge at chambers, and in such event the procedure for appeal is governed by Article 27A of Chapter 1 of the General Statutes. If the clerk allows the resignation and an appeal is taken from the decision of the clerk, the appeal stays the judgment and order of the clerk until the cause is heard and determined by the judge upon the appeal taken.~~ a superior court judge as provided for in G.S. 1-301.3.

"**§ 36A-28:** Repealed by Session Laws 1999-216, s. 2, effective January 1, 2000.

"**§ 36A-29. Final accounting before resignation.**

~~No~~ If the trustee is required to account to the clerk of superior court, then unless the terms of the governing instrument provide otherwise, no trustee shall be ~~allowed or~~ permitted to resign ~~his trust~~ as trustee until ~~he shall first file with the court his~~ a final account of the trust ~~estate,~~ estate is filed with the clerk, and until the court shall be satisfied that the ~~said~~ account is true and correct.

~~**§ 36A-30. Resignation effective on settlement with successor.**~~

~~In case the resignation of the trustee is accepted by the court, the resignation shall not release or discharge the trustee from liability, until he shall have filed an account acceptable to his successor in full for all moneys, securities, property, or other assets or things of value in his possession or under his control or which should be in his possession or under his control belonging to the trust estate, and such account has been approved by the court.~~

"§ 36A-31. ~~Court to appoint successor; when~~ When bond required.

~~If the court shall allow any trustee to resign his trust upon compliance with the provisions of this Article, it shall be the duty of the court to proceed to appoint some fit and suitable person as the successor of such trustee; and the court shall require the person so appointed to give bond with sufficient surety, approved by the court,~~ A trustee need not provide bond to secure performance of the trustee's duties unless required by the terms of the governing instrument, reasonably requested by a beneficiary, or found by the clerk to be necessary to protect the interests of beneficiaries who are not able to protect themselves and whose interests otherwise are not adequately represented. However, in no event shall bond be required if the governing instrument directs otherwise. On petition of the trustee or other interested person, the clerk may excuse a requirement of bond, reduce the amount of the bond, release the surety, or permit the substitution of another bond with the same or different sureties. If the governing instrument is silent as to the requirement of a bond and the clerk finds that no bond is necessary, or if the clerk excuses or reduces the bond requirement, the clerk's decision must be approved by a superior court judge unless all beneficiaries have been notified of the decision. If bond is required, it shall be in a sum double the value of the personal property to come into ~~his~~ the trustee's hands when bond is executed by a personal ~~surety~~ surety, and in an amount not less than one and one-fourth times the value of all personal property of the ~~decedent~~ trust estate when the bond is secured by a suretyship bond executed by a corporate surety company authorized by the Commissioner of Insurance to do business in this State, provided that the clerk of superior court, when the value of the personal property exceeds one hundred thousand dollars ($100,000), may accept bond in an amount equal to the value of the personal property plus ten percent (10%) thereof, conditioned upon the faithful performance of ~~his~~ the trustee's duties ~~as such trustee~~ and for the payment to the persons entitled to receive ~~the same of~~ all moneys, assets, or other things of value which may come into ~~his hands; provided, that where by the terms of the creating instrument the trustee who has resigned was not required to give bond and did not give bond and an intent is expressed in the creating instrument that a successor trustee shall serve without bond, or where the clerk, upon due investigation finds that bond is not necessary for the protection of the estate, the clerk, with the approval of the judge, upon the petition of any party in interest, may waive the requirement of a bond for the successor trustee and permit said successor trustee to serve without bond.~~ the trustee's hands. All bonds executed under the provisions of this Article shall be filed with the clerk.

"§ 36A-32. Rights and duties devolve on successor.

~~Upon the acceptance by the court of the resignation of any trustee, and upon the appointment by the court of his successor in the manner provided by this Article, the~~ A successor trustee shall succeed to all the rights, powers, and privileges, and shall be subject to all the duties, liabilities, and responsibilities that were imposed upon the original trustee unless a contrary intent appears from the ~~creating~~ governing instrument.

"§ 36A-33. Appointment of ~~successors to deceased or incapacitated trustees.~~ successor trustee on clerk's own motion.

~~Upon the death or incapacity of a trustee, a new trustee may be appointed on application by a beneficiary or other interested person by petition to the clerk of the superior court of the county in which the instrument under which the deceased or incapacitated trustee claimed is registered. The petition shall make all necessary parties defendants. Proceedings under this section are special proceedings subject to Article 33 of Chapter 1 of the General Statutes. A beneficiary, creditor, or other person interested in the trust estate has the right to answer the petition and to offer evidence why the prayer of the petition should not be granted. After hearing the matter, the clerk may appoint the person named in the petition or some other fit and suitable person or corporation to act as the successor of the deceased or incapacitated trustee. The clerk shall require the person so appointed to give bond as required in G.S. 36A-31. If the instrument under which the deceased or incapacitated trustee claimed, however, does not require the trustee to give bond and expresses an intent that a successor trustee serve without bond, or if the clerk upon due investigation, finds that bond is not necessary for the protection of the estate, the requirement of a bond for the successor trustee may be waived as provided in G.S. 36A-31. Any party in interest may appeal from the order or judgment of the clerk as provided in Article 27A of Chapter 1 of the General Statutes.~~

~~Nothing~~ Unless the governing instrument provides otherwise, if the trustee is required to account to the clerk of court, nothing in this ~~section~~ Article shall be construed to limit the authority of the clerk ~~of superior court~~ to appoint a successor trustee to a deceased or incapacitated trustee upon the clerk's own motion.

~~"§ 36A-34. Testamentary trustee may renounce.~~

~~(a) Any person or corporation named as trustee in any will admitted to probate in this State, or any substitute trustee, may at any time prior to qualifying as required by G.S. 36A-107 or taking any action as trustee if such qualification is not required, and whether or not such person or corporation is entitled to so qualify or act, renounce such trusteeship by a writing filed with the clerk of superior court of the county in which the will is admitted to probate. Upon receipt of such renunciation the clerk shall give notice thereof to all persons interested in the trust, including successor or substitute trustees named in the will, which notice shall also comply with the requirements of subsection (e) of this section.~~

~~(b) If the will names or identifies a substitute trustee in case of renunciation, the provisions of the will shall be complied with, and the clerk shall enter an appropriate order appointing the substitute trustee in accordance therewith unless the substitute trustee also renounces. A substitute trustee so named shall succeed to the office of~~

~~trustee upon the date of the order of appointment by the clerk unless the will provides otherwise.~~

~~(c) If the will does not name or identify a substitute trustee in case of renunciation, and it appears that a substitute trustee should be appointed, the clerk shall appoint some fit and suitable person or corporation as substitute trustee. If the will does not name or identify a substitute trustee, but contains provisions regarding the selection of a substitute trustee, such provisions shall be complied with unless the clerk determines that such provisions would result in the selection of an unfit or unsuitable trustee. A substitute trustee so appointed shall succeed to the office of trustee upon the date of the order of appointment unless the will provides otherwise.~~

~~(d) A substitute trustee shall, upon succeeding to the office of trustee, unless the will provides otherwise, have such powers and duties and be vested with the title to the property included in the trust, as if the substitute trustee had been originally named in the will.~~

~~(e) Each notice required by this section shall be written notice, and shall identify the proceeding and apprise the person to be notified of the nature of the action to be taken. Service of such notice may be in the same manner as is provided for service of notice in civil actions, or by mailing the notice to the person to be notified at his last known address. Service of notice must be completed not less than 10 days prior to the date the hearing is held or the action is taken. Service by mail shall be complete upon deposit of the notice enclosed in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Post Office Department.~~

~~(f) The clerk of superior court shall file, docket, and index all proceedings pursuant to this section in the same manner as special proceedings, and shall also enter with the will a notation that the trustee has renounced and a reference to the file, or other place where the record may be found.~~

~~"§ 36A-35. Removal of trustee.~~

~~Any beneficiary, cotrustee or other person interested in the trust estate may file a petition in the office of the clerk of superior court of the county having jurisdiction over the administration of the trust for the removal of a trustee or cotrustee who fails to comply with the requirements of this Chapter or a court order, or who is otherwise unsuitable to continue in office. Upon the filing of the petition, the clerk shall docket the cause as a special proceeding, with the petitioner as plaintiff. All known beneficiaries, trustees, or cotrustees not joined as plaintiffs shall be joined as defendants. Upon proper notice and hearing, the clerk may, in the exercise of his discretion, order the removal of the trustee or cotrustee and proceed to appoint a successor. The procedure for notice, hearing, appeals, and the effective date of the order, shall be in accord with that provided for in the case of a resignation of a trustee and the appointment of a successor in G.S. 36A-24 through 36A-32.~~

~~Nothing in this section shall be construed to limit the authority of the clerk of superior court to remove a trustee or cotrustee for failure to comply with the~~

~~requirements of this Chapter or a court order, or who is otherwise unsuitable to continue in office.~~

"§ 36A-36. Appointment of special trustee.

If it appears necessary to the protection of the trust estate, the clerk of superior court having jurisdiction ~~of~~ over the administration of the trust may appoint a special trustee until a successor trustee can be appointed or, where a trust has terminated, to distribute the assets. A special trustee may be appointed without notice and may be removed whenever the court so orders. The special trustee shall give such bond, if any, as the court may require and shall have the powers conferred by the order of appointment.

"§ 36A-37. Consolidation, merger, reorganization, reincorporation, or transfer of assets and liabilities by a corporate trustee.

Whenever any corporate trustee doing business in this State shall consolidate or merge with or shall sell to and transfer its assets and liabilities to any other corporation, or where such corporate trustee is in any manner reorganized or ~~reincorporated~~ reincorporated, all existing rights, powers, duties, and liabilities of such consolidating, merging, transferring, reorganizing or reincorporating corporation as trustee shall, upon the effective date of such consolidation, merger, reorganization or reincorporation, or sale and transfer, vest in and devolve upon the transferee corporation or the consolidated, merged, reorganized or reincorporated corporation in the manner prescribed in G.S. 53-17.

~~**"§ 36A-38. Powers of successor trustee.**~~

~~Unless otherwise provided in the creating instrument, all powers conferred upon the trustee by such instrument attached to the office, as provided in G.S. 36A-72, and are exercisable by the trustee from time to time holding the office.~~

"§ 36A-39. Powers of cotrustees.

Unless otherwise provided in the ~~creating~~ governing instrument, if one of several trustees dies, resigns, or is removed, the remaining trustees shall have all rights, title, and powers of all the original trustees. If the ~~creating~~ governing instrument manifests an intent that a successor trustee be appointed to fill a vacancy, the remaining trustees may exercise the powers of all the original trustees until such time as a successor is ~~appointed.~~ appointed, except those powers which the remaining trustees are prohibited from exercising under the governing instrument or by law.

"§ 36A-40. Vesting of title.

A special or successor trustee is vested with the title of the ~~original~~ predecessor trustee. A predecessor trustee ~~who resigns, is removed, or is otherwise severed from his office~~ shall execute such documents transferring title to trust property as may be appropriate to facilitate administration of the trust and upon ~~his~~ the predecessor trustee's failure to do so, the clerk may order ~~him~~ the predecessor trustee to execute such documents, or the clerk may ~~himself~~ transfer title.

~~**"§ 36A-41. Applicability.**~~

~~The provisions of this Article shall not apply to proceedings begun before January 1, 1978.~~

"**§ 36A-42 through 36A-46:** Reserved for future codification purposes."

SECTION 2. G.S. 7A-307(a) reads as rewritten:

"(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, and of trusts under wills and under powers of attorney, in trust proceedings under G.S. 36A-23.1, and in collections of personal property by affidavit, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of ten dollars ($10.00), to be remitted to the county. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(2) For support of the General Court of Justice, the sum of twenty-six dollars ($26.00), plus an additional forty cents (40¢) per one hundred dollars ($100.00), or major fraction thereof, of the gross estate, not to exceed three thousand dollars ($3,000). Gross estate shall include the fair market value of all personalty when received, and all proceeds from the sale of realty coming into the hands of the fiduciary, but shall not include the value of realty. In collections of personal property by affidavit, the fee based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information reported in the inventory and shall be paid when the inventory is filed with the clerk. If additional gross estate, including income, comes into the hands of the fiduciary after the filing of the inventory, the fee for such additional value shall be assessed and paid upon the filing of any account or report disclosing such additional value. For each filing the minimum fee shall be ten dollars ($10.00). Sums collected under this subsection shall be remitted to the State Treasurer.

(2a) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars ($100.00), or major fraction, of the gross estate, not to exceed three thousand dollars ($3,000), shall not be assessed on personalty received by a trust under a will when the estate of the decedent was administered under Chapters 28 or 28A of the General Statutes. Instead, a fee of fifteen dollars ($15.00) shall be assessed on the filing of each annual and final account.

(2b) Notwithstanding subdivisions (1) and (2) of this subsection, no costs shall be assessed when the estate is administered or settled pursuant to G.S. 28A-25-6.

(2c) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars ($100.00), or major fraction, of the gross estate shall not be assessed on the gross estate of a trust that is

the subject of a proceeding under G.S. 36A-23.1 if there is no requirement in the trust that accountings be filed with the clerk.

(3) For probate of a will without qualification of a personal representative, the clerk shall assess a facilities fee as provided in subdivision (1) of this subsection and shall assess for support of the General Court of Justice, the sum of seventeen dollars ($17.00)."

SECTION 3. This act becomes effective January 1, 2002, and applies to all trustees covered by the provisions of Article 36A of the General Statutes, whether administering trusts established on or after that date.

HOUSE BILL 1070

Short Title: Removal/Resignation of Trustees. (Public)

Sponsors: Representative Haire.

Referred to: Judiciary II, if favorable, Finance.

April 10, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROVISIONS FOR THE RESIGNATION, REMOVAL, AND RENUNCIATION OF TRUSTEES AND FOR THE APPOINTMENT OF SUCCESSOR TRUSTEES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 36A of the General Statutes reads as rewritten:

"Article 3.

"~~Resignation, Removal, and Renunciation of Trustees.~~ Trust Administration.

"~~§ 36A-22. Applicability of this Article.~~

~~(a) Except when otherwise provided by law, the term "trustee," as used in this Article, includes "trustees," "guardians," and other fiduciaries.~~

~~(b) The resignation, removal, and renunciation of personal representatives and collectors shall be governed by the provisions of Articles 5, 9, and 10 of Chapter 28A.~~

~~(c) The substitution of trustees in mortgages and deeds of trust shall be governed by the provisions of G.S. 45-10.~~

"**§ 36A –22.1. Definitions.**

As used in this Article:

(1) "Beneficiary" means a person who has any present or future interest, vested or contingent, in a trust, including (i) the owner of an interest by assignment or other transfer; and (ii) any person entitled to enforce a charitable trust.

(2) "Fiduciary" includes personal representatives, guardians of the person, guardians of the estate, attorneys-in-fact, and trustees.

(3) "Interested person" includes creditors, beneficiaries, and any others having a property right in or a claim against a trust estate which may be affected by the proceeding. The term also includes fiduciaries representing interested persons. The meaning of the term as it relates

to particular persons may vary from time to time and must be determined according to the particular purposes of and matter involved in a particular proceeding.

(4) "Person" means an individual person, a corporation, an organization, or other legal entity.

(5) "Trust"' includes any express trust, private or charitable, with additions to the trust, wherever and however created. The term includes both testamentary and inter vivos trusts, regardless of whether the trustee is required to account to the clerk. The term also includes a trust created for or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term does not include other constructive trusts, resulting trusts, conservatorships, personal representatives, trust accounts as defined in G.S. 53-146.2, 54-109.57, 54B-130, and 54C-166, trust funds subject to G.S. 90-210.61, custodial arrangements pursuant to G.S. 33A-1 through G.S. 33A-24 and G.S. 33B-1 through G.S. 33B-22, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, or any arrangement under which a person is nominee or escrowee for another.

(6) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court. The term does not include trustees in mortgages and deeds of trust. Substitution of trustees in mortgages and deeds of trust are governed by the provisions of G.S. 45-10.

~~"§36A-23. Clerk's power to accept resignations.~~

~~The clerks of superior courts of this State have power and jurisdiction to accept the resignation of trustees and to appoint their successors in the manner provided by this Article.~~

"§ 36A-23.1. Court; jurisdiction of trusts.

(a) The clerks of superior court of this State have original jurisdiction over all proceedings initiated by interested persons concerning the internal affairs of trusts except proceedings to modify or terminate trusts. Except as provided in subdivision (3) of this subsection, the clerk's jurisdiction is exclusive. Proceedings that may be maintained under this subsection are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and trust beneficiaries, to the extent that those matters are not otherwise provided for in the governing instrument. These include proceedings:

(1) To appoint or remove a trustee;

(2) To review trustees' fees pursuant to G.S. 32-50 and review and settle interim or final accounts; and

(3) To ascertain beneficiaries, to determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments, and to determine the existence or nonexistence of trusts created other than by will and the existence or nonexistence of any immunity, power, privilege, duty, or right. The clerk, on the clerk's own motion, may determine that a proceeding to determine an issue listed in this subdivision shall be originally heard by a superior court judge.

(b) The management and distribution of a trust estate, submission of accounts and reports to beneficiaries, payment of trustees' fees and other obligations of a trust, acceptance and change of trusteeship, and other aspects of the administration of a trust shall proceed expeditiously, consistent with the terms of the trust, free of judicial intervention and without order, approval, or other action of any court, subject to the jurisdiction of the clerk as invoked by interested parties or as otherwise exercised as provided by law. Nothing in this section shall be construed (i) to confer upon the clerk any authority to regulate or supervise the actions of a trustee except to the extent that the trustee's actions are inconsistent with the provisions of the governing instrument or of State law, or (ii) to confer upon any interested person any additional right, remedy, or cause of action not otherwise conferred by law.

(c) Nothing in this section affects the right of a person to file an action for declaratory relief under the provisions of Article 26 of Chapter 1 of the General Statutes.

~~"§ 36A-24. Petition; contents and verification.~~

~~When any trustee desires to resign his trust, he shall file his petition in the office of the clerk of superior court of the county in which he qualified or in which the instrument under which he claims is registered. The petition shall set forth all the facts in connection with the appointment and qualifications as such trustee, with a copy of the instrument under which he acts; shall state the names, ages, and residences of all the beneficiaries and other parties interested in the trust estate; shall contain a full and complete statement of all debts or liabilities due by the estate, and a full and complete statement of all assets belonging to said estate, and a full and complete statement of all moneys, securities, or assets in the hands of the trustee and due the estate, together with a full statement of the reasons the applicant should be permitted to resign his trust. The petition shall be verified by the oath of the applicant.~~

"**§ 36A-24.1. Trust proceedings; venue.**

(a) If the trustee is required to account to the clerk, then unless the terms of the governing instrument provide otherwise, venue for proceedings under G.S. 36A-23.1 involving trusts is the place where the accountings are filed.

(b) If the trustee is not required to account to the clerk, then unless the terms of the governing instrument provide otherwise, venue for proceedings under G.S. 36A-23.1 involving trusts is in any county of this State in which the trust has its principal place of administration or where any beneficiary resides. Unless otherwise designated in the governing instrument, the principal place of administration of the trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the

trustee's residence if the trustee has no such place of business. In the case of cotrustees, the principal place of administration, if not otherwise designated in the governing instrument, is:

(1) The usual place of business of the corporate trustee if there is but one corporate cotrustee; or

(2) The usual place of business or residence of any of the cotrustees.

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

~~Upon the filing of the petition, the clerk shall docket the cause as a special proceeding, with the trustee as plaintiff and the beneficiaries as defendants, and shall issue the summons for the defendants. Proceedings under this section are subject to Article 33 of Chapter 1 of the General Statutes. A beneficiary, creditor, or other person interested in the trust estate has the right to answer the petition and to offer evidence why the prayer of the petition should not be granted. The clerk shall then proceed to hear and determine the matter. If it appears to the clerk that the best interests of the creditors and the beneficiaries demand that the resignation of the trustee be accepted or if it appears to the clerk that sufficient reasons exist for allowing the resignation and that the resignation can be allowed without prejudice to the rights of creditors or the beneficiaries, the clerk may, in the exercise of the clerk's discretion, allow the applicant to resign. The clerk shall appoint the successor of the petitioner in the manner provided in this Article.~~

"**§ 36A-25.1. Trust proceedings; dismissal of matters relating to foreign trusts.**

The clerk of superior court shall not, over the objection of a party, entertain proceedings under G.S. 36A-23.1 involving a trust having its principal place of administration in another state, except:

(1) When all appropriate parties could not be bound by litigation in the courts of the state in which the trust had its principal place of administration; or

(2) When the interests of justice otherwise would be seriously impaired.

The clerk may condition a stay or dismissal of a proceeding under this section on the consent of any party to jurisdiction of the state in which the trust has its principal place of administration, or the clerk may grant a continuance or enter any other appropriate order.

~~"§ 36A-26. Resignation allowed; costs; judge's approval.~~

~~In making an order allowing the trustee to resign, the clerk shall make such order concerning the costs of the proceedings and commissions to the trustee as may be just. If there is no appeal from the decision and order of the clerk within the time prescribed by law, the proceedings shall be submitted to the judge of the superior court and approved by him before the same shall become effective.~~

"**§ 36A-26.1. Trust proceedings; necessary parties.**

Proceedings under G.S. 36A-23.1 are initiated by filing a petition or complaint in the office of the clerk of superior court. Upon the filing of the petition, the clerk shall docket the cause as an estate matter. All known beneficiaries, trustees, or cotrustees not joined as petitioners shall be joined as respondents. The clerk shall issue the summons for the respondents. The clerk may order notification of additional persons. An order is

valid as to all persons who are given notice of the proceeding even if all interested persons are not notified. The beneficiaries, creditors, or any other persons interested in the trust estate have the right to answer the petition and to offer evidence against granting the petition. The clerk shall then proceed to hear and determine the matter as provided for in G.S. 1-301.3.

"**§ 36A-26.2. Waiver of notice.**

An interested person, or a person representing an interested person as provided in G.S. 36A-26.3, may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding.

"**§ 36A-26.3. When parties represented by others.**

In proceedings involving trusts, the following rules apply:

(1) Interests to be affected shall be described in pleadings that give reasonable information to interested persons by name or class, by reference to the instrument creating the interests, or in some other appropriate manner.

(2) Interested persons shall be represented by others in the following cases:

a. The sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, shall represent other persons to the extent that their interests, as objects, takers in default, or otherwise, are subject to the power.

b. If the clerk finds that there is no conflict of interest between the interested person and the person representing the interested person, or among persons represented, a guardian of the estate shall represent the person whose estate the guardian controls; a guardian of the person shall represent the ward if no guardian of the ward's estate has been appointed; a trustee shall represent beneficiaries of the trust in proceedings to probate a will establishing or adding to the trust, to review the acts or accounts of a prior fiduciary, and in other proceedings involving creditors or other third parties; and a personal representative shall represent persons interested in the undistributed assets of the decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no guardian of the estate or guardian of the person has been appointed, a parent shall represent a minor child.

c. If the clerk finds that another party has an interest in the proceeding substantially identical to the interest of an unborn or unascertained person who is not otherwise represented, that party shall represent the unborn or unascertained person.

d. At any point in a proceeding, a clerk shall allow an attorney-in-fact to represent the attorney-in-fact's principal, provided that, if the principal is incapacitated, the power of attorney is durable

as defined in G.S. 32A-8, and provided that the power of attorney grants to the attorney-in-fact either (i) the authority to do, execute, or perform any act that the principal might or could do or otherwise evidences the principal's intent to give the attorney-in-fact full power to handle the principal's affairs or deal with the principal's property; (ii) the powers described under G.S. 32A-2(2) and G.S. 32A-2(8) and, if interests in real property are affected, the powers described in G.S. 32A-2(1); or (iii) other direct or indirect authority the clerk deems sufficient in the clerk's discretion.

(3) At any point in the proceeding, the clerk may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity is unknown, if the clerk determines that representation of the interest otherwise would be inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests. The clerk shall set forth the clerk's reasons for appointing a guardian ad litem as a part of the record of the proceedings.

Nothing in this section authorizes the disbursement of funds distributable to an interested person to a person authorized to represent that person under this section.

"**§ 36A-27. ~~Appeal; stay effected by appeal.~~ Appeal.**

Any party in interest may appeal from the decision of the clerk to ~~the judge at chambers, and in such event the procedure for appeal is governed by Article 27A of Chapter 1 of the General Statutes. If the clerk allows the resignation and an appeal is taken from the decision of the clerk, the appeal stays the judgment and order of the clerk until the cause is heard and determined by the judge upon the appeal taken.~~ a superior court judge as provided for in G.S. 1-301.3.

"**§ 36A-28:** Repealed by Session Laws 1999-216, s. 2, effective January 1, 2000.

"**§ 36A-29. Final accounting before resignation.**

~~No~~ If the trustee is required to account to the clerk of superior court, then unless the terms of the governing instrument provide otherwise, no trustee shall be ~~allowed or~~ permitted to resign ~~his trust~~ as trustee until ~~he shall first file with the court his~~ a final account of the trust ~~estate,~~ estate is filed with the clerk, and until the court shall be satisfied that the ~~said~~ account is true and correct.

~~**§ 36A-30. Resignation effective on settlement with successor.**~~

~~In case the resignation of the trustee is accepted by the court, the resignation shall not release or discharge the trustee from liability, until he shall have filed an account acceptable to his successor in full for all moneys, securities, property, or other assets or things of value in his possession or under his control or which should be in his possession or under his control belonging to the trust estate, and such account has been approved by the court.~~

"**§ 36A-31. ~~Court to appoint successor; when~~ When bond required.**

~~If the court shall allow any trustee to resign his trust upon compliance with the provisions of this Article, it shall be the duty of the court to proceed to appoint some fit~~

~~and suitable person as the successor of such trustee; and the court shall require the person so appointed to give bond with sufficient surety, approved by the court,~~ A trustee need not provide bond to secure performance of the trustee's duties unless required by the terms of the governing instrument, reasonably requested by a beneficiary, or found by the clerk to be necessary to protect the interests of beneficiaries who are not able to protect themselves and whose interests otherwise are not adequately represented. However, in no event shall bond be required if the governing instrument directs otherwise. On petition of the trustee or other interested person, the clerk may excuse a requirement of bond, reduce the amount of the bond, release the surety, or permit the substitution of another bond with the same or different sureties. If the governing instrument is silent as to the requirement of a bond and the clerk finds that no bond is necessary, or if the clerk excuses or reduces the bond requirement, the clerk's decision must be approved by a superior court judge unless all beneficiaries have been notified of the decision. If bond is required, it shall be in a sum double the value of the personal property to come into ~~his~~ the trustee's hands when bond is executed by a personal ~~surety~~ surety, and in an amount not less than one and one-fourth times the value of all personal property of the ~~decedent~~ trust estate when the bond is secured by a suretyship bond executed by a corporate surety company authorized by the Commissioner of Insurance to do business in this State, provided that the clerk of superior court, when the value of the personal property exceeds one hundred thousand dollars ($100,000), may accept bond in an amount equal to the value of the personal property plus ten percent (10%) thereof, conditioned upon the faithful performance of ~~his~~ the trustee's duties ~~as such trustee~~ and for the payment to the persons entitled to receive ~~the same of~~ all moneys, assets, or other things of value which may come into ~~his hands; provided, that where by the terms of the creating instrument the trustee who has resigned was not required to give bond and did not give bond and an intent is expressed in the creating instrument that a successor trustee shall serve without bond, or where the clerk, upon due investigation finds that bond is not necessary for the protection of the estate, the clerk, with the approval of the judge, upon the petition of any party in interest, may waive the requirement of a bond for the successor trustee and permit said successor trustee to serve without bond.~~ the trustee's hands. All bonds executed under the provisions of this Article shall be filed with the clerk.

"§ 36A-32. Rights and duties devolve on successor.

~~Upon the acceptance by the court of the resignation of any trustee, and upon the appointment by the court of his successor in the manner provided by this Article, the~~ A successor trustee shall succeed to all the rights, powers, and privileges, and shall be subject to all the duties, liabilities, and responsibilities that were imposed upon the original trustee unless a contrary intent appears from the ~~creating~~ governing instrument.

"§ 36A-33. Appointment of ~~successors to deceased or incapacitated trustees.~~ successor trustee on clerk's own motion.

~~Upon the death or incapacity of a trustee, a new trustee may be appointed on application by a beneficiary or other interested person by petition to the clerk of the superior court of the county in which the instrument under which the deceased or incapacitated trustee claimed is registered. The petition shall make all necessary parties~~

~~defendants. Proceedings under this section are special proceedings subject to Article 33 of Chapter 1 of the General Statutes. A beneficiary, creditor, or other person interested in the trust estate has the right to answer the petition and to offer evidence why the prayer of the petition should not be granted. After hearing the matter, the clerk may appoint the person named in the petition or some other fit and suitable person or corporation to act as the successor of the deceased or incapacitated trustee. The clerk shall require the person so appointed to give bond as required in G.S. 36A-31. If the instrument under which the deceased or incapacitated trustee claimed, however, does not require the trustee to give bond and expresses an intent that a successor trustee serve without bond, or if the clerk upon due investigation, finds that bond is not necessary for the protection of the estate, the requirement of a bond for the successor trustee may be waived as provided in G.S. 36A-31. Any party in interest may appeal from the order or judgment of the clerk as provided in Article 27A of Chapter 1 of the General Statutes.~~

~~Nothing~~ Unless the governing instrument provides otherwise, if the trustee is required to account to the clerk of court, nothing in this ~~section~~ Article shall be construed to limit the authority of the clerk ~~of superior court~~ to appoint a successor trustee to a deceased or incapacitated trustee upon the clerk's own motion.

~~"§ 36A-34. Testamentary trustee may renounce.~~

~~(a) Any person or corporation named as trustee in any will admitted to probate in this State, or any substitute trustee, may at any time prior to qualifying as required by G.S. 36A-107 or taking any action as trustee if such qualification is not required, and whether or not such person or corporation is entitled to so qualify or act, renounce such trusteeship by a writing filed with the clerk of superior court of the county in which the will is admitted to probate. Upon receipt of such renunciation the clerk shall give notice thereof to all persons interested in the trust, including successor or substitute trustees named in the will, which notice shall also comply with the requirements of subsection (e) of this section.~~

~~(b) If the will names or identifies a substitute trustee in case of renunciation, the provisions of the will shall be complied with, and the clerk shall enter an appropriate order appointing the substitute trustee in accordance therewith unless the substitute trustee also renounces. A substitute trustee so named shall succeed to the office of trustee upon the date of the order of appointment by the clerk unless the will provides otherwise.~~

~~(c) If the will does not name or identify a substitute trustee in case of renunciation, and it appears that a substitute trustee should be appointed, the clerk shall appoint some fit and suitable person or corporation as substitute trustee. If the will does not name or identify a substitute trustee, but contains provisions regarding the selection of a substitute trustee, such provisions shall be complied with unless the clerk determines that such provisions would result in the selection of an unfit or unsuitable trustee. A substitute trustee so appointed shall succeed to the office of trustee upon the date of the order of appointment unless the will provides otherwise.~~

~~(d) A substitute trustee shall, upon succeeding to the office of trustee, unless the will provides otherwise, have such powers and duties and be vested with the title to the~~

~~property included in the trust, as if the substitute trustee had been originally named in the will.~~

~~(e) Each notice required by this section shall be written notice, and shall identify the proceeding and apprise the person to be notified of the nature of the action to be taken. Service of such notice may be in the same manner as is provided for service of notice in civil actions, or by mailing the notice to the person to be notified at his last known address. Service of notice must be completed not less than 10 days prior to the date the hearing is held or the action is taken. Service by mail shall be complete upon deposit of the notice enclosed in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Post Office Department.~~

~~(f) The clerk of superior court shall file, docket, and index all proceedings pursuant to this section in the same manner as special proceedings, and shall also enter with the will a notation that the trustee has renounced and a reference to the file, or other place where the record may be found.~~

~~"§ 36A-35. Removal of trustee.~~

~~Any beneficiary, cotrustee or other person interested in the trust estate may file a petition in the office of the clerk of superior court of the county having jurisdiction over the administration of the trust for the removal of a trustee or cotrustee who fails to comply with the requirements of this Chapter or a court order, or who is otherwise unsuitable to continue in office. Upon the filing of the petition, the clerk shall docket the cause as a special proceeding, with the petitioner as plaintiff. All known beneficiaries, trustees, or cotrustees not joined as plaintiffs shall be joined as defendants. Upon proper notice and hearing, the clerk may, in the exercise of his discretion, order the removal of the trustee or cotrustee and proceed to appoint a successor. The procedure for notice, hearing, appeals, and the effective date of the order, shall be in accord with that provided for in the case of a resignation of a trustee and the appointment of a successor in G.S. 36A-24 through 36A-32.~~

~~Nothing in this section shall be construed to limit the authority of the clerk of superior court to remove a trustee or cotrustee for failure to comply with the requirements of this Chapter or a court order, or who is otherwise unsuitable to continue in office.~~

"§ 36A-36. Appointment of special trustee.

If it appears necessary to the protection of the trust estate, the clerk of superior court having jurisdiction ~~of~~ over the administration of the trust may appoint a special trustee until a successor trustee can be appointed or, where a trust has terminated, to distribute the assets. A special trustee may be appointed without notice and may be removed whenever the court so orders. The special trustee shall give such bond, if any, as the court may require and shall have the powers conferred by the order of appointment.

"§ 36A-37. Consolidation, merger, reorganization, reincorporation, or transfer of assets and liabilities by a corporate trustee.

Whenever any corporate trustee doing business in this State shall consolidate or merge with or shall sell to and transfer its assets and liabilities to any other corporation, or where such corporate trustee is in any manner reorganized or ~~reincorporated~~

reincorporated, all existing rights, powers, duties, and liabilities of such consolidating, merging, transferring, reorganizing or reincorporating corporation as trustee shall, upon the effective date of such consolidation, merger, reorganization or reincorporation, or sale and transfer, vest in and devolve upon the transferee corporation or the consolidated, merged, reorganized or reincorporated corporation in the manner prescribed in G.S. 53-17.

~~"§ 36A-38. Powers of successor trustee.~~

~~Unless otherwise provided in the creating instrument, all powers conferred upon the trustee by such instrument attached to the office, as provided in G.S. 36A-72, and are exercisable by the trustee from time to time holding the office.~~

"§ 36A-39. Powers of cotrustees.

Unless otherwise provided in the ~~creating~~ governing instrument, if one of several trustees dies, resigns, or is removed, the remaining trustees shall have all rights, title, and powers of all the original trustees. If the ~~creating~~ governing instrument manifests an intent that a successor trustee be appointed to fill a vacancy, the remaining trustees may exercise the powers of all the original trustees until such time as a successor is ~~appointed.~~ appointed, except those powers which the remaining trustees are prohibited from exercising under the governing instrument or by law.

"§ 36A-40. Vesting of title.

A special or successor trustee is vested with the title of the ~~original~~ predecessor trustee. A predecessor trustee ~~who resigns, is removed, or is otherwise severed from his office~~ shall execute such documents transferring title to trust property as may be appropriate to facilitate administration of the trust and upon ~~his~~ the predecessor trustee's failure to do so, the clerk may order ~~him~~ the predecessor trustee to execute such documents, or the clerk may ~~himself~~ transfer title.

~~"§ 36A-41. Applicability.~~

~~The provisions of this Article shall not apply to proceedings begun before January 1, 1978.~~

"§ 36A-42 through 36A-46: Reserved for future codification purposes."

SECTION 2. G.S. 7A-307(a) reads as rewritten:

"(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, and of trusts under wills and under powers of attorney, in trust proceedings under G.S. 36A-23.1, and in collections of personal property by affidavit, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of ten dollars ($10.00), to be remitted to the county. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(2) For support of the General Court of Justice, the sum of twenty-six dollars ($26.00), plus an additional forty cents (40¢) per one hundred dollars ($100.00), or major fraction thereof, of the gross estate, not to exceed three thousand dollars ($3,000). Gross estate shall include the fair market value of all personalty when received, and all proceeds

from the sale of realty coming into the hands of the fiduciary, but shall not include the value of realty. In collections of personal property by affidavit, the fee based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information reported in the inventory and shall be paid when the inventory is filed with the clerk. If additional gross estate, including income, comes into the hands of the fiduciary after the filing of the inventory, the fee for such additional value shall be assessed and paid upon the filing of any account or report disclosing such additional value. For each filing the minimum fee shall be ten dollars ($10.00). Sums collected under this subsection shall be remitted to the State Treasurer.

(2a) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars ($100.00), or major fraction, of the gross estate, not to exceed three thousand dollars ($3,000), shall not be assessed on personalty received by a trust under a will when the estate of the decedent was administered under Chapters 28 or 28A of the General Statutes. Instead, a fee of fifteen dollars ($15.00) shall be assessed on the filing of each annual and final account.

(2b) Notwithstanding subdivisions (1) and (2) of this subsection, no costs shall be assessed when the estate is administered or settled pursuant to G.S. 28A-25-6.

(2c) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars ($100.00), or major fraction, of the gross estate shall not be assessed on the gross estate of a trust that is the subject of a proceeding under G.S. 36A-23.1 if there is no requirement in the trust that accountings be filed with the clerk.

(3) For probate of a will without qualification of a personal representative, the clerk shall assess a facilities fee as provided in subdivision (1) of this subsection and shall assess for support of the General Court of Justice, the sum of seventeen dollars ($17.00)."

SECTION 3. This act becomes effective January 1, 2002, and applies to all trustees covered by the provisions of Article 36A of the General Statutes, whether administering trusts established on or after that date.

HOUSE BILL 1070:
Removal/Resignation of Trustees

BILL ANALYSIS

Committee:	Judiciary II	**Introduced by:**	Representative Haire
Date:	June 5, 2001	**Summary by:**	Esther Manheimer
Version:	H1070-CSSK-23[v.1]		Committee Counsel

SUMMARY: *House Bill 1070 rewrites Article 3 of Chapter 36A regarding the resignation and removal of trustees. The Article as rewritten by this bill incorporates part of the Uniform Probate Code and expands the jurisdiction of the clerk of court over proceedings regarding the removal and resignation of trustees to all matters concerning the internal affairs of a trust. The bill would eliminate bond requirements of a trustee and the requirement that a guardian ad litem be appointed in certain situations. In addition, the bill changes current accounting requirements. The bill also makes numerous technical and conforming changes. This act becomes effective January 1, 2001, and applies to all trustees covered by the provisions of Article 36A, whether administering trusts before or after that date.*

BILL ANALYSIS:

Article Title Change. Under House Bill 1070, the title of Article 3 would change from "Resignation, Removal, and Renunciation of Trustees", to "Trust Administration".

Addition of a Definition Section: This bill includes the following terms in a definition section in Article 3: beneficiary, fiduciary, interested person, person, trust, and trustee.

Clerk of Superior Court's Jurisdiction: Under current law, the clerk of superior court has jurisdiction over matters regarding the resignation and removal of trustees. However, the clerk's order must be submitted to and approved by a superior court judge. House Bill 1070 would expand the clerk's current jurisdiction over trusts to include **all internal affairs of the trust** except proceedings to modify or terminate the trust, and the clerk's order would not require the approval of a superior court judge.

> All internal affairs include: appointment or removal of a trustee, reviewing trustees' fees, review and settle interim or final accounts, ascertaining beneficiaries, questions regarding the administration/distribution of the trust, question regarding the construction of the trust, and the determination of whether a trust exists (other than trusts created by a will).

Venue for Proceedings. Under current law, Article 3 made no provisions regarding the venue for proceedings held under this Chapter. This bill would mandate that venue would be in the county where accountings are filed if the trustee is required to account to the clerk. If no accounting is required, then venue is in the county where the principal place of administration of the trust is located or where any beneficiary resides. The bill also provides for situations where there is more than one trustee. When the principal place of administration is in another state, the clerk may not entertain a trust proceeding unless certain circumstances are present.

Trust Proceedings.

- Under current law, in a proceeding before the clerk under Article 3, the trustee is the plaintiff and the beneficiaries are the defendants. This bill would make **all known beneficiaries and trustees respondents** (the clerk issues summons to the respondents).
- An **order would be valid as to all persons given notice** even if all interested persons are not notified.
- **Interested persons may be represented by others** in certain situations. Under current law, infants must be appointed a guardian ad litem. The bill would allow a parent to represent a minor, and one with substantially similar interests may represent unborn persons or unascertained persons. Also, HB 1070 provides that the clerk would have discretion as to whether the appointment of a guardian ad litem is necessary for the following persons: a minor, an incapacitated person, an unborn person, or an unascertained person, or a person whose identity is unknown.

Appeals Procedure. HB 1070 makes clear that the clerk's order may be appealed to superior court.

Accounting Requirements. Under current law, a trustee may not resign until a final accounting has been filed with the clerk and the clerk has found it to be true and correct. In addition, the trustee is not released from liability until an accounting is accepted by the successor trustee. HB 1070 would repeal the above provisions and require that if an accounting is required that the trustee may not resign until the court is satisfied that the accounting is true and correct. Once the accounting is accepted as true and correct, then the trustee is released even if a successor trustee has not been appointed.

Bond Requirements. Under current law, trustees must provide bond to secure performance of the trustee's duties unless the clerk found that the trust did not require bond or bond was not needed for the protection of the estate. HB 1070 would eliminate the requirement of bond unless the trust required it or the clerk found that bond was necessary to protect the interests of the beneficiaries.

Deceased or Incapacitated Trustees. Where a trustee is required to account to the clerk, this bill allows the clerk to appoint a successor trustee upon the clerk's own motion in the event that the current trustee is deceased or incapacitated.

Testamentary Trustee may Renounce. The bill deletes all provisions regarding the renouncing of trusteeship by a testamentary trustee. Earlier provisions pertaining to trust proceedings would cover these types of actions.

Removal of Trustees. The bill deletes the provisions regarding petitioning for removal of a trustee by any beneficiary, cotrustee, or other interested persons. Earlier provisions pertaining to trust proceedings would cover these types of actions.

VISITOR REGISTRATION SHEET

Judiciary II
Name of Committee

6/5/01
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
John Madler	Sentencing Commission
Harrin Freeman	Sentencing Commission
Larry Dix	DJJDP
O. Lee	ACLU
Jay Chaudhuri	DOJ
Greg Holt	DOC
Richard Garrett	POC
Scott Perry	CJ Stats Division - DOJ
Katie Simons	Intern - Gov's Office
Bill Kratt	NC Bar Assoc
[illegible]	AOC
Eddie Caldwell	NCLEOA
[illegible]	NFOPA
[illegible]	CJDC

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

June 7, 2001 – 10:00 a.m.

The House Committee on JUDICIARY II met at 10:00 a.m. on Thursday, June 7, 2001, in Room 421 of the Legislative Office Building. The following members were present: Chairman Phil Baddour, Vice Chairman Phil Haire, Representatives Bowie, Decker, Jeffus, Justus, Miller, Miner, Pope, Sherrill, and Weiss. Staff Attorneys Robin Johnson, Esther Manheimer, and Jeff Hudson, were also present. The Visitor Sheet is attached as a record of the Minutes.

The Chairman called the meeting to order, and recognized the Pages assigned to serve the Committee. He then called for consideration of the following bill:

Committee Substitute for SB 243 - Red Light Cameras/Certain Cities:
Representative Weiss moved that the Committee reconsider the vote by which the previous House committee substitute received a favorable report. Motion passed. Representative Ellis explained the bill, and the changes from the previous House committee substitute. Representative Miner moved that the proposed House committee substitute be before the committee for purposes of discussion, and the motion carried. Handouts related to SB 243 are attached as a record of the Minutes. Representative Miller made a motion to amend the PCS by inserting the word "only" on line 38, page 3. The amendment was adopted. Representative Haire made a motion to roll the amendment into House committee substitute #2 and moved that the House committee substitute bill be given a favorable report, unfavorable as to Senate committee substitute bill. The motion carried.

The meeting adjourned at 10:30 a.m.

Julie Allen

Representative Philip A. Baddour, Jr.
Presiding Chairman

Julie Allen
Committee Assistant

ATTACHMENTS

HOUSE JUDICIARY II COMMITTEE
AGENDA

June 7, 2001
10:00 A.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Jeff Hudson
Elizabeth Kirkland (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDERED:

SB 243 Red Light Cameras/Certain Cities – Sen. Plyler

ADJOURNMENT

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 243 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE CERTAIN MUNICIPALITIES TO USE TRAFFIC CONTROL PHOTOGRAPHIC SYSTEMS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to House committee substitute bill #3, which changes the title, unfavorable as to House committee substitute bill # 2.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 243

State and Local Government Committee Substitute Adopted 3/12/01
Corrected Copy 3/13/01
Fourth Edition Engrossed 3/21/01
House Committee Substitute Reported Without Prejudice 4/2/01
House Committee Substitute #2 Favorable 4/16/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S243-PCS3487-SB-35

Short Title: Red Light Cameras/Certain Municipalities. (Local)

Sponsors:

Referred to:

February 26, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CERTAIN MUNICIPALITIES TO USE TRAFFIC CONTROL PHOTOGRAPHIC SYSTEMS AND TO AUTHORIZE THE MUNICIPALITIES IN WAKE COUNTY TO USE RED LIGHT CAMERAS FOR SAFETY, FOR SCHOOLS, BUT NOT FOR PROFIT.

The General Assembly of North Carolina enacts:

SECTION 1. Subsection (d) of G.S. 160A-300.1 reads as rewritten:

"(d) This ~~act~~ section applies to the Cities of Albemarle, Charlotte, Concord, Durham, Fayetteville, Greensboro, High Point, Rocky Mount, Wilmington, Greenville, and Lumberton, ~~and~~ to the Towns of Chapel Hill, Cornelius, Huntersville, Matthews, Nags Head, and ~~Pineville~~ Pineville, and to all of the municipalities in Union County only."

SECTION 2. Article 15 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-300.2. Use of traffic control photographic systems in Wake County.**

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

(b) Any traffic control photographic system or any device which is a part of that system, as described in subsection (a) of this section, installed on a street or highway which is a part of the State highway system shall meet requirements established by the North Carolina Department of Transportation. Any traffic control system installed on a

municipal street shall meet standards established by the municipality and shall be consistent with any standards set by the Department of Transportation.

(c) Any traffic control photographic system installed on a street or highway shall be identified by appropriate advance warning signs conspicuously posted not more than 300 feet from the location of the traffic control photographic system. All advance warning signs shall be consistent with a statewide standard adopted by the Department of Transportation in conjunction with local governments authorized to install traffic control photographic systems.

(d) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-158 by means of a traffic control photographic system, as described in subsection (a) of this section. If a municipality adopts an ordinance pursuant to this section then, notwithstanding G.S. 20-176, a violation of G.S. 20-158 detected only by a traffic control photographic system shall not be an infraction. If a violation of G.S. 20-158 is detected by both a law enforcement officer and a traffic control photographic system, the officer may charge the offender with an infraction. If the officer charges the offender with an infraction, a civil penalty issued by the municipality for the same offense is void and unenforceable. An ordinance authorized by this subsection shall provide that:

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

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

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

c. A statement that the person who received the citation is not the owner or driver of the vehicle, or that the person who received the citation was not driving a vehicle at the time and location designated in the citation.

(2) A violation detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed and for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the vehicle nor insurance points as authorized by G.S. 58-36-65.

(3) The owner of the vehicle shall be issued a citation that shall be attached to photographic evidence of the violation that identifies the vehicle involved. The citation shall clearly state the manner in which

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

(4) The municipality shall establish a nonjudicial administrative hearing process to review objections to citations or penalties issued or assessed under this section. The municipality may establish an appeals panel composed of municipal employees to review objections. If the municipality does not establish an appeals panel composed of municipal employees, the mayor of the municipality shall review and make a final decision on all objections.

(e) The duration of the yellow light change interval at intersections where traffic control photographic systems are in use shall be no less than the yellow light change interval duration specified in the Design Manual developed by the Signals and Geometrics Section of the North Carolina Department of Transportation.

(f) A municipality enacting an ordinance implementing a traffic control photographic system may enter into a contract with a contractor for the lease, lease-purchase, or purchase of the system. The municipality may enter into only one contract for the lease, lease-purchase, or purchase of the system and the duration of the contract may be for no more than 60 months. After the period specified in the contract has expired, the system shall either be the property of the municipality or the system shall be removed and returned to the contractor.

(g) The clear proceeds from the citations issued pursuant to the ordinance authorized by this section shall be paid to the county school fund. The clear proceeds from the citations shall mean the funds remaining after paying for the lease, lease-purchase, or purchase of the traffic control photographic system; paying a contractor for operating the system; and paying any administrative costs incurred by the municipality related to the use of the system.

(h) This section applies to all of the municipalities located in Wake County. For purposes of this section, a municipality is located in Wake County if fifty-one percent (51%) or more of the land area of the municipality lies within Wake County."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 243

State and Local Government Committee Substitute Adopted 3/12/01
Corrected Copy 3/13/01
Fourth Edition Engrossed 3/21/01
House Committee Substitute Reported Without Prejudice 4/2/01
House Committee Substitute #2 Favorable 4/16/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S243-PCS3488-SB-36

Short Title: Red Light Cameras/Certain Municipalities. (Local)

Sponsors:

Referred to:

February 26, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CERTAIN MUNICIPALITIES TO USE TRAFFIC CONTROL PHOTOGRAPHIC SYSTEMS AND TO AUTHORIZE THE MUNICIPALITIES IN WAKE COUNTY TO USE RED LIGHT CAMERAS FOR SAFETY, FOR SCHOOLS, BUT NOT FOR PROFIT.

The General Assembly of North Carolina enacts:

SECTION 1. Subsection (d) of G.S. 160A-300.1 reads as rewritten:

"(d) This ~~act~~ section applies to the Cities of Albemarle, Charlotte, Concord, Durham, Fayetteville, Greensboro, High Point, Rocky Mount, Wilmington, Greenville, and Lumberton, ~~and~~ to the Towns of Chapel Hill, Cornelius, Huntersville, Matthews, Nags Head, and ~~Pineville~~ Pineville, and to all of the municipalities in Union County only."

SECTION 2. Article 15 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-300.2. Use of traffic control photographic systems in Wake County.**

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

(b) Any traffic control photographic system or any device which is a part of that system, as described in subsection (a) of this section, installed on a street or highway which is a part of the State highway system shall meet requirements established by the North Carolina Department of Transportation. Any traffic control system installed on a

municipal street shall meet standards established by the municipality and shall be consistent with any standards set by the Department of Transportation.

(c) Any traffic control photographic system installed on a street or highway shall be identified by appropriate advance warning signs conspicuously posted not more than 300 feet from the location of the traffic control photographic system. All advance warning signs shall be consistent with a statewide standard adopted by the Department of Transportation in conjunction with local governments authorized to install traffic control photographic systems.

(d) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-158 by means of a traffic control photographic system, as described in subsection (a) of this section. If a municipality adopts an ordinance pursuant to this section then, notwithstanding G.S. 20-176, a violation of G.S. 20-158 detected only by a traffic control photographic system shall not be an infraction. If a violation of G.S. 20-158 is detected by both a law enforcement officer and a traffic control photographic system, the officer may charge the offender with an infraction. If the officer charges the offender with an infraction, a civil penalty issued by the municipality for the same offense is void and unenforceable. An ordinance authorized by this subsection shall provide that:

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

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

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

c. A statement that the person who received the citation is not the owner or driver of the vehicle, or that the person who received the citation was not driving a vehicle at the time and location designated in the citation.

(2) A violation detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed and for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the vehicle nor insurance points as authorized by G.S. 58-36-65.

(3) The owner of the vehicle shall be issued a citation that shall be attached to photographic evidence of the violation that identifies the vehicle involved. The citation shall clearly state the manner in which

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

(4) The municipality shall establish a nonjudicial administrative hearing process to review objections to citations or penalties issued or assessed under this section. The municipality may establish an appeals panel composed of municipal employees to review objections. If the municipality does not establish an appeals panel composed of municipal employees, the mayor of the municipality shall review and make a final decision on all objections.

(e) The duration of the yellow light change interval at intersections where traffic control photographic systems are in use shall be no less than the yellow light change interval duration specified in the Design Manual developed by the Signals and Geometrics Section of the North Carolina Department of Transportation.

(f) A municipality enacting an ordinance implementing a traffic control photographic system may enter into a contract with a contractor for the lease, lease-purchase, or purchase of the system. The municipality may enter into only one contract for the lease, lease-purchase, or purchase of the system and the duration of the contract may be for no more than 60 months. After the period specified in the contract has expired, the system shall either be the property of the municipality or the system shall be removed and returned to the contractor.

(g) The clear proceeds from the citations issued pursuant to the ordinance authorized by this section shall be paid to the county school fund. The clear proceeds from the citations shall mean the funds remaining after paying for the lease, lease-purchase, or purchase of the traffic control photographic system; paying a contractor for operating the system; and paying any administrative costs incurred by the municipality related to the use of the system.

(h) This section applies to all of the municipalities located in Wake County only. For purposes of this section, a municipality is located in Wake County if fifty-one percent (51%) or more of the land area of the municipality lies within Wake County."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 6

SENATE BILL 243

State and Local Government Committee Substitute Adopted 3/12/01
Corrected Copy 3/13/01
Fourth Edition Engrossed 3/21/01
House Committee Substitute Reported Without Prejudice 4/2/01
House Committee Substitute #2 Favorable 4/16/01

Short Title: Red Light Cameras/Certain Municipalities. (Local)

Sponsors:

Referred to:

February 26, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CERTAIN MUNICIPALITIES TO USE TRAFFIC CONTROL PHOTOGRAPHIC SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. Subsection (d) of G.S. 160A-300.1 reads as rewritten:

"(d) This ~~act~~ section applies to the Cities of Albemarle, Charlotte, Concord, Durham, Fayetteville, Greensboro, High Point, Rocky Mount, Wilmington, Greenville, and Lumberton, ~~and~~ to the Towns of Cary, Chapel Hill, Cornelius, Huntersville, Matthews, Nags Head, and ~~Pineville~~ Pineville, and to all the municipalities of Union County only."

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

SENATE BILL 243:
Red Light Cameras/Certain Municipalities.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Plyler
Date:	June 7, 2001	**Summary by:**	Jeff Hudson
Version:	S243-PCS3487-SB-35		Committee Counsel

SUMMARY: ***The proposed committee substitute for Senate Bill 243 (S243-PCS3487-SB-35) would add the municipalities of Albemarle, Concord, Durham, Nags Head, Pineville, and all of the municipalities in Union County to the current statute that authorizes municipalities to use traffic control photographic systems. The proposed committee substitute would also create a new statute that authorizes municipalities located primarily in Wake County to use traffic control photographic systems. The similarities and differences between the new statute, G.S. 160A-300.2, and the current statute, G.S. 160A-300.1, are outlined below. The act is effective when it becomes law.***

Comparison of Current Law and New Statute

Provision	Current Statute, G.S. 160A-300.1	New Statute, G.S. 160A-300.2
Municipalities to which the Statute Applies	**Albemarle**, Charlotte, **Concord**, **Durham**, Fayetteville, Greensboro, High Point, Rocky Mount, Wilmington, Greenville, Lumberton, Chapel Hill, Cornelius, Huntersville, Matthews, **Nags Head**, **Pineville**, and **all of the municipalities in Union County**. (Added municipalities are in bold.)	All of the municipalities located primarily in Wake County.
Compliance with Department of Transportation Requirements	Traffic control photographic systems and traffic control systems must comply with Department of Transportation requirements.	Same.
Advance Warning Signs	Traffic control photographic systems must be identified by warning signs posted no more than 300 feet from the system.	Same.
Penalty for Violation	A violation at a location at which a traffic control photographic system is in operation is not an infraction. If the violation is detected by a traffic control photographic system, it is a noncriminal violation for which a $50 civil penalty may be assessed, but for which no driver's license or insurance points may be assessed.	Same if a violation is detected by a traffic control photographic system only. If a violation is detected by a law enforcement officer and a traffic control photographic system, the officer may charge the offender with an infraction, but if the officer does so, a civil penalty issued by the municipality is void and unenforceable.

Provision	Current Statute, G.S. 160A-300.1	New Statute, G.S. 160A-300.2
Form of Citation	The citation must state the manner in which the violation may be challenged.	Same, except that the citation must also be attached to photographic evidence of the violation that identifies the vehicle involved.
Responsibility for Violation	The owner of the vehicle is responsible unless, within 21 days after receiving notice of the violation, the owner furnishes officials or agents of the municipality with: • The name and address of the person or company who leased, rented, or otherwise had control of the vehicle. • An affidavit stating that the vehicle was stolen or in the custody of a person who did not have permission to use it.	Same, except that the owner must furnish information to the office of the mayor and may also avoid responsibility by furnishing: • A statement that the person who received the citation is not the owner or driver of the vehicle or was not driving a vehicle at the time and location designated by the citation.
Appeal	The municipality must institute a nonjudicial administrative hearing to review objections to citations and penalties.	The municipality must establish a nonjudicial administrative hearing process to review objections to citations and penalties. The municipality may establish an appeals panel of municipal employees to review objections but if it does not, the mayor must review make a final decision on objections.
Duration of Yellow Light	No Similar Provision.	Duration of yellow lights at intersections where traffic control photographic systems are in use may not be less than specified by the Department of Transportation.
Contract for Traffic Control Photographic System	No Similar Provision.	A municipality may enter into only one contract for the lease, lease-purchase, or purchase of a traffic control photographic system and the contract may be for no more than 60 months. After the period of the contract expires, the municipality must either own the system or return it.
Proceeds from Citations	No Similar Provision. (Municipalities retain proceeds from citations and use for a variety of purposes.)	The clear proceeds from citations are paid to the county school fund. Clear proceeds are funds remaining after paying for the system, its operation, and administrative costs.

VISITOR REGISTRATION SHEET

HR Committee
Name of Committee

6-7-01
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Marie Lundberg	WNC-TV
DAVID BARNES	Poyner + Spruill LLP
PETER Doyle	
Barbara Conklin	Manning, Fulton & Skinner
Chuck Cromer	NCATL
Jackie Strut	PCPAB
BRUCE THOMASON	PARKER POE ADAMS & BERNSTEIN
Andy Romanet	NCCM
SAM JOHNSON	ATT
PB Powell	AOC
Shannon Kostrzewa	Adv. Cap. Assoc
MILTON DEAN	NCDOT
John O'Hale	Gov office intern
Jonny Harrelson	Enterprise
Ed Eder	Town of CARY

VISITOR REGISTRATION SHEET

J2 Committee — Name of Committee

6-7-01 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Cam Cuver	PBMHL
Doug Howey	NCPMA
Gary Harris	"
Mark Benson	Capitol Group
Bill Wilson	NCATL
Jim Black	Bode Call + Stroup
Jack Hawke	
Michelle Frazier	NC Bar Assoc.
David Ferrell	Hofler Caldwell & Ferrell PA
Steve Hoffman	NCSBA

MINUTES
HO USE COMMITTEE ON JUDICIARY II

June 12, 2001 – 10:00 a.m.

The House Committee on JUDICIARY II met at 10:00 a.m on Tuesday, June 12, 2001, in Room 421 of the Legislative Office Building. The following members were present: Chairman Phil Baddour, Vice Chairman Phil Haire, Representatives Bowie, Decker, Gulley, Hall, Jeffus, Miller, Pope, Sherrill, and Weiss. Staff Attorneys, Esther Manheimer and Jeff Hudson, were also present. The Visitor Registration Sheet is attached as a part of the record of the Minutes.

Vice Chairman Haire presided and called the meeting to order. He recognized the Pages who were assigned to serve the Committee. The following bills were considered:

Committee Substitute for SB 746 - Sentencing Enhancement Changes/ Sentencing Commission. Representative Decker moved that the proposed committee substitute be before the Committee for purposes of discussion, and without objection the motion carried. Senator Miller, bill sponsor, was recognized to explain the bill. Representative Weiss made a motion for a favorable report as to House Committee Substitute bill, which changes the title, unfavorable as to the Senate Committee Substitute bill. The motion carried.

Committee Substitute SB 681 Judicial and Execution Sales/ Revise Procedure. Representative Haire recognized Mr. Floyd Lewis of the General Statutes Commission who gave an explanation of the bill, and Mr. P.B. Powell of the Administrative Office of the Courts who further explained the benefits of the bill. Hartsell, bill sponsor, also spoke on the bill and offered a technical amendment. Representative Bowie made a motion to adopt the amendment for discussion and the motion carried. Staff was asked to explain the amendment. Following this, Representative Bowie moved that the amendment be rolled into a House Committee Substitute and the House Committee Substitute be given a favorable report, unfavorable to the Senate Committee Substitute bill. The motion carried.

The meeting adjourned at 10:50 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Julie Allen
Committee Assistant

ATTACHMENTS

HOUSE JUDICIARY II COMMITTEE
AGENDA

June 12, 2001
10:00 A.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Jeff Hudson
Julie Allen (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDERED:

SB 681 Judicial & Execution Sales/Revise Procedure -Hartsell
SB 746 Sentencing Enhancement Changes/Sent. Comm. - Miller

ADJOURNMENT

file
mtg · 6.12.01

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 746 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW REGARDING ENHANCED SENTENCES AS RECOMMENDED BY THE SENTENCING COMMISSION.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ With a favorable report as to House committee substitute bill, ☒ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 746

Judiciary II Committee Substitute Adopted 4/17/01

PROPOSED HOUSE COMMITTEE SUBSTITUTE S746-PCS4178-RH-45

Short Title: Sentencing Enhancements Changes/Sent. Comm. (Public)

Sponsors:

Referred to:

April 2, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING ENHANCED SENTENCES AS RECOMMENDED BY THE SENTENCING COMMISSION, AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-2.2 is repealed.

SECTION 2. G.S. 15A-1340.16A reads as rewritten:

"**§ 15A-1340.16A. Enhanced sentence if defendant is convicted of a Class A, B1, B2, C, D, or E felony and the defendant used, displayed, or threatened to use or display a firearm during the commission of the felony.**

~~(a) If a person is convicted of a Class A, B1, B2, C, D, or E felony and the court finds that the person used, displayed, or threatened to use or display a firearm at the time of the felony, the court shall increase the minimum term of imprisonment to which the person is sentenced by 60 months. The court shall not suspend the 60-month minimum term of imprisonment imposed as an enhanced sentence under this section and shall not place any person sentenced under this section on probation for the enhanced sentence.~~

~~(b) Subsection (a) of this section does not apply in any of the following circumstances:~~

~~(1) The person is not sentenced to an active term of imprisonment.~~

~~(2) The evidence of the use, display, or threatened use or display of a firearm is needed to prove an element of the underlying Class A, B1, B2, C, D, or E felony.~~

~~(3) The person did not actually possess a firearm about his or her person.~~

(a) If a person is convicted of a Class A, B1, B2, C, D, or E felony and it is found as provided in this section that: (i) the person committed the felony by using, displaying, or threatening the use or display of a firearm, and (ii) the person actually possessed the firearm about his or her person, then the person shall have the minimum

term of imprisonment to which the person is sentenced for that felony increased by 60 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 60 months, as specified in G.S. 15A-1340.17(e) and (e1). The court shall not suspend any sentence imposed under this section and shall not place a person sentenced under this section on probation for the sentence imposed under this section.

(b) An indictment or information for the Class A, B1, B2, C, D, or E felony shall allege in that indictment or information the facts set out in subsection (a) of this section. The pleading is sufficient if it alleges that the defendant committed the felony by using, displaying, or threatening the use or display of a firearm and the defendant actually possessed the firearm about the defendant's person. One pleading is sufficient for all Class A, B1, B2, C, D, or E felonies that are tried at a single trial.

(c) The State shall prove the issues set out in subsection (a) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony unless the defendant pleads guilty or no contest to that issue. If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issue set out in subsection (a) of this section, then a jury shall be impaneled to determine that issue.

(d) Subsection (a) of this section does not apply if the evidence of the use, display, or threatened use or display of the firearm is needed to prove an element of the felony or if the person is not sentenced to an active term of imprisonment."

SECTION 3. G.S. 15A-1340.16B reads as rewritten:

"**§ 15A-1340.16B. Life imprisonment without parole for a second or subsequent conviction of a Class B1 ~~felony.~~felony, the victim was 13 years of age or younger, and there are no mitigating factors.**

(a) ~~Notwithstanding the sentencing dispositions in G.S. 15A-1340.17,~~ If a person is convicted of a Class B1 felony and it is found as provided in this section that: (i) ~~shall be sentenced to life imprisonment without parole if:~~

~~(1)~~ ~~The offense was committed~~the person committed the felony against a victim who was 13 years of age or younger at the time of the offense; and

~~(2)~~ ~~The~~ (ii) the person has one or more prior convictions of a Class B1 ~~felony; and~~

~~(3)~~ ~~The court finds that there are no mitigating factors in accordance with G.S. 15A-1340.16(e).~~felony, then the person shall be sentenced to life imprisonment without parole.

~~(b) If the sentencing court finds that there are mitigating circumstances, then the court shall sentence the person in accordance with G.S. 15A-1340.17.~~

~~(c) A prior conviction of a Class B1 felony shall be proved in accordance with G.S. 15A-1340.14.~~

(b) An indictment or information for the Class B1 felony shall allege in that indictment or information or in a separate indictment or information the facts set out in subsection (a) of this section. The pleading is sufficient if it alleges that the defendant

committed the felony against a victim who was 13 years of age or younger at the time of the felony and had one or more prior convictions of a Class B1 felony. One pleading is sufficient for all Class B1 felonies that are tried at a single trial.

(c) The State shall prove the issues set out in subsection (a) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony unless the defendant pleads guilty or no contest to that issue. The issue shall be presented in the same manner as provided in G.S. 15A-928(c). If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issue set out in subsection (a) of this section, then a jury shall be impaneled to determine that issue.

(d) Subsection (a) of this section does not apply if there are mitigating factors present under G.S. 15A-1340.16(e)."

SECTION 4. G.S. 15A-1340.16C reads as rewritten:

"**§ 15A-1340.16C. Enhanced sentence if defendant is convicted of a felony and the defendant was wearing or had in his or her immediate possession a bulletproof vest during the commission of the felony.**

(a) If a person is convicted of a felony and ~~the court finds that~~ it is found as provided in this section that the person ~~was wearing~~ wore or had in his or her immediate possession a bulletproof vest at the time of the felony, then the person is guilty of a felony that is one class higher than the underlying felony for which the person was convicted.

~~(b) This section does not apply if the evidence that the person possessed a bullet-proof vest is needed to prove an element of the underlying felony for which the person was convicted. This section does not apply to law enforcement officers.~~

(b) An indictment or information for the felony shall allege in that indictment or information or in a separate indictment or information the facts set out in subsection (a) of this section. The pleading is sufficient if it alleges that the defendant committed the felony while wearing or having in the defendant's immediate possession a bulletproof vest. One pleading is sufficient for all felonies that are tried as a single trial.

(c) The State shall prove the issue set out in subsection (a) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony unless the defendant pleads guilty or no contest to that issue. If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issue set out in subsection (a) of this section, then a jury shall be impaneled to determine that issue.

(d) Subsection (a) of this section does not apply if the evidence that the person wore or had in the person's immediate possession a bulletproof vest is needed to prove an element of the felony."

SECTION 5. Article 81B of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1340.18. Maximum punishments for felony offenses.**

The maximum punishment for a felony offense shall be equal to the maximum term of imprisonment which corresponds to the longest minimum term of imprisonment in

the aggravated range in Prior Record Level VI for that offense class pursuant to G.S. 15A-1340.17. The maximum punishments are as follows:

(1) A Class A felony shall be punishable by death or life imprisonment without parole as provided by Article 100 of Chapter 15A of the General Statutes.

(2) A Class B1 felony may be punished by a term of imprisonment of up to life imprisonment without parole.

(3) A Class B2 felony may be punished by a term of imprisonment of up to 480 months.

(4) A Class C felony may be punished by a term of imprisonment of up to 261 months.

(5) A Class D felony may be punished by a term of imprisonment of up to 229 months.

(6) A Class E felony may be punished by a term of imprisonment of up to 98 months.

(7) A Class F felony may be punished by a term of imprisonment of up to 59 months.

(8) A Class G felony may be punished by a term of imprisonment of up to 44 months.

(9) A Class H felony may be punished by a term of imprisonment of up to 30 months.

(10) A Class I felony may be punished by a term of imprisonment of up to 15 months."

SECTION 6. G.S. 14-269.1 reads as rewritten:

"**§ 14-269.1. Confiscation and disposition of deadly weapons.**

Upon conviction of any person for violation of ~~G.S. 14-2.2,~~ 14-269, 14-269.7, or any other offense involving the use of a deadly weapon of a type referred to in G.S. 14-269, the deadly weapon with reference to which the defendant shall have been convicted shall be ordered confiscated and disposed of by the presiding judge at the trial in one of the following ways in the discretion of the presiding judge.

(1) By ordering the weapon returned to its rightful owner, but only when such owner is a person other than the defendant and has filed a petition for the recovery of such weapon with the presiding judge at the time of the defendant's conviction, and upon a finding by the presiding judge that petitioner is entitled to possession of same and that he was unlawfully deprived of the same without his consent.

(2), (3) Repealed by Session Laws 1994, Ex. Sess., c. 16, s. 2.

(4) By ordering such weapon turned over to the sheriff of the county in which the trial is held or his duly authorized agent to be destroyed. The sheriff shall maintain a record of the destruction thereof.

(4a) By ordering the weapon, if the weapon has a legible unique identification number, turned over to a law enforcement agency in the

county of trial for the official use of such agency, but only upon the written request by the head or chief of such agency. The receiving law enforcement agency shall maintain a record and inventory of all such weapons received.

(5) By ordering such weapon turned over to the North Carolina State Bureau of Investigation's Crime Laboratory Weapons Reference Library for official use by that agency. The State Bureau of Investigation shall maintain a record and inventory of all such weapons received.

(6) By ordering such weapons turned over to the North Carolina Justice Academy for official use by that agency. The North Carolina Justice Academy shall maintain a record and inventory of all such weapons received."

SECTION 7. G.S. 15A-1340.16(d) reads as rewritten:

"(d) Aggravating Factors. – The following are aggravating factors:

(1) The defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants.

(2) The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.

(2a) The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy. A "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of felony or violent misdemeanor offenses, or delinquent acts that would be felonies or violent misdemeanors if committed by an adult, and having a common name or common identifying sign, colors, or symbols.

(3) The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(4) The defendant was hired or paid to commit the offense.

(5) The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(6) The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.

(7) The offense was especially heinous, atrocious, or cruel.
(8) The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
(9) The defendant held public office at the time of the offense and the offense related to the conduct of the office.
(10) The defendant was armed with or used a deadly weapon at the time of the crime.
(11) The victim was very young, or very old, or mentally or physically infirm, or handicapped.
(12) The defendant committed the offense while on pretrial release on another charge.
(13) The defendant involved a person under the age of 16 in the commission of the crime.
(14) The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.
(15) The defendant took advantage of a position of trust or confidence to commit the offense.
(16) The offense involved the sale or delivery of a controlled substance to a minor.
(17) The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
(18) The defendant does not support the defendant's family.
(18a) The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.
(19) The serious injury inflicted upon the victim is permanent and debilitating.
(20) Any other aggravating factor reasonably related to the purposes of sentencing.

Evidence necessary to prove an element of the offense shall not be used to prove any factor in aggravation, and the same item of evidence shall not be used to prove more than one factor in aggravation. Evidence necessary to establish ~~that~~ an enhanced sentence ~~is required under G.S. 14-2.2~~ may not be used to prove any factor in aggravation.

The judge shall not consider as an aggravating factor the fact that the defendant exercised the right to a jury trial."

SECTION 8. This act is effective when it becomes law and applies to offenses committed on or after that date. Prosecutions for offenses occurring before the

effective date of this act are not abated or affected by this act, and the statutes that would be applicable before this act remain applicable to those prosecutions.

J-II
June 12, 2001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 746
Judiciary II Committee Substitute Adopted 4/17/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S746-CSRH-45 [v.1]

6/5/2001 9:18:01 AM

Short Title: Sentencing Enhancements Changes/Sent. Comm. (Public)

Sponsors:

Referred to:

April 2, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING ENHANCED SENTENCES AS RECOMMENDED BY THE SENTENCING COMMISSION, AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-2.2 is repealed.

SECTION 2. G.S. 15A-1340.16A reads as rewritten:

"**§ 15A-1340.16A. Enhanced sentence if defendant is convicted of a Class A, B1, B2, C, D, or E felony and the defendant used, displayed, or threatened to use or display a firearm during the commission of the felony.**

~~(a) If a person is convicted of a Class A, B1, B2, C, D, or E felony and the court finds that the person used, displayed, or threatened to use or display a firearm at the time of the felony, the court shall increase the minimum term of imprisonment to which the person is sentenced by 60 months. The court shall not suspend the 60-month minimum term of imprisonment imposed as an enhanced sentence under this section and shall not place any person sentenced under this section on probation for the enhanced sentence.~~

~~(b) Subsection (a) of this section does not apply in any of the following circumstances:~~

~~(1) The person is not sentenced to an active term of imprisonment.~~

~~(2) The evidence of the use, display, or threatened use or display of a firearm is needed to prove an element of the underlying Class A, B1, B2, C, D, or E felony.~~

~~(3) The person did not actually possess a firearm about his or her person.~~

(a) If a person is convicted of a Class A, B1, B2, C, D, or E felony and it is found as provided in this section that: (i) the person committed the felony by using, displaying, or threatening the use or display of a firearm, and (ii) the person actually possessed the firearm about his or her person, then the person shall have the minimum

term of imprisonment to which the person is sentenced for that felony increased by 60 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 60 months, as specified in G.S. 15A-1340.17(e) and (e1). The court shall not suspend any sentence imposed under this section and shall not place a person sentenced under this section on probation for the sentence imposed under this section.

(b) An indictment or information for the Class A, B1, B2, C, D, or E felony shall allege in that indictment or information the facts set out in subsection (a) of this section. The pleading is sufficient if it alleges that the defendant committed the felony by using, displaying, or threatening the use or display of a firearm and the defendant actually possessed the firearm about the defendant's person. One pleading is sufficient for all Class A, B1, B2, C, D, or E felonies that are tried at a single trial.

(c) The State shall prove the issues set out in subsection (a) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony unless the defendant pleads guilty or no contest to that issue. If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issue set out in subsection (a) of this section, then a jury shall be impaneled to determine that issue.

(d) Subsection (a) of this section does not apply if the evidence of the use, display, or threatened use or display of the firearm is needed to prove an element of the felony or if the person is not sentenced to an active term of imprisonment."

SECTION 3. G.S. 15A-1340.16B reads as rewritten:

"**§ 15A-1340.16B. Life imprisonment without parole for a second or subsequent conviction of a Class B1 ~~felony.~~felony, the victim was 13 years of age or younger, and there are no mitigating factors.**

(a) ~~Notwithstanding the sentencing dispositions in G.S. 15A-1340.17,~~ If a person is convicted of a Class B1 felony and it is found as provided in this section that: (i) ~~shall be sentenced to life imprisonment without parole if:~~

~~(1)~~ ~~The offense was committed~~the person committed the felony against a victim who was 13 years of age or younger at the time of the offense; and

~~(2)~~ ~~The~~ (ii) the person has one or more prior convictions of a Class B1 ~~felony; and~~

~~(3)~~ ~~The court finds that there are no mitigating factors in accordance with G.S. 15A-1340.16(e).~~felony, then the person shall be sentenced to life imprisonment without parole.

~~(b) If the sentencing court finds that there are mitigating circumstances, then the court shall sentence the person in accordance with G.S. 15A-1340.17.~~

~~(c) A prior conviction of a Class B1 felony shall be proved in accordance with G.S. 15A-1340.14.~~

(b) An indictment or information for the Class B1 felony shall allege in that indictment or information or in a separate indictment or information the facts set out in subsection (a) of this section. The pleading is sufficient if it alleges that the defendant

committed the felony against a victim who was 13 years of age or younger at the time of the felony and had one or more prior convictions of a Class B1 felony. One pleading is sufficient for all Class B1 felonies that are tried at a single trial.

(c) The State shall prove the issues set out in subsection (a) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony unless the defendant pleads guilty or no contest to that issue. The issue shall be presented in the same manner as provided in G.S. 15A-928(c). If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issue set out in subsection (a) of this section, then a jury shall be impaneled to determine that issue.

(d) Subsection (a) of this section does not apply if there are mitigating factors present under G.S. 15A-1340.16(e)."

SECTION 4. G.S. 15A-1340.16C reads as rewritten:

"**§ 15A-1340.16C. Enhanced sentence if defendant is convicted of a felony and the defendant was wearing or had in his or her immediate possession a bulletproof vest during the commission of the felony.**

(a) If a person is convicted of a felony and ~~the court finds that~~ it is found as provided in this section that the person ~~was wearing~~ wore or had in his or her immediate possession a bulletproof vest at the time of the felony, then the person is guilty of a felony that is one class higher than the underlying felony for which the person was convicted.

~~(b) This section does not apply if the evidence that the person possessed a bullet-proof vest is needed to prove an element of the underlying felony for which the person was convicted. This section does not apply to law enforcement officers.~~

(b) An indictment or information for the felony shall allege in that indictment or information or in a separate indictment or information the facts set out in subsection (a) of this section. The pleading is sufficient if it alleges that the defendant committed the felony while wearing or having in the defendant's immediate possession a bulletproof vest. One pleading is sufficient for all felonies that are tried as a single trial.

(c) The State shall prove the issue set out in subsection (a) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony unless the defendant pleads guilty or no contest to that issue. If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issue set out in subsection (a) of this section, then a jury shall be impaneled to determine that issue.

(d) Subsection (a) of this section does not apply if the evidence that the person wore or had in the person's immediate possession a bulletproof vest is needed to prove an element of the felony."

SECTION 5. Article 81B of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1340.18. Maximum punishments for felony offenses.**

The maximum punishment for a felony offense shall be equal to the maximum term of imprisonment which corresponds to the longest minimum term of imprisonment in

the aggravated range in Prior Record Level VI for that offense class pursuant to G.S. 15A-1340.17. The maximum punishments are as follows:

(1) A Class A felony shall be punishable by death or life imprisonment without parole as provided by Article 100 of Chapter 15A of the General Statutes.

(2) A Class B1 felony may be punished by a term of imprisonment of up to life imprisonment without parole.

(3) A Class B2 felony may be punished by a term of imprisonment of up to 480 months.

(4) A Class C felony may be punished by a term of imprisonment of up to 261 months.

(5) A Class D felony may be punished by a term of imprisonment of up to 229 months.

(6) A Class E felony may be punished by a term of imprisonment of up to 98 months.

(7) A Class F felony may be punished by a term of imprisonment of up to 59 months.

(8) A Class G felony may be punished by a term of imprisonment of up to 44 months.

(9) A Class H felony may be punished by a term of imprisonment of up to 30 months.

(10) A Class I felony may be punished by a term of imprisonment of up to 15 months."

SECTION 6. G.S. 14-269.1 reads as rewritten:

"§ 14-269.1. Confiscation and disposition of deadly weapons.

Upon conviction of any person for violation of ~~G.S. 14-2.2,~~ 14-269, 14-269.7, or any other offense involving the use of a deadly weapon of a type referred to in G.S. 14-269, the deadly weapon with reference to which the defendant shall have been convicted shall be ordered confiscated and disposed of by the presiding judge at the trial in one of the following ways in the discretion of the presiding judge.

(1) By ordering the weapon returned to its rightful owner, but only when such owner is a person other than the defendant and has filed a petition for the recovery of such weapon with the presiding judge at the time of the defendant's conviction, and upon a finding by the presiding judge that petitioner is entitled to possession of same and that he was unlawfully deprived of the same without his consent.

(2), (3) Repealed by Session Laws 1994, Ex. Sess., c. 16, s. 2.

(4) By ordering such weapon turned over to the sheriff of the county in which the trial is held or his duly authorized agent to be destroyed. The sheriff shall maintain a record of the destruction thereof.

(4a) By ordering the weapon, if the weapon has a legible unique identification number, turned over to a law enforcement agency in the

county of trial for the official use of such agency, but only upon the written request by the head or chief of such agency. The receiving law enforcement agency shall maintain a record and inventory of all such weapons received.

(5) By ordering such weapon turned over to the North Carolina State Bureau of Investigation's Crime Laboratory Weapons Reference Library for official use by that agency. The State Bureau of Investigation shall maintain a record and inventory of all such weapons received.

(6) By ordering such weapons turned over to the North Carolina Justice Academy for official use by that agency. The North Carolina Justice Academy shall maintain a record and inventory of all such weapons received."

SECTION 7. G.S. 15A-1340.16(d) reads as rewritten:

"(d) Aggravating Factors. – The following are aggravating factors:

(1) The defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants.

(2) The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.

(2a) The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy. A "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of felony or violent misdemeanor offenses, or delinquent acts that would be felonies or violent misdemeanors if committed by an adult, and having a common name or common identifying sign, colors, or symbols.

(3) The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(4) The defendant was hired or paid to commit the offense.

(5) The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(6) The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.

(7) The offense was especially heinous, atrocious, or cruel.
(8) The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
(9) The defendant held public office at the time of the offense and the offense related to the conduct of the office.
(10) The defendant was armed with or used a deadly weapon at the time of the crime.
(11) The victim was very young, or very old, or mentally or physically infirm, or handicapped.
(12) The defendant committed the offense while on pretrial release on another charge.
(13) The defendant involved a person under the age of 16 in the commission of the crime.
(14) The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.
(15) The defendant took advantage of a position of trust or confidence to commit the offense.
(16) The offense involved the sale or delivery of a controlled substance to a minor.
(17) The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
(18) The defendant does not support the defendant's family.
(18a) The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.
(19) The serious injury inflicted upon the victim is permanent and debilitating.
(20) Any other aggravating factor reasonably related to the purposes of sentencing.

Evidence necessary to prove an element of the offense shall not be used to prove any factor in aggravation, and the same item of evidence shall not be used to prove more than one factor in aggravation. Evidence necessary to establish ~~that~~ an enhanced sentence ~~is required under G.S. 14-2.2~~ may not be used to prove any factor in aggravation.

The judge shall not consider as an aggravating factor the fact that the defendant exercised the right to a jury trial."

SECTION 8. This act is effective when it becomes law and applies to offenses committed on or after that date. Prosecutions for offenses occurring before the

effective date of this act are not abated or affected by this act, and the statutes that would be applicable before this act remain applicable to those prosecutions.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 2

SENATE BILL 746

Judiciary II Committee Substitute Adopted 4/17/01

Short Title: Sentencing Enhancements Changes/Sent. Comm. (Public)

Sponsors:

Referred to:

April 2, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING ENHANCED SENTENCES AS RECOMMENDED BY THE SENTENCING COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-2.2 is repealed.

SECTION 2. G.S. 15A-1340.16A reads as rewritten:

"**§ 15A-1340.16A. Enhanced sentence if defendant is convicted of a Class A, B1, B2, C, D, or E felony and the defendant used, displayed, or threatened to use or display a firearm during the commission of the felony.**

~~(a) If a person is convicted of a Class A, B1, B2, C, D, or E felony and the court finds that the person used, displayed, or threatened to use or display a firearm at the time of the felony, the court shall increase the minimum term of imprisonment to which the person is sentenced by 60 months. The court shall not suspend the 60-month minimum term of imprisonment imposed as an enhanced sentence under this section and shall not place any person sentenced under this section on probation for the enhanced sentence.~~

~~(b) Subsection (a) of this section does not apply in any of the following circumstances:~~

~~(1) The person is not sentenced to an active term of imprisonment.~~

~~(2) The evidence of the use, display, or threatened use or display of a firearm is needed to prove an element of the underlying Class A, B1, B2, C, D, or E felony.~~

~~(3) The person did not actually possess a firearm about his or her person.~~

(a) If a person is convicted of a Class A, B1, B2, C, D, or E felony and it is found as provided in this section that: (i) the person committed the felony by using, displaying, or threatening the use or display of a firearm, and (ii) the person actually possessed the firearm about his or her person, then the person shall have the minimum term of imprisonment to which the person is sentenced for that felony increased by 60 months. The maximum term of imprisonment shall be the maximum term that

corresponds to the minimum term after it is increased by 60 months, as specified in G.S. 15A-1340.17(e) and (e1). The court shall not suspend any sentence imposed under this section and shall not place a person sentenced under this section on probation for the sentence imposed under this section.

(b) An indictment or information for the Class A, B1, B2, C, D, or E felony shall allege in that indictment or information the facts set out in subsection (a) of this section. The pleading is sufficient if it alleges that the defendant committed the felony by using, displaying, or threatening the use or display of a firearm and the defendant actually possessed the firearm about the defendant's person. One pleading is sufficient for all Class A, B1, B2, C, D, or E felonies that are tried at a single trial.

(c) The State shall prove the issues set out in subsection (a) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony unless the defendant pleads guilty or no contest to that issue. If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issue set out in subsection (a) of this section, then a jury shall be impaneled to determine that issue.

(d) Subsection (a) of this section does not apply if the evidence of the use, display, or threatened use or display of the firearm is needed to prove an element of the felony or if the person is not sentenced to an active term of imprisonment."

SECTION 3. G.S. 15A-1340.16B reads as rewritten:

"**§ 15A-1340.16B. Life imprisonment without parole for a second or subsequent conviction of a Class B1 ~~felony.~~felony, the victim was 13 years of age or younger, and there are no mitigating factors.**

(a) ~~Notwithstanding the sentencing dispositions in G.S. 15A-1340.17,~~ If a person is convicted of a Class B1 felony and it is found as provided in this section that: ~~(i) shall be sentenced to life imprisonment without parole if:~~

~~(1)~~ ~~The offense was committed~~the person committed the felony against a victim who was 13 years of age or younger at the time of the offense; and

~~(2)~~ ~~The~~ (ii) the person has one or more prior convictions of a Class B1 ~~felony; and~~

~~(3)~~ ~~The court finds that there are no mitigating factors in accordance with G.S. 15A-1340.16(e).~~felony, then the person shall be sentenced to life imprisonment without parole.

~~(b) If the sentencing court finds that there are mitigating circumstances, then the court shall sentence the person in accordance with G.S. 15A-1340.17.~~

~~(c) A prior conviction of a Class B1 felony shall be proved in accordance with G.S. 15A-1340.14.~~

(b) An indictment or information for the Class B1 felony shall allege in that indictment or information or in a separate indictment or information the facts set out in subsection (a) of this section. The pleading is sufficient if it alleges that the defendant committed the felony against a victim who was 13 years of age or younger at the time of

the felony and had one or more prior convictions of a Class B1 felony. One pleading is sufficient for all Class B1 felonies that are tried at a single trial.

(c) The State shall prove the issues set out in subsection (a) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony unless the defendant pleads guilty or no contest to that issue. The issue shall be presented in the same manner as provided in G.S. 15A-928(c). If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issue set out in subsection (a) of this section, then a jury shall be impaneled to determine that issue.

(d) Subsection (a) of this section does not apply if there are mitigating factors present under G.S. 15A-1340.16(e)."

SECTION 4. G.S. 15A-1340.16C reads as rewritten:

"**§ 15A-1340.16C. Enhanced sentence if defendant is convicted of a felony and the defendant was wearing or had in his or her immediate possession a bulletproof vest during the commission of the felony.**

(a) If a person is convicted of a felony and ~~the court finds that~~ it is found as provided in this section that the person ~~was wearing~~ wore or had in his or her immediate possession a bulletproof vest at the time of the felony, then the person is guilty of a felony that is one class higher than the underlying felony for which the person was convicted.

~~(b) This section does not apply if the evidence that the person possessed a bullet-proof vest is needed to prove an element of the underlying felony for which the person was convicted. This section does not apply to law enforcement officers.~~

(b) An indictment or information for the felony shall allege in that indictment or information or in a separate indictment or information the facts set out in subsection (a) of this section. The pleading is sufficient if it alleges that the defendant committed the felony while wearing or having in the defendant's immediate possession a bulletproof vest. One pleading is sufficient for all felonies that are tried as a single trial.

(c) The State shall prove the issue set out in subsection (a) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony unless the defendant pleads guilty or no contest to that issue. If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issue set out in subsection (a) of this section, then a jury shall be impaneled to determine that issue.

(d) Subsection (a) of this section does not apply if the evidence that the person wore or had in the person's immediate possession a bulletproof vest is needed to prove an element of the felony."

SECTION 5. Article 81B of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1340.18. Maximum punishments for felony offenses.**

The maximum punishment for a felony offense shall be equal to the maximum term of imprisonment which corresponds to the longest minimum term of imprisonment in the aggravated range in Prior Record Level VI for that offense class pursuant to G.S. 15A-1340.17. The maximum punishments are as follows:

(1) A Class A felony shall be punishable by death or life imprisonment without parole as provided by Article 100 of Chapter 15A of the General Statutes.

(2) A Class B1 felony may be punished by a term of imprisonment of up to life imprisonment without parole.

(3) A Class B2 felony may be punished by a term of imprisonment of up to 480 months.

(4) A Class C felony may be punished by a term of imprisonment of up to 261 months.

(5) A Class D felony may be punished by a term of imprisonment of up to 229 months.

(6) A Class E felony may be punished by a term of imprisonment of up to 98 months.

(7) A Class F felony may be punished by a term of imprisonment of up to 59 months.

(8) A Class G felony may be punished by a term of imprisonment of up to 44 months.

(9) A Class H felony may be punished by a term of imprisonment of up to 30 months.

(10) A Class I felony may be punished by a term of imprisonment of up to 15 months."

SECTION 6. This act is effective when it becomes law and applies to offenses committed on or after that date. Prosecutions for offenses occurring before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable before this act remain applicable to those prosecutions.

SENATE BILL 746:
Sentencing Enhancements Changes/Sent. Comm.

June 12, 2001

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Miller
Date:	June 5, 2001	**Summary by:**	Robin S. Johnson*
Version:	S746-CSRH-45[v.1]		Committee Counsel

The PCS adds Sections 6 & 7 to make conforming changes to two statutes that are affected by the repeal of G.S. 14-2.2 in Section 1.

SUMMARY: Senate Bill 746 would amend the enhanced sentencing laws to conform to a recent United States Supreme Court case and a North Carolina Court of Appeals case by requiring that (1) the facts supporting an enhanced sentence be alleged in the indictment, and (2) a jury determine the enhancement issues beyond a reasonable doubt. The bill also would codify the maximum punishment for all classes of felonies.

The bill is recommended by the Sentencing Commission.

The act would become effective when it becomes law and apply to offenses committed on or after that date. The current statutes would be applicable to prosecutions for offenses occurring before the act becomes effective.

BACKGROUND: Currently, there are three North Carolina statutes that require a sentencing judge, upon finding certain facts by a preponderance of the evidence, to increase a defendant's sentence beyond the ranges authorized by structured sentencing: These statutes are (i) firearm enhancement; (ii) enhancement for Class B1 felonies involving young victims; and (iii) bulletproof vest enhancement.

A recent United States Supreme Court decision, *Apprendi v. New Jersey*, 530 U.S. 466 (2000), has called into question the constitutionality of these sentencing enhancements. The Court held that any fact, other than a prior conviction, that increases the punishment for a crime beyond the statutory maximum for that crime must be submitted to the jury and proven beyond a reasonable doubt.

In a decision issued on December 29, 2000, the North Carolina Court of Appeals followed the *Apprendi* decision and held that North Carolina's firearm enhancement statute was unconstitutional as violative of procedural due process under the 14th Amendment of the United States Constitution.

BILL ANALYSIS: The bill would modify the three enhanced sentencing statutes to conform with the recent *Apprendi* and *Guice* decisions by requiring that a jury determine beyond a reasonable doubt the facts supporting an enhanced sentence.

I. Firearm Enhancement (Secs. 1 & 2)

Under current law, G.S. 15A-1340.16A requires that an additional 60 months be added to a defendant's sentence ***if the judge finds*** that the defendant (1) used, displayed, or threatened to use or display a firearm during the commission of a Class A through E felony and (2) actually possessed a firearm about his or her person.

Under the bill, a defendant will be subject a 60-month enhancement ***if a jury finds beyond a reasonable doubt*** that the defendant (i) used, displayed, or threatened to use or display a firearm during the commission of a Class A through E felony and (ii) actually possessed a firearm about his or her person.

Under current law and under the bill, the enhancement will not apply if evidence of the use, display, or threatened use or display of a firearm is needed to prove an element of the underlying felony or if the person is not sentenced to an active term of imprisonment.

II. Enhancement for Class B1 Felonies Involving Young Victims (Sec. 3)

Currently, G.S. 15A-1340.16B requires that a defendant who is convicted of a Class B1 felony be sentenced to life imprisonment without parole ***if the judge finds*** that (1) the victim was 13 years of age or younger at the time of the offense, (2) the defendant has one or more prior convictions of a Class B1 felony, and (3) there are no mitigating factors present.

B1 felonies are: 1st degree rape, 1st degree sexual offense, and statutory rape or a sexual offense of a person who is 13, 14, or 15 years old and the defendant is at least 6 years older than the victim.

Under the bill, a defendant who is convicted of a Class B1 felony shall be sentenced to life imprisonment without parole ***if a jury determines beyond a reasonable doubt*** (1) the victim was 13 years of age or younger at the time of the offense, and (2) the defendant has one or more prior convictions of a Class B1 felony. The enhanced sentence will not apply if there are mitigating factors present.

III. Bulletproof Vest Enhancement (Sec. 4)

Under current law, G.S. 15A-1340.16C requires that a defendant who is convicted of a felony ***where the judge finds*** that the person wore or had in the person's immediate possession a bulletproof vest at the time of the felony be guilty of a felony that is one class higher than the underlying felony for which the person was convicted. This enhancement does not apply to law enforcement officers.

Under the bill, a defendant who is convicted of a felony ***where the jury determines beyond a reasonable doubt*** that the person wore or had in his immediate possession a bulletproof vest at the time of the felony, shall be guilty of a felony that is one class higher than the underlying felony for which the person was convicted. The exception for law enforcement officers is removed under the bill.

Under current law and under the bill, the enhanced sentence will not apply if evidence that the person wore or had in his immediate possession a bulletproof vest is needed to prove an element of the felony.

For all enhancements, the bill would require indictments to allege the facts necessary to support an enhanced sentence.

Maximum Punishments for Felonies (Sec. 5)

The bill also would create a new G.S. 15A-1340.18 in Article 81B of Chapter 15A. This new section would codify the maximum punishments for all classes of felony offenses. This section does not change the law but rather it clarifies the maximum punishments that judges currently permit and apply in the sentencing process.

S746-SMRH-002: Ms. Trina Griffin, committee counsel for Senate Judiciary II, contributed significantly to this summary.*

Section 1 would repeal this statute:

§ 14-2.2. Sentencing of a person convicted of a Class A, B, B1, B2, C, D, or E felony who used, displayed, or threatened to use or display a firearm during the commission of the crime; confiscation and disposition of a firearm used in a felony.

(a) If a person is convicted of a Class A, B, B1, B2, C, D, or E felony and the person used, displayed, or threatened to use or display a firearm during the commission of the felony, the person shall, in addition to the punishment for the underlying felony, be sentenced to a minimum term of imprisonment for 60 months as provided by G.S. 15A-1340.16A.

The court shall not suspend any sentence imposed under this section and shall not place a person sentenced under this section on probation for the sentence imposed under this section. Sentences imposed pursuant to this section shall be consecutive to all other sentences imposed and shall begin at the expiration of any other sentence being served by the person.

(b) Subsection (a) of this section does not apply in any of the following circumstances:

(1) The person is not sentenced to an active term of imprisonment.

(2) The evidence of the use, display, or threatened use or display of a firearm is needed to prove an element of the underlying Class A, B, B1, B2, C, D, or E felony.

(3) The person did not actually possess a firearm about his or her person.

(c) When a person is found to have personally used a firearm in the commission or attempted commission of a felony and the firearm is owned by that person, or the serial number on the firearm has been defaced such that ownership is not traceable, the court shall order that the firearm be confiscated and disposed of in any of the ways provided by G.S. 14-269.1 that the court in its discretion deems appropriate.

(d) Repealed by Session Laws 1994, Extra Session, c. 22, s. 19(b). (1979, c. 760, s. 2; 1979, 2nd Sess., c. 1316, ss. 34, 47, 48; 1981, c. 63, s. 1; c. 179, s. 14; 1993, c. 538, s. 4; 1994, Ex. Sess., c. 22, ss. 18, 19(a), (b).)

J-II
June 12, 2001

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 681

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

S681-ASB-30 [v.2]

Date _____,2001

Comm. Sub. [YES]
Amends Title [NO]
Second Edition

rolled into House
PCS
PCS

Representative _____

moves to amend the bill on page 6, line 37,
by rewriting that line to read:

"public sale, except that the notice of any resale of personal property held pursuant to an order granted under G.S. 1-339.27A need not be published in a newspaper, but shall be posted as provided by G.S. 1-339-17.'"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 2

SENATE BILL 681

Judiciary I Committee Substitute Adopted 4/12/01

Short Title: Judicial & Execution Sales/Revise Procedure. (Public)

Sponsors:

Referred to:

March 26, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING JUDICIAL SALES AND EXECUTION SALES TO PROVIDE FOR A ROLLING UPSET BID PROCEDURE AND TO CONFORM THE TIME PERIODS FOR POSTING AND PUBLISHING NOTICE OF SALE TO THE LAW GOVERNING FORECLOSURE SALES UNDER A POWER OF SALE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

PART I. JUDICIAL SALES.

SECTION 1. G.S. 1-339.3(b) reads as rewritten:

"(b) The procedure prescribed by this Article applies to all sales ordered by a judge of the superior or district court, except that the judge having jurisdiction may, upon a finding and a recital in the order of sale of the necessity or advisability thereof, vary the procedure from that herein prescribed, but not inconsistently with G.S. 1-339.6 restricting the place of sale of real ~~property, and not inconsistently with G.S. 1-339.27(a) and G.S. 1-339.36 requiring that a resale be ordered when an upset bid is submitted.~~property."

SECTION 2. G.S. 1-339.8 reads as rewritten:

"**§ 1-339.8. Public sale of separate tracts in different counties.**

(a) When an order of public sale directs the sales of separate tracts of real property situated in different counties, exclusive jurisdiction over the sale remains in the superior or district court of the county where the proceeding, in which the order of sale was issued, is pending, but there shall be a separate advertisement, sale and report of sale with respect to the property in each county. In any such sale proceeding, the clerk of the superior court of the county where the original order of sale was ~~issued,~~ issued has jurisdiction with respect to ~~the resale of~~ upset bids submitted for separate tracts of property situated in other counties as well as in the clerk's own ~~county, and when~~ county. When the public sale is by auction an upset bid may be filed only with that

~~clerk, except in those cases where the judge retains resale jurisdiction pursuant to G.S. 1-339.27.~~clerk.

(b) The report of sale with respect to all sales of separate tracts situated in different counties shall be filed with the clerk of the superior court of the county in which the order of sale was issued, and is not required to be filed in any other county.

(c) When the public sale is by auction, the sale ~~and each subsequent resale~~ of each separate tract shall be subject to ~~a separate upset bid; and to~~ separate upset bids. To the extent deemed necessary by the judge or clerk of court of the county where the original order of sale was issued, the sale of each ~~tract, after an upset bid thereon,~~ tract shall be treated as a separate ~~sale for the purpose of determining the procedure applicable thereto.~~sale.

(d) When real property is sold in a county other than the county where the proceeding, in which the sale was ordered, is pending, the person authorized to hold the sale shall cause a certified copy of the order of confirmation to be recorded in the office of the register of deeds of the county where such property is situated, and it shall not be necessary for the clerk of court to probate said certified copy of the order of confirmation."

SECTION 3. G.S. 1-339.17 reads as rewritten:

"**§ 1-339.17. Public sale; posting and publishing notice of sale of real property.**

(a) ~~The~~ Subject to subsection (d) of this section, notice of public sale of real property ~~shall~~ shall:

(1) Be posted, in the area designated by the clerk of superior court for the posting of notices in the county in which the property is situated, for ~~thirty~~ at least 20 days immediately preceding the ~~sale,~~sale; and

(2) ~~And in addition thereto,~~Be published once a week for at least two successive weeks:

a. ~~If~~ In a newspaper qualified for legal advertising ~~is~~ published in the ~~county, the notice shall be published in such a newspaper once a week for at least four successive weeks, but~~county; or

b. If no newspaper qualified for legal advertising is published in the county, ~~then notice shall be published once a week for at least four successive weeks~~ in a newspaper having ~~a~~ general circulation in the county.

(b) When the notice of public sale is published in a ~~newspaper,~~newspaper:

(1) The period from the date of the first publication to the date of the last publication, both dates inclusive, shall not be less than ~~twenty-two~~ seven days, including ~~Sundays,~~ Sundays; and

(2) The date of the last publication shall be not more than 10 days preceding the date of the sale in a sale by ~~auction,~~ auction or the date on which sealed bids are opened in a sale by sealed bid.

(c) When the real property to be sold is situated in more than one county, the provisions of subsections (a) and (b) of this section shall be complied with in each county in which any part of the property is situated.

(c1) When the public sale is a sale of timber by sealed bid, the notice shall also be given in writing, not less than 21 days before the date on which bids are opened, to a reasonable number of prospective timber buyers, which in all cases shall include the timber buyers listed in the office of the Division of Forest Resources for the county or counties in which the timber to be sold is located.

(d) In addition to the ~~foregoing,~~ other requirements of this section, the notice of public sale shall be ~~otherwise~~ posted or the sale shall be ~~otherwise~~ advertised as may be required by the judge or clerk pursuant to the provisions of G.S. 1-339.13(b)(2).

(e) If the sale is a sale of timber by sealed bid, the person holding the sale shall include in the report required by G.S. 1-339.24 an affidavit showing that the requirements of this section have been complied with and listing all the persons notified pursuant to subsection (c1) of this section."

SECTION 4. G.S. 1-339.25 reads as rewritten:

"**§ 1-339.25. Public sale; upset bid on real property; compliance bond.**

(a) An upset bid is an advanced, ~~increased~~ increased, or raised bid in a public sale by auction whereby a person offers to purchase real property theretofore sold for an amount exceeding the reported sale price or the last upset bid by a minimum of five percent (5%) thereof, but in any event with a minimum increase of seven hundred fifty dollars ($750.00). ~~An~~ Subject to the provisions of subsection (b) of this section, an upset bid shall be made by delivering to the clerk of superior court, with whom the report of the sale or the last notice of upset bid was filed, a deposit in cash or by certified check or cashier's check satisfactory to the clerk in an amount greater than or equal to five percent (5%) of the amount of the upset bid but in no event less than seven hundred fifty dollars ($750.00). The deposit required by this section shall be filed with the clerk of the superior ~~court,~~ court with whom the report of sale or the last notice of upset bid was filed, by the close of normal business hours on the tenth day after the filing of the report of ~~sale,~~ sale or the last notice of upset bid, and if the tenth day ~~shall fall~~ falls upon a Sunday or legal holiday or upon a day in which the office of the clerk is not open for the regular dispatch of its business, the deposit may be made and the notice of upset bid may be filed on the day following when the office is open for the regular dispatch of its business. ~~An upset bid need not be in writing, and the timely deposit with the clerk of the required amount, together with an indication to the clerk as to the sale to which it is applicable, is sufficient to constitute the upset bid, subject to the provisions of subsection (b) of this section.~~Except as provided in G.S. 1-339.27A and G.S. 1-339.30, there shall be no resales; however, there may be successive upset bids, each of which shall be followed by a period of 10 days for a further upset bid. If a timely motion for resale is filed under G.S. 1-339.27A, no upset bids may be filed while the motion is pending. If an upset bid or a motion for resale under G.S. 1-339.27A is not filed within

10 days following a sale, resale, or prior upset bid, the rights of the parties to the sale or resale become fixed.

(b) The clerk of the superior court may require ~~a person submitting an upset bid~~ an upset bidder or the highest bidder at a resale held under G.S. 1-339.30 also to deposit with the clerk a cash bond, or, in lieu thereof at the option of the bidder, a surety bond, approved by the ~~clerk, conditioned on compliance with the upset bid. The amount of such bond shall not exceed the amount of the upset bid less the amount of the required deposit.~~ clerk. The compliance bond shall be in the amount the clerk deems adequate, but in no case greater than the amount of the bid of the person being required to furnish the bond, less the amount of any required deposit. The compliance bond shall be payable to the State of North Carolina for the use of the parties in interest and shall be conditioned on the principal obligor's compliance with the bid.

~~(c) The clerk of the superior court may in the order of resale require the highest bidder at a resale had pursuant to an upset bid to deposit with the clerk a cash bond, or, in lieu thereof at the option of the bidder, a surety bond, approved by the clerk, conditioned on compliance with his bid. The bond shall be in such amount as the clerk deems adequate, but in no case greater than the amount of the bid of the person being required to furnish the bond.~~

~~(d) A compliance bond, such as is provided for by subsections (b) and (c), shall be payable to the State of North Carolina for the use of the parties in interest and shall be conditioned on the principal obligor's compliance with his bid.~~

(d1) At the time that an upset bid on real property is submitted to the court as provided in subsection (a) of this section, together with a compliance bond if one is required, the upset bidder shall file with the clerk a notice of upset bid. The notice of upset bid shall:

(1) State the name, address, and telephone number of the upset bidder;

(2) Specify the amount of the upset bid;

(3) Provide that the sale shall remain open for a period of 10 days after the date on which the notice of upset bid is filed for the filing of additional upset bids as permitted by law; and

(4) Be signed by the upset bidder or the attorney or the agent of the upset bidder.

(d2) When an upset bid is made as provided in this section, the clerk shall notify the person holding the sale who shall thereafter mail a written notice of upset bid by first-class mail to the last known address of the last prior bidder and the current record owners of the property.

(d3) When an upset bid is made as provided in this section, the last prior bidder, regardless of how the bid was made, is released from any further obligation on account of the bid, and any deposit or bond provided by the last prior bidder shall be released.

(d4) Any person offering to purchase real property by upset bid as permitted in this Article is subject to and bound by the terms of the original notice of sale except as modified by court order or the provisions of this Article.

(d5) The clerk of superior court shall make all orders as may be just and necessary to safeguard the interests of all parties and may fix and determine all necessary procedural details with respect to upset bids in all instances in which this Article fails to make definite provisions as to that procedure.

(e) The provisions of this section do not apply to public sales of timber by sealed bid."

SECTION 5. G.S. 1-339.26 reads as rewritten:

"**§ 1-339.26. Public sale by auction; separate upset bids when real property sold in parts; subsequent procedure.**

When real property is sold at public sale by auction in parts, as provided by G.S. 1-339.9, the ~~sale, and each subsequent resale,~~ sale of any part shall be subject to a separate upset bid; and, to the extent the judge or clerk of court having jurisdiction deems advisable, the sale of each part shall thereafter be treated as a separate sale for the purpose of determining the ~~procedure applicable thereto.~~ applicable procedure."

SECTION 6. G.S. 1-339.27 is repealed.

SECTION 7. Article 29A of Chapter 1 of the General Statutes is amended by adding a new section to read:

"**§ 1-339.27A. Ordering resale of real property after sale or upset bid.**

Upon motion of an interested person filed within 10 days after a sale or upset bid and for good cause, the judge or clerk having jurisdiction may order a resale of real property. If the motion is granted based on the inadequacy of the last bid, the procedure for the resale is the same in every respect as is provided by this Article in the case of an original public sale, and the last bidder is released from the bidder's obligations under the bid. If the motion is granted for any other reason, the last bid becomes the opening bid at resale, and if there is no bid at resale other than the last bid, the person who made the last bid is the highest bidder at resale. If the motion is denied, the 10-day period for subsequent upset bids begins upon the entry of the order."

SECTION 8. G.S. 1-339.30 reads as rewritten:

"**§ 1-339.30. Public sale; failure of bidder to make cash deposit or to comply with bid; resale.**

(a) If an order of public sale by auction requires the highest bidder to make a cash deposit at the sale, and ~~he~~ the highest bidder fails to make the required deposit, the person holding the sale shall at the same time and place again offer the property for sale.

(a1) If an order of public sale of timber by sealed bid requires the highest bidder to make a cash deposit and the bidder fails to make the required deposit within the time specified in the order, the judge or clerk having jurisdiction may direct that the timber be sold to the person who submitted the next highest bid or may order a resale. The procedure for a resale is the same in every respect as is provided by this Article in the case of an original public sale.

(b) When the highest bidder at a public sale of personal property not required to be confirmed fails to make the cash payment, if any, required by the terms of the sale, the person holding the sale shall at the same time and place again offer the property for

sale. In the event no other bid is received, a new sale may be advertised in the regular manner provided by this Article for an original sale.

(c) When the highest bidder at a public sale of personal property required to be confirmed fails to comply with his bid within ~~ten~~ 10 days after notice given by the person holding the sale or after a bona fide attempt to give such notice that the sale has been confirmed, the judge or clerk having jurisdiction may order a resale. The procedure for ~~such~~ the resale is the same in every respect as is provided by this Article in the case of an original public sale of personal property.

(d) When the highest bidder at a public sale or resale of real property by auction or any upset bidder fails to comply with ~~his~~ the bid within ~~ten~~ 10 days after the tender to ~~him~~ the bidder of a deed for the property or after a bona fide attempt to tender the deed, the judge or clerk having jurisdiction may order a resale. The procedure for a resale of real property is the same in every respect as is provided by this Article in the case of an original public sale of real ~~property except that the provisions of G.S. 1-339.27 (c), (d) and (e) apply with respect to the posting and publishing of the notice of the resale.~~property.

(d1) When the highest bidder at a public sale or resale of timber by sealed bid fails to comply with ~~his~~ the bid within 10 days after the tender to ~~him~~ the bidder of a deed for the timber or after a bona fide attempt to tender a timber deed, the judge or clerk having jurisdiction may direct that the timber be sold to the person who submitted the next highest bid or may order a resale. The procedure for a resale is the same in every respect as is provided by this Article in the case of an original public sale.

(e) A defaulting bidder at any sale or resale or any defaulting upset bidder is liable on ~~his~~ the bid, and in case a resale is had because of ~~his~~ the default, ~~he shall remain~~ the defaulting bidder remains liable to the extent that the final sale price is less than ~~his~~ the bid, and for all costs of the resale or resales. Any deposit or compliance bond made by the defaulting bidder shall secure payment of the amount, if any, for which the defaulting bidder remains liable under this section.

(f) Nothing in this section deprives any person of any other remedy against the defaulting bidder."

SECTION 9. G.S. 1-339.36(b) reads as rewritten:

"(b) When an upset bid is made for property sold at private sale, subsequent procedure with respect ~~thereto shall be~~to the upset bid is the same as for ~~the public sale of real property for which an upset bid has been submitted, except that the notice of resale of personal property need not be published in a newspaper, but shall be posted as provided by G.S. 1-339.17.~~upset bids submitted in connection with real property sold at public sale."

SECTION 10. G.S. 1-339.37 reads as rewritten:

"**§ 1-339.37. Private sale; confirmation.**

If no upset bid for property sold at private sale is submitted within ~~ten~~ 10 days after the report of sale or the last notice of upset bid is filed, the sale may then be confirmed, and the provisions of G.S. 1-339.28(a) and (b) are applicable to such confirmation

whether the property sold is real or personal. Unless otherwise provided in the order of sale, no confirmation is required of any sale held as provided by G.S. 1-339.34."

PART II. EXECUTION SALES.

SECTION 11. G.S. 1-339.52 reads as rewritten:

"**§ 1-339.52. Posting and publishing notice of sale of real property.**

(a) The notice of sale of real property ~~shall~~shall:

(1) Be posted, ~~at the courthouse door~~ in the area designated by the clerk of superior court for the posting of notices in the county in which the property is situated, for ~~thirty~~ at least 20 days immediately preceding the ~~sale,~~sale; and

(2) ~~And in addition thereto,~~Be published once a week for at least two successive weeks:

a. ~~If~~ In a newspaper qualified for legal advertising ~~is~~ published in the ~~county, the notice shall be published in such a newspaper once a week for at least four successive weeks; but~~county; or

b. If no ~~such~~ newspaper qualified for legal advertising is published in the county, ~~then notice shall be published once a week for at least four successive weeks~~ in a newspaper having general circulation in the county.

(b) When the notice of sale is published in a ~~newspaper,~~newspaper:

(1) The period from the date of the first publication to the date of the last publication, both dates inclusive, shall not be less than ~~twenty-two~~ seven days, including ~~Sundays,~~ Sundays; and

(2) The date of the last publication shall be not more than 10 days preceding the date of the sale.

(c) When the real property to be sold is situated in more than one county, the provisions of subsections (a) and (b) shall be complied with in each county in which any part of the property is situated."

SECTION 12. G.S. 1-339.53 reads as rewritten:

"**§ 1-339.53. Posting notice of sale of personal property.**

The notice of sale of personal property, except in the case of perishable property as specified in G.S. 1-339.56, shall be posted, ~~at the courthouse door~~ in the area designated by the clerk of superior court for the posting of notices in the county in which the sale is to be held, for ~~ten~~ 10 days immediately preceding the date of sale."

SECTION 13. G.S. 1-339.58 reads as rewritten:

"**§ 1-339.58. Postponement of sale.**

(a) The sheriff may postpone the sale to a day certain not later than six days, exclusive of Sunday, after the original date for the ~~sale~~ sale:

(1) When there are no bidders, ~~or~~

(2) When, in ~~his~~ the sheriff's judgment, the number of prospective bidders at the sale is substantially decreased by inclement weather or by any casualty, ~~or~~

(3) When there are so many other sales advertised to be held at the same time and place as to make it inexpedient and impracticable, in ~~his~~ the sheriff's judgment, to hold the sale on that day, ~~or~~

(4) When ~~he~~ the sheriff is unable to hold the sale because of illness or for other good reason, or

(5) When other good cause exists.

(b) Upon postponement of a sale, the sheriff ~~shall~~ shall:

(1) At the time and place advertised for the sale, publicly announce the postponement ~~thereof, and~~ of the sale; and

(2) On the same day, attach to or enter on the original notice of sale or a copy ~~thereof,~~ of the notice, posted ~~at the courthouse door,~~ as provided by G.S. 1-339.52 in the case of real property or G.S. 1-339.53 in the case of personal property, a notice of the postponement.

(c) The posted notice of postponement ~~shall~~shall:

(1) State that the sale is postponed,

(2) State the hour and date to which the sale is postponed,

(3) State the reason for the postponement, and

(4) Be signed by the sheriff.

(d) If a sale is not held at the time fixed ~~therefor~~ for the sale and is not postponed as provided by this section, or if a postponed sale is not held at the time fixed ~~therefor,~~ for the sale, the sheriff shall report the facts with respect thereto to the clerk of the superior court, who shall thereupon make an order for the sale of the property to be held at such time and place and upon such notice to be given in ~~such~~ the manner and for ~~such~~ the length of time as ~~he~~ the clerk of the superior court deems advisable, but nothing ~~herein contained shall be deemed to relieve~~ in this section relieves the sheriff of liability for the nonperformance of ~~his~~ the sheriff's official duty."

SECTION 14. G.S. 1-339.64 reads as rewritten:

"**§ 1-339.64. Upset bid on real property; compliance bond.**

(a) An upset bid is an advanced, ~~increased~~ increased, or raised bid whereby a person offers to purchase real property theretofore sold for an amount exceeding the reported sale price or last upset bid by a minimum of five percent (5%) thereof, but in any event with a minimum increase of seven hundred fifty dollars ($750.00). ~~An~~ Subject to the provisions of subsection (b) of this section, an upset bid shall be made by delivering to the clerk of superior court, with whom the report of sale or the last notice of upset bid was filed, a deposit in cash or by certified check or cashier's check satisfactory to the clerk in an amount greater than or equal to five percent (5%) of the amount of the upset bid but in no event less than seven hundred fifty dollars ($750.00). The deposit required by this section shall be filed with the clerk of the superior court, with whom the report of sale or the last notice of upset bid was filed, by the close of normal business hours on the tenth day after the filing of the report of ~~sale,~~ sale or the last notice of upset bid and if the tenth day ~~shall fall~~ falls upon a Sunday or legal holiday or upon a day in which the office of the clerk is not open for the regular dispatch of its

business, the deposit may be made and the notice of upset bid may be filed on the day following when ~~said~~ the office is open for the regular dispatch of its business. ~~An upset bid need not be in writing, and the timely deposit with the clerk of the required amount, together with an indication to the clerk as to the sale to which it is applicable, is sufficient to constitute the upset bid, subject to the provisions of subsection (b).~~Except as provided in G.S. 1-339.66A and G.S. 1-339.69, there shall be no resales; however, there may be successive upset bids, each of which shall be followed by a period of 10 days for a further upset bid. If a timely motion for resale is filed under G.S. 1-339.66A, no upset bids may be filed while the motion is pending. If an upset bid or a motion for resale under G.S. 1-339.66A is not filed within 10 days following a sale, resale, or prior upset bid, the rights of the parties to the sale or resale become fixed.

(b) The clerk of the superior court may require ~~the person submitting an upset bid~~ an upset bidder or the highest bidder at a resale held under G.S. 1-339.69 also to deposit with the clerk a cash bond, or, in lieu thereof at the option of the bidder, a surety bond, approved by the ~~clerk, conditioned on compliance with the upset bid. The amount of such bond shall not exceed the amount of the upset bid less the amount of the required deposit.~~clerk. The compliance bond shall be in the amount the clerk deems adequate, but in no case greater than the amount of the bid of the person being required to furnish the bond, less the amount of any required deposit. The compliance bond shall be payable to the State of North Carolina for the use of the parties in interest and shall be conditioned on the principal obligor's compliance with the bid.

~~(c) The clerk of the superior court may in the order of resale require the highest bidder at a resale had pursuant to an upset bid to deposit with the clerk a cash bond, or, in lieu thereof at the option of the bidder, a surety bond, approved by the clerk, conditioned on compliance with his bid. The bond shall be in such amount as the clerk deems adequate but in no case greater than the amount of the bid of the person being required to furnish the bond.~~

~~(d) A compliance bond, such as is provided for by subsections (b) and (c), shall be payable to the State of North Carolina for the use of the parties in interest and shall be conditioned on the principal obligor's compliance with his bid.~~

(e) At the time that an upset bid on real property is submitted to the court as provided in subsection (a) of this section, together with a compliance bond if one is required, the upset bidder shall file with the clerk a notice of upset bid. The notice of upset bid shall:

(1) State the name, address, and telephone number of the upset bidder;

(2) Specify the amount of the upset bid;

(3) Provide that the sale shall remain open for a period of 10 days after the date on which the notice of upset bid is filed for the filing of additional upset bids as permitted by law; and

(4) Be signed by the upset bidder or the attorney or the agent of the upset bidder.

(f) When an upset bid is made as provided in this section, the clerk shall notify the person holding the sale who shall thereafter mail a written notice of upset bid by first-class mail to the last known address of the last prior bidder and the current record owners of the property.

(g) When an upset bid is made as provided in this section, the last prior bidder, regardless of how the bid was made, is released from any further obligation on account of the bid, and any deposit or bond provided by the last prior bidder shall be released.

(h) Any person offering to purchase real property by upset bid as permitted in this Article is subject to and bound by the terms of the original notice of sale except as modified by a court order or the provisions of this Article.

(i) The clerk of superior court shall make all orders as may be just and necessary to safeguard the interests of all parties and may fix and determine all necessary procedural details with respect to upset bids in all instances in which this Article fails to make definite provisions as to that procedure."

SECTION 15. G.S. 1-339.65 reads as rewritten:

"**§ 1-339.65. Separate upset bids when real property sold in parts; subsequent procedure.**

When real property is sold in parts, as provided by G.S. 1- 339.46, the ~~sale, and each subsequent resale,~~ sale of any ~~such~~ part shall be subject to a separate upset bid; and to the extent the clerk of the superior court having jurisdiction deems advisable, the sale of each ~~such~~ part shall thereafter be treated as a separate sale for the purpose of determining the ~~procedure applicable thereto.~~ applicable procedure."

SECTION 16. G.S. 1-339.66 is repealed.

SECTION 17. Article 29B of Chapter 1 of the General Statutes is amended by adding a new section to read:

"**§ 1-339.66A. Ordering resale of real property after upset bid.**

Upon motion of an interested person filed within 10 days after a sale or upset bid and for good cause, the clerk of superior court may order a resale of real property when an upset bid is submitted as provided in G.S. 1-339.64. If the motion is granted based on the inadequacy of the last bid, the procedure for the resale is the same in every respect as is provided by this Article in the case of an original public sale, and the last bidder is released from the bidder's obligations under the bid. If the motion is granted for any other reason, the last bid becomes the opening bid at resale, and if there is no bid at resale other than the last bid, the person who made the last bid is the highest bidder at resale. If the motion is denied, the 10-day period for subsequent upset bids begins upon the entry of the order."

SECTION 18. G.S. 1-339.69 reads as rewritten:

"**§ 1-339.69. Failure of bidder to comply with bid; resale.**

(a) When the highest bidder at a sale of personal property fails to pay the amount of ~~his~~ the bid, the sheriff shall at the same time and place immediately resell the property. In the event no other bid is received, a new sale may be advertised in the regular manner provided by this Article for an original sale.

(b) When the highest bidder at a sale or resale of real property or any upset bidder fails to comply with ~~his~~ the bid within ~~ten~~ 10 days after the tender to ~~him~~ the bidder of a deed for the property or after a bona fide attempt to tender such deed, the clerk of the superior court who issued the execution may order a resale. The procedure for such resale is the same in every respect as is provided by this Article in the case of an original sale of real ~~property except that the provisions of G.S. 1-339.66(b), (c) and (d) apply with respect to the posting and publishing of the notice of such resale.~~property.

(c) A defaulting bidder at any sale or resale or any defaulting upset bidder is liable on ~~his~~ the bid, and in case a resale is had because of ~~such~~ the default, ~~he shall remain~~ the defaulting bidder remains liable to the extent that the final sale price is less than ~~his~~ the bid plus all costs of ~~such~~ the resale or resales. Any deposit or compliance bond made by the defaulting bidder shall secure payment of the amount, if any, for which the defaulting bidder remains liable under this section.

(d) Nothing in this section deprives any person of any other remedy against the defaulting bidder."

PART III. CONFORMING AMENDMENTS TO OTHER SECTIONS OF THE GENERAL STATUTES.

SECTION 19. G.S. 46-28.1(e) reads as rewritten:

"(e) If the court revokes its order of confirmation under this section, the court shall order a ~~resale pursuant to the provisions of G.S. 1-339.27.~~ resale. The procedure for a resale is the same as is provided for an original public sale under Article 29A of Chapter 1 of the General Statutes."

PART IV. EFFECTIVE DATE AND APPLICABILITY.

SECTION 20. This act becomes effective January 1, 2002, and applies to judicial sales when the original order of sale is issued on or after that date and to execution sales when the execution is originally issued on or after that date. This act does not apply to any judicial sale when the original order of sale is issued prior to the effective date of this act or to any execution sale held pursuant to any execution originally issued prior to the effective date of this act.

J. H
June 12, 2001

SENATE BILL 681:
Judicial & Execution Sales/Revise Procedure.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Hartsell
Date:	June 11, 2001	**Summary by:**	Jeff Hudson
Version:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 681 would revise the procedure for resales of real property being sold through a judicial sale or an execution sale by substituting a rolling upset bid process for the current process, which requires a series of resales. The bill would also shorten the period during which a notice of sale must be given prior to a sale being conducted. Senate Bill 681 is a recommendation of the General Statutes Commission.***

CURRENT LAW: Under current law, courts (and sometimes clerks) are allowed to order the sale of the property of a person when necessary for the benefit of that person. These sales are known as judicial sales. These include sales at the request of estate executors and administrators, guardians of minors and incompetent adults, trustees, and receivers.

Sales authorized by the courts as part of executions to satisfy outstanding judgments are known as execution sales. Execution sales are conducted by sheriffs.

Currently, for judicial sales and execution sales of real property, after the original sale of the real property, if an upset bid is filed within 10 days of the date of the report of sale, a resale is ordered that requires renoticing interested parties and publicizing the sale through posting and newspaper notices. The notice of an original sale must be posted for 30 days and publication of the notice of sale in the newspaper must be for four weeks. The notice for a resale must be posted for 15 days and publication of notice of resale in the newspaper must be for two weeks.

BILL ANALYSIS: Senate Bill 681 would revise the resale procedures for judicial sales and execution sales of real property to provide that a sale could be upset by subsequent upset bids filed within 10 days of the report of sale or the prior upset bid, until the price for the property is no longer raised. This procedure would eliminate the need for most resales and the need to readvertise the sale of the property. The bill does allow a court to order a resale for good cause. When the order of resale is based on inadequate price, the last bidder is released from the bidder's obligation and the sale is conducted as an original sale. When the resale is ordered for any other reason, the last bidder is considered to be the opening bid and if no other bid is received, the last bidder becomes the high bidder.

The bill would also shorten the time required for notice of a sale prior to the sale being conducted from 30 to 20 days for the posting requirement and publication of the newspaper notice from four successive weeks to two successive weeks. These same notice requirements would apply to any resales ordered.

Part I – Judicial Sales.

Sections 1, 2, 5, 8, 9, 10, and 19 make conforming changes. Note: Section 9 amends the statute that governs, among other things, the private sale of personal property. Under current law, upset bids in private sales of personal property are treated the same as upset bids in public sales of real property. Section 9 would apply the new rolling upset bid process that applies to sales of real property to private sales of personal property.

Section 3 shortens the current time limits for posting and publication of the notice of sale.

Section 4 sets out the process for successive upset bids in lieu of resales. As under current law, an upset bid must be at least 5%, or a minimum of $750, above the previous offer price. Upset bids remain open for up to 10 days to allow additional upset bids to be filed. If no upset bid is filed, the sale becomes final after the 10-day period expires. When an upset bid is received the clerk of court is to give notice to the person conducting the sale that the upset bid has been filed. The person conducting the sale is to then give notice to the last prior bidder.

Section 6 repeals the current section that sets forth the process for resales necessitated by upset bids.

Section 7 allows a court to order a resale for good cause.

Part II. Execution Sales.

Section 11 shortens the current time limits for posting and publication of the notice of sale by the sheriff.

Sections 12, 13, 15, and 18 make conforming changes.

Section 14 sets out the process for successive upset bids in lieu of resales for sales by the sheriff similar to the process set forth in Section 4 above.

Section 16 repeals the current section that sets forth the process for resales necessitated by upset bids.

Section 17 allows a court to order a resell for good cause.

EFFECTIVE DATE: Senate Bill 681 would become effective January 1, 2002 and apply to judicial sales and execution sales that were originally ordered after that date.

Note: Walker Reagan, Committee Counsel for the Senate Judiciary I Committee, contributed to the preparation of this summary.

June 12, 2001

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

MEMORANDUM

TO: House Judiciary II Committee

FROM: General Statutes Commission

DATE: June 7, 2001

RE: Senate Bill 681 (Judicial & Execution Sales/Revise Procedure)

General Comments

Senate Bill 681 reduces the expense and shortens the time for judicial sales and execution sales of real property in the usual case by authorizing a rolling upset bid procedure similar to the procedure authorized for foreclosure sales under a deed of trust and by conforming the minimum time periods for posting and publishing notice of sale to the time periods authorized for foreclosure sales. Under the rolling upset bid procedure, the submission of an upset bid does not require a subsequent resale of the property but only requires the filing of a notice of upset bid and the required deposit with the clerk of superior court. Upon submission of the upset bid, the clerk is required to notify the person holding the sale who is then required to mail a written notice of upset bid to the last prior bidder and the owners of the property. The upset bid is followed by a period of 10 days to allow for the submission of a subsequent upset bid.

The bill continues to permit resales under certain conditions. An interested person may file a motion for resale within 10 days after a sale or upset bid, and the court may order a resale for good cause. No upset bids may be filed while the motion is pending. If the motion is granted based on the inadequacy of the last bid, the last bidder is released from the bidder's obligation under the bid. If the motion is granted for any other reason, the last bid becomes the opening bid at resale and if there is no bid at resale other than the last bid, the person who made the last bid is the highest bidder at resale. However, if the motion is denied, the 10-day period for submission of a subsequent upset bid begins upon the entry of the order.

The bill also makes various conforming and stylistic changes.

Specific Comments

Sections 1 and 2 make conforming and stylistic changes.

Section 3 reduces the minimum time period for posting notice of judicial sale from 30 days to 20 days and the minimum time period for publishing notice of judicial sale from four successive weeks to two successive weeks. This section 3 also makes stylistic changes.

Section 4 authorizes the rolling upset bid procedure for judicial sales.

Section 5 makes conforming and stylistic changes.

Section 6 repeals G.S. 1-339.27, which requires the ordering of a resale upon submission of an upset bid in a judicial sale and specifies the procedure for the resale.

Section 7 allows the judge or clerk having jurisdiction, upon motion of an interested person and for good cause, to order a resale when an upset bid is submitted in a judicial sale.

Sections 8, 9, and 10 make conforming changes. Please note that because G.S. 1-339.36, amended by Section 9, currently allows upset bids in private sales of some personal property, the rolling upset bid procedure will apply in these sales.

Section 11 reduces the minimum time period for posting notice of execution sale from 30 days to 20 days and the minimum time period for publishing notice of execution sale from four successive weeks to two successive weeks. This section also makes stylistic changes.

Sections 12 and 13 make conforming and stylistic changes.

Section 14 authorizes the rolling upset bid procedure for execution sales.

Section 15 makes conforming and stylistic changes.

Section 16 repeals G.S. 1-339.66, which requires the ordering of a resale upon submission of an upset bid in an execution sale and specifies the procedure for the resale.

Section 17 allows the clerk of superior court, upon motion of an interested person and for good cause, to order a resale when an upset bid is submitted in an execution sale.

Section 18 makes conforming and stylistic changes.

Section 19 amends the partition sales provisions to delete a statutory reference to G.S. 1-339.27, which is being repealed by the bill.

Section 20 provides that the bill becomes effective January 1, 2002, and sets forth an applicability provision.

VISITOR REGISTRATION SHEET

~~APPROPRIATIONS-JUSTICE AND PUBLIC SAFETY~~

Name of Committee JUD II

Date 6-12-01

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Weiss	ACLU
Kelly Cook	CHH
Harrin Freeman	NC Sentencing Commission
John Madler	" "
[illegible]	[illegible]
[illegible]	AOC
Bob Hobgood	AOC
Yvonne Hart	NCAE
Floyd Lewis	General Statutes Commission
PAMELA L. NAVEY	AOC/SENTENCING SERVICES

2001

HOUSE
JUDICIARY II

MINUTES

6/19

HOUSE JUDICIARY II COMMITTEE AGENDA

Tuesday, June 19, 2001
10:00 A.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Jeff Hudson
Julie Allen (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDERED:

HB 1284 Openness of Court Records and Proceedings – Rep. Weiss
SB 532 Clarify School Board Applications/ Noncertified Employees Notice – Sen. Dalton
SB 241 Health Insurance Termination Notice – Sen. Dalton

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

June 19, 2001

The House Committee on JUDICIARY II met at 10:00 a.m. on Tuesday, June 19, 2001 in Room 421 of the Legislative Office Building. The following members were present: Chairman Baddour, Representatives Fitch, Decker, Gulley, Hall, Jeffus, Justus, Miller, Pope, Sherrill, Weiss. The Visitor Registration Sheet is attached as a part of the record of the Minutes. Related handouts are listed as ATTACHMENTS for the record..

Chairman Baddour presided and called the meeting to order. He recognized the Pages who were assigned to serve the Committee. The following bills were considered:

HB 1284 Openness of Court Records and Proceedings. Representative Weiss made motion to hear the proposed committee substitute for the purpose of discussion. Mr. P.B. Powell, from the Administrative Office of the Courts, was recognized to speak on the bill. Staff was recognized to explain the specific changes in the bill. Representative Fitch moved that the PCS be given a favorable report, unfavorable to original proposed committee substitute. Motion passed with favorable report and the bill was re-referred to the House Committee on Finance.

SB 532 Clarify School Board Applications/Noncertified Employees Notice. Representative Baddour recognized Senator Dalton, bill sponsor, to explain the bill. Representative Pope made a motion to bring the proposed committee substitute to the committee for discussion. Motion carried. Representative Pope recognized to send forth an amendment to remove the word "specific." Tom Stern, North Carolina Association of Educators, was recognized to support the amendment. Ms. Leanne Winner, North Carolina School Boards Association, was recognized to support the bill as amended. Ms. Jan Crotts, North Carolina Association of School Administrators, was recognized to support the amendment. Representative Fitch moved that the Proposed Committee Substitute be given a favorable report, unfavorable to the bill as originally written. Motion carried.

The committee adjourned at 10:25 am.

Representative Philip A. Baddour
Presiding Chairman
ATTACHMENTS:

Julie R. Allen
Committee Assistant

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

file
6-19-01
Minutes

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

☒ Committee Substitute for
H.B. 1284 A BILL TO BE ENTITLED AN ACT TO ESTABLISH A PRESUMPTION THAT COURT RECORDS FOR CIVIL AND ADMINISTRATIVE CASES ARE OPEN, TO PROVIDE THE PROCEDURE TO OBTAIN AN ORDER TO SEAL A COURT RECORD, TO ESTABLISH A PRESUMPTION THAT THE HEARINGS, PROCEEDINGS, AND TRIALS FOR CIVIL AND ADMINISTRATIVE CASES ARE OPEN, AND TO PROVIDE THE PROCEDURE TO OBTAIN AN ORDER TO CONDUCT A CLOSED HEARING, PROCEEDING, OR TRIAL.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill (# 2), ☒ which changes the title, unfavorable as to (Committee Substitute Bill # 1), (and recommendation that the committee substitute bill # 2) be re-referred to the Committee on FINANCE.)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

HB 1284:
Openness of Court Records and Proceedings

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Weiss
Date:	June 19, 2001	**Summary by:**	Esther Manheimer
Version:	H1284-CSSK-40[v.6]		Committee Counsel

BILL ANALYSIS: The PCS for HB 1284 completely rewrites the version of the bill that House Judiciary II gave a favorable to on 4/24/2001. The version of the bill given a favorable report in April created a presumption that all court records and all court proceedings, with some exceptions, are open. This PCS rewrites the bill to allow those that assert a right of access to a judicial proceeding or record, the right to intervene in the proceeding as a matter of right under Rule 24 of the North Carolina Rules of Civil Procedure. Intervention would be limited to the purpose of gaining access to the proceeding or record only. No right to intervene would be permitted in juvenile proceedings under Chapter 7B. Additionally, HB 1284 would not preempt State statutes that otherwise restrict access to a judicial proceeding or record. The PCS also creates a fee of $20.00 for filing the motion to intervene described above. **This bill is effective October 1, 2001, and applies to court records filed on or after that date and applies to judicial proceedings commenced or pending on or after that date.**

BACKGROUND:

Rule 24. Rule 24 of the North Carolina Rules of Civil Procedure establishes the grounds on which a party may intervene in a lawsuit and is used by applicants or parties that wish to be made a party to an ongoing lawsuit or action. Rule 24 only allows parties to intervene in an action under certain circumstances, one of which is when a statute grants a right to a party to intervene. This bill creates a new statute that grants a party or applicant the right to intervene under Rule 24 for the limited purpose of gaining access to a proceeding or record.

There are two types of intervention under Rule 24 – intervention of right and permissive intervention. Under the former, the judge has no discretion as to whether a party may intervene and under the latter; the judge does have discretion as to whether to allow a party to intervene. HB 1284 grants an intervention of right to parties seeking to intervene under the provisions of this bill.

***Virmani v. Presbyterian Health Servs. Corp.*, 350 N.C. 449, 515 S.E.2d 675 (1999).** If enacted, this bill would overturn the decision in *Virmani*. In *Virmani*, the Charlotte Observer attempted to intervene, using Rule 24, in a case where medical records were sealed and the judicial proceedings were closed. The North Carolina Supreme Court held:

> Because we conclude that the Observer had no direct interest in [the action] and that the Observer's indirect interest may be adequately asserted in a timely manner by other means, we hold that the Observer was not entitled to intervene as a matter of right pursuant to N.C.G.S. § 1A-1, Rule 24(a)....We further conclude that the trial court did not err in denying the Observer permissive intervention.

This bill would overturn the Court's decision and allow parties that assert a right of access to a judicial proceeding or record, the right to intervene under Rule 24.

Rule 24. Intervention.

(a) *Intervention of right.* - Upon timely application anyone shall be permitted to intervene in an action:

(1) When a statute confers an unconditional right to intervene; or

(2) When the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) *Permissive intervention.* - Upon timely application anyone may be permitted to intervene in an action.

(1) When a statute confers a conditional right to intervene; or

(2) When an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or State governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, such officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) *Procedure.* - A person desiring to intervene shall serve a motion to intervene upon all parties affected thereby. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute gives a right to intervene, except when the statute prescribes a different procedure.

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Lee II June 19, 2001

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H D

HOUSE BILL 1284
Committee Substitute Favorable 4/24/01
PROPOSED COMMITTEE SUBSTITUTE H1284-PCS2269-SK-40

Short Title: Openness of Court Records and Proceedings. (Public)

Sponsors:

Referred to:

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO ALLOW AN INTERVENTION OF RIGHT UNDER RULE 24 OF THE RULES OF CIVIL PROCEDURE FOR THOSE THAT ASSERT A RIGHT OF ACCESS TO A JUDICIAL PROCEEDING OR TO A JUDICIAL RECORD AND TO CREATE A NEW FEE FOR FILING A MOTION TO INTERVENE UNDER G.S. 1-72.1.

The General Assembly of North Carolina enacts:

SECTION 1. Article 6 of Chapter 1 of the General Statutes is amended by adding a new section to read:

"**§ 1-72.1. Right of access.**

An applicant asserting a right of access to a judicial proceeding or to a judicial record may intervene in that judicial proceeding pursuant to Rule 24(a)(1) for the limited purpose of gaining access to the judicial proceeding or to a judicial record. This section does not apply to juvenile proceedings or court records of juvenile proceedings held under Chapter 7B of the General Statutes. Nothing in this section preempts State law that otherwise restricts access to judicial proceedings or judicial records."

SECTION 2. G.S. 7A-308(a) reads as rewritten:

"(a) The following miscellaneous fees and commissions shall be collected by the clerk of superior court and remitted to the State for the support of the General Court of Justice:

(1) Foreclosure under power of sale in deed of trust or mortgage.....$40.00
If the property is sold under the power of sale, an additional amount will be charged, determined by the following formula: thirty cents (30¢) per one hundred dollars ($100.00), or major fraction thereof, of the final sale price. If the amount determined by the formula is less than ten dollars ($10.00), a minimum ten dollar ($10.00) fee will be collected. If the amount determined by the formula is more than two

hundred dollars ($200.00), a maximum two hundred dollar ($200.00) fee will be collected.

(2) Proceeding supplemental to execution.....20.00
(3) Confession of judgment.....15.00
(4) Taking a deposition.....5.00
(5) Execution.....15.00
(6) Notice of resumption of former name.....5.00
(7) Taking an acknowledgment or administering an oath, or both, with or without seal, each certificate (except that oaths of office shall be administered to public officials without charge).....$1.00
(8) Bond, taking justification or approving.....5.00
(9) Certificate, under seal.....2.00
(10) Exemplification of records.....5.00
(11) Recording or docketing (including indexing) any document
– first page.....4.00
– each additional page or fraction thereof..... .25
(12) Preparation of copies
– first page.....1.00
– each additional page or fraction thereof..... .25
(13) Preparation and docketing of transcript of judgment.....5.00
(14) Substitution of trustee in deed of trust.....5.00
(15) Execution of passport application – the amount allowed by federal law
(16) Repealed by Session Laws 1989, c. 783, s. 2.
(17) Criminal record search except if search is requested by an agency of the State or any of its political subdivisions or by an agency of the United States or by a petitioner in a proceeding under Article 2 of General Statutes Chapter 20.....5.00
(18) Filing the affirmations, acknowledgments, agreements and resulting orders entered into under the provisions of G.S. 110-132 and G.S. 110-133
..... 4.00
(19) Repealed by Session Laws 1989, c. 783, s. 3.
(20) Filing a motion to intervene under G.S. 1-72.1.....20.00."

SECTION 3. This act becomes effective October 1, 2001, and applies to court records filed on or after that date and applies to judicial proceedings commenced or pending on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1284
Committee Substitute Favorable 4/24/01
PROPOSED COMMITTEE SUBSTITUTE H1284-CSSK-40 [v.6]

6/18/2001 4:45:23 PM

Short Title: Openness of Court Records and Proceedings. (Public)

Sponsors:

Referred to:

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO ALLOW AN INTERVENTION OF RIGHT UNDER RULE 24 OF THE RULES OF CIVIL PROCEDURE FOR THOSE THAT ASSERT A RIGHT OF ACCESS TO A JUDICIAL PROCEEDING OR TO A JUDICIAL RECORD AND TO CREATE A NEW FEE FOR FILING A MOTION TO INTERVENE UNDER G.S. 1-72.1.

The General Assembly of North Carolina enacts:

SECTION 1. Article 6 of Chapter 1 of the General Statutes is amended by adding a new section to read:

"**§ 1-72.1 Right of access.**

An applicant asserting a right of access to a judicial proceeding or to a judicial record may intervene in that judicial proceeding pursuant to Rule 24(a)(1) for the limited purpose of gaining access to the judicial proceeding or to a judicial record. This section does not apply to juvenile proceedings or court records of juvenile proceedings held under Chapter 7B of the General Statutes. Nothing in this section preempts State law that otherwise restricts access to judicial proceedings or judicial records."

SECTION 2. G.S. 7A-308(a) reads as rewritten:

"(a) The following miscellaneous fees and commissions shall be collected by the clerk of superior court and remitted to the State for the support of the General Court of Justice:

(1) Foreclosure under power of sale in deed of trust or mortgage.....$40.00
If the property is sold under the power of sale, an additional amount will be charged, determined by the following formula: thirty cents (30¢) per one hundred dollars ($100.00), or major fraction thereof, of the final sale price. If the amount determined by the formula is less than ten dollars ($10.00), a minimum ten dollar ($10.00) fee will be collected. If the amount determined by the formula is more than two

hundred dollars ($200.00), a maximum two hundred dollar ($200.00) fee will be collected.

(2) Proceeding supplemental to execution.....20.00
(3) Confession of judgment.....15.00
(4) Taking a deposition.....5.00
(5) Execution.....15.00
(6) Notice of resumption of former name.....5.00
(7) Taking an acknowledgment or administering an oath, or both, with or without seal, each certificate (except that oaths of office shall be administered to public officials without charge).....$1.00
(8) Bond, taking justification or approving.....5.00
(9) Certificate, under seal.....2.00
(10) Exemplification of records.....5.00
(11) Recording or docketing (including indexing) any document
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– each additional page or fraction thereof..... .25
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(13) Preparation and docketing of transcript of judgment.....5.00
(14) Substitution of trustee in deed of trust.....5.00
(15) Execution of passport application – the amount allowed by federal law
(16) Repealed by Session Laws 1989, c. 783, s. 2.
(17) Criminal record search except if search is requested by an agency of the State or any of its political subdivisions or by an agency of the United States or by a petitioner in a proceeding under Article 2 of General Statutes Chapter 20.....5.00
(18) Filing the affirmations, acknowledgments, agreements and resulting orders entered into under the provisions of G.S. 110-132 and G.S. 110-133 .....4.00
(19) Repealed by Session Laws 1989, c. 783, s. 3.
(20) Filing a motion to intervene under G.S. 1-72.1.....20.00"

SECTION 3. This act becomes effective October 1, 2001, and applies to court records filed on or after that date and applies to judicial proceedings commenced or pending on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1284 #1

Committee Substitute Favorable 4/24/01

PROPOSED COMMITTEE SUBSTITUTE H1284-CSSK-40 [v.6]

6/18/2001 4:45:23 PM

Short Title: Openness of Court Records and Proceedings. (Public)

Sponsors:

Referred to:

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO ALLOW AN INTERVENTION OF RIGHT UNDER RULE 24 OF THE RULES OF CIVIL PROCEDURE FOR THOSE THAT ASSERT A RIGHT OF ACCESS TO A JUDICIAL PROCEEDING OR TO A JUDICIAL RECORD AND TO CREATE A NEW FEE FOR FILING A MOTION TO INTERVENE UNDER G.S. 1-72.1.

The General Assembly of North Carolina enacts:

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SECTION 2. G.S. 7A-308(a) reads as rewritten:

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(17) Criminal record search except if search is requested by an agency of the State or any of its political subdivisions or by an agency of the United States or by a petitioner in a proceeding under Article 2 of General Statutes Chapter 20.....5.00
(18) Filing the affirmations, acknowledgments, agreements and resulting orders entered into under the provisions of G.S. 110-132 and G.S. 110-133 .....4.00
(19) Repealed by Session Laws 1989, c. 783, s. 3.
(20) Filing a motion to intervene under G.S. 1-72.1.....20.00"

SECTION 3. This act becomes effective October 1, 2001, and applies to court records filed on or after that date and applies to judicial proceedings commenced or pending on or after that date.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

File
J - II
Minutes
June 19, 2001

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Baddour** (Chair/Chairs) for the Committee on **JUDICIARY II.**

☒ Committee Substitute for
~~S.B. 532~~ A BILL TO BE ENTITLED AN ACT TO CLARIFY THE RIGHT TO APPEAL TO A LOCAL BOARD OF EDUCATION, AND TO REQUIRE NOTICE OF THE DISMISSAL, DEMOTION, OR SUSPENSION WITHOUT PAY OF NONCERTIFIED EMPLOYEES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ With a favorable report as to House committee substitute bill (# 2), ~~☐ which changes the title~~, unfavorable as to House committee substitute bill # 1.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 532

Second Edition Engrossed 4/12/01
House Committee Substitute Favorable 6/4/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S532-PCS2694-RC-58

Short Title: Clarify Sch. Bd. Apps./Noncert. E'ees Notice. (Public)

Sponsors:

Referred to:

March 19, 2001

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE RIGHT TO APPEAL TO A LOCAL BOARD OF EDUCATION, AND TO REQUIRE NOTICE OF THE DISMISSAL, DEMOTION, OR SUSPENSION WITHOUT PAY OF NONCERTIFIED EMPLOYEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-45(c) reads as rewritten:

"(c) Appeals to Board of Education and to Superior Court. – An appeal shall lie to the local board of education from ~~the~~ any final administrative decision ~~of all school personnel to the appropriate local board of education.~~ in the following matters:

(1) The discipline of a student under G.S. 115C-391(c), (d), (d1), (d2), or (d3);

(2) An alleged violation of a specified federal law, State law, State Board of Education policy, State rule, or local board policy, including policies regarding grade retention of students;

(3) The terms or conditions of employment or employment status of a school employee; and

(4) Any other decision that by statute specifically provides for a right of appeal to the local board of education and for which there is no other statutory appeal procedure.

As used in this subsection, the term "final administrative decision" means a decision of a school employee from which no further appeal to a school administrator is available.

Any person aggrieved by a decision not covered under subdivisions (1) through (4) of this subsection shall have the right to appeal to the superintendent and thereafter shall have the right to petition the local board of education for a hearing, and the local board may grant a hearing regarding any final decision of school personnel within the local

school administrative unit. The local board of education shall notify the person making the petition of its decision whether to grant a hearing.

In all ~~such~~ appeals to the board it ~~shall be~~is the duty of the board of education to see that a proper notice is given to all parties concerned and that a record of the hearing is properly entered in the records of the board conducting the hearing.

The board of education may designate hearing panels composed of not less than two members of the board to hear and act upon such appeals in the name and on behalf of the board of education.

~~An appeal shall lie from the decision of a local board of education to the superior court of the State in any action of a local board of education affecting one's character or right to teach.~~An appeal of right brought before a local board of education under subdivision (1), (2), (3), or (4) of this subsection may be further appealed to the superior court of the State on the grounds that the local board's decision is in violation of constitutional provisions, is in excess of the statutory authority or jurisdiction of the board, is made upon unlawful procedure, is affected by other error of law, is unsupported by substantial evidence in view of the entire record as submitted, or is arbitrary or capricious. However, the right of a noncertified employee to appeal decisions of a local board under subdivision (3) of this subsection shall only apply to decisions concerning the dismissal, demotion, or suspension without pay of the noncertified employee. A noncertified employee may request and shall be entitled to receive written notice as to the reasons for the employee's dismissal, demotion, or suspension without pay. The notice shall be provided to the employee prior to any local board of education hearing on the issue. This subsection shall not alter the employment status of a noncertified employee."

SECTION 2. G.S. 115C-305 is repealed.

SECTION 3. This act becomes effective July 1, 2001, and applies to final administrative or school board decisions made on or after that date.

6/19

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 532
Second Edition Engrossed 4/12/01
House Committee Substitute Favorable 6/4/01
PROPOSED COMMITTEE SUBSTITUTE S532-CSRC-58 [v.2]

6/13/2001 4:11:36 PM

Short Title: Clarify Sch. Bd. Apps./Noncert. E'ees Notice. (Public)

Sponsors:

Referred to:

March 19, 2001

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE RIGHT TO APPEAL TO A LOCAL BOARD OF EDUCATION, AND TO REQUIRE NOTICE OF THE DISMISSAL, DEMOTION, OR SUSPENSION WITHOUT PAY OF NONCERTIFIED EMPLOYEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-45(c) reads as rewritten:

"(c) Appeals to Board of Education and to Superior Court. – An appeal shall lie to the local board of education from ~~the~~ any final administrative decision ~~of all school personnel to the appropriate local board of education.~~ in the following matters:

(1) The discipline of a student under G.S. 115C-391(c), (d), (d1), (d2), or (d3);

(2) An alleged violation of a specified federal law, State law, State Board of Education policy, State rule, or local board policy, including policies regarding grade retention of students;

(3) The terms or conditions of employment or employment status of a school employee; and

(4) Any other decision that by statute specifically provides for a right of appeal to the local board of education and for which there is no other statutory appeal procedure.

As used in this subsection, the term "final administrative decision" means a decision of a school employee from which no further appeal to a school administrator is avaible.

Any person aggrieved by a decision not covered under subdivisions (1) through (4) of this subsection shall have the right to appeal to the superintendent and thereafter shall have the right to petition the local board of education for a hearing, and the local board may grant a hearing regarding any final decision of school personnel within the local school administrative unit. The local board of education shall notify the person making the petition of its decision whether to grant a hearing.

In all ~~such~~ appeals to the board it ~~shall be~~is the duty of the board of education to see that a proper notice is given to all parties concerned and that a record of the hearing is properly entered in the records of the board conducting the hearing.

The board of education may designate hearing panels composed of not less than two members of the board to hear and act upon such appeals in the name and on behalf of the board of education.

~~An appeal shall lie from the decision of a local board of education to the superior court of the State in any action of a local board of education affecting one's character or right to teach.~~An appeal of right brought before a local board of education under subdivision (1), (2), (3), or (4) of this subsection may be further appealed to the superior court of the State on the grounds that the local board's decision is in violation of constitutional provisions, is in excess of the statutory authority or jurisdiction of the board, is made upon unlawful procedure, is affected by other error of law, is unsupported by substantial evidence in view of the entire record as submitted, or is arbitrary or capricious. However, the right of a noncertified employee to appeal decisions of a local board under subdivision (3) of this subsection shall only apply to decisions concerning the dismissal, demotion, or suspension without pay of the noncertified employee. A noncertified employee may request and shall be entitled to receive written notice as to the specific reasons for the employee's dismissal, demotion, or suspension without pay. The notice shall be provided to the employee prior to any local board of education hearing on the issue."

SECTION 2. G.S. 115C-305 is repealed.

SECTION 3. This act becomes effective July 1, 2001, and applies to final administrative or school board decisions made on or after that date.

6/19

SENATE BILL 532:
Clarify Sch. Bd. Apps./Noncert. E'ees Apps.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Sen. Dalton
Date:	June 19, 2001	**Summary by:**	Robin Johnson*
Version:	S532-PCSRC-58[v.2]		Committee Counsel

The PCS would define the term "final administrative decision", require all school personnel decisions that do not have an automatic right of appeal to the local board to be appealed to the superintendent with an optional appeal to the board, require the board to notify an individual of whether this optional appeal is granted, and remove the definition of "noncertified employee".

SUMMARY: This bill would limit which school personnel decisions may be appealed to local boards of education and which school personnel decisions may be appealed to superior court. It also would provide noncertified employees with the right to be given written notice of the grounds for the superintendent recommending that the employee be dismissed, demoted, or suspended without pay.

The act would take effect July 1, 2001, and apply to final administrative or school board decisions made on or after that date.

DECISIONS THAT MUST BE APPEALABLE TO LOCAL SCHOOL BOARDS

Current Law: Under current law, there is a statutory right of appeal to the local school board from any decision made by school personnel. This means any decision that affects a student, employee, or other individual (for example, someone who wants to use a school building or who attempts to enroll a child.). In addition, there are a number of federal and State laws that require certain decisions to be appealable. Senate Bill 532 would amend G.S. 115C-45(c) to limit the decisions that are automatically appealable to local boards.

Any Final Administrative Decision: The bill would first limit appeals to "any final administrative decision", which the bill defines as any school employee's decision from which there is no further appeal to a school administrator. School administrators include superintendents, associate superintendents, assistant superintendents, principals, and assistant principals and may include other central office administrators.

Certain Final Administrative Decisions Must Provide for an Appeal to the Local Board: The bill would provide a right of appeal to the school board from any final administrative decision concerning:

1. A disciplinary decision resulting in:
   - A student suspension of at least 10 days;
   - A student expulsion (permanent removal from school) or permanent placement in an alternative setting;
   - A 365-days suspension or alternative placement of a student who brings a weapon (primarily guns/bombs) to school or to a school-sponsored activity, who makes a false bomb threat, or who physically assaults another person on school or at a school-sponsored activity.
2. An alleged violation of a specified federal law, State law, State Board of Education policy, State rule, or local board policy, including any policy regarding grade retention of students.
3. The terms or conditions of an employee's employment or employment status.

4. Any other decision, which by statute specifically provides for a right of appeal to the local board an for which there is no other statutory appeal procedure.

Other Decisions Must Provide For an Appeal to the Superintendent with an Optional Appeal to the Local Board. The bill would provide any other individual (i.e., one who is aggrieved by decisions of school personnel for which there is no automatic right to appeal to the board) with the right to appeal to the superintendent. After an appeal to the superintendent, the individual may petition the board for a hearing, which the board may grant. The board must notify the individual of its decision whether to grant a hearing.

The effect of these changes is that there would no longer be an automatic right of appeal to the local board from some decisions. These could include certain decisions (but not necessarily all decisions) related to the following issues: student placement; attendance; athletic eligibility; tuition for nonresidents; student records; building use policies; school admission; student fees; the use of corporal punishment; and suspensions of no more than 10 days. Many of these will be governed by local board policies.

APPEALS OF DECISIONS TO SUPERIOR COURT

Currently, any person has the right to appeal to superior court any decision made by any school personnel or by the local board of education that affects one's character or right to teach.

The bill would repeal G.S. 115C-305 and would amend G.S. 115C-45(c) by providing for an appeal to superior court from most appeals of right to the local board. These include appeals from final administrative decisions concerning items 1-4 above. An exception is made for decisions concerning noncertified employees – only appeals of right to the local board related to decisions concerning these employees' dismissal, demotion, or suspension without pay would have a subsequent right to appeal t superior court.

Appeals to superior court would be limited to claims that the local board's decision:

- Violates constitutional provisions;
- Exceeds the board's statutory authority or jurisdiction;
- Is based on unlawful procedure;
- Is affected by other error of law;
- Is unsupported by substantial evidence in view of the entire record as submitted; or
- Is arbitrary or capricious.

Optional appeals to the local board would not have an automatic right of appeal to superior court.

EMPLOYMENT PROCEDURES FOR NONCERTIFIED EMPLOYEES

Noncertified employees include teacher assistants, bus drivers, secretaries, cafeteria workers, maintenance workers, and mechanics. Generally, these employees are considered to be at-will employees. The statutes do not prescribe the procedure for their dismissal, demotion, or suspension without pay. This means these employees may be dismissed, demoted, suspended at any time and no written notice is required. It is, however, possible for a local board to have a policy governing the procedures for these decisions related to these employees.

The bill would require a superintendent to provide a noncertified employee with written notice of the specific reasons why the superintendent is going to recommend that the employee be dismisses, demoted

or suspended without pay. A noncertified employee would have the right to appeal to superior court the board's employment decisions that are related to a dismissal, demotion, or suspension without pay. (The claims are limited to those enumerated above.) A noncertified employee would not have a right to appeal to superior court other employment related decisions made by a local board unless those decisions violated other federal or State laws, or federal, State or State Board rules.

*S532-SMRH-001. * Kory Goldsmith, House Education Committee counsel, contributed to this summary.*

6/11

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 532

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

S532-ARH-44 [v.1]

Date _____,2001

Comm. Sub. [YES]
Amends Title [NO]
S532-CSRC-58

Representative Pope

moves to amend the PCS on page 2, line 19,
by deleting the word "specific";

and further moves to amend the PCS on page 2, line 21, by inserting after the word "issue." the following new sentence:
"This subsection shall not alter the employment status of a noncertified employee.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

J. H
Name of Committee

6/19/07
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Jim Calvert	NCAE
Joyce Elliott	NCAE
Carolyn McKinney	NCAE
Jack Poloda	NCAE
Tom Stern	"
Peggy Peters	"
Ron McKinney	"
Robert Van Dine	NCAE
Frank Lewis	OSBPM
Glenn Norris	Public School Forum of NC
Eddie Caldwell	Education Everybody's Business Coalition
Robin Broom	NCASA
Ann McColl	NCASA
Jan Cratt	NCASA
PB Powell	AOC

VISITOR REGISTRATION SHEET

J. II
Name of Committee

6/19/01
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Angela Featherly	NCAE
Jean Hankins	NCAE
Jennifer Hardy	NCAE
Antoinette Bass	NCAE
Cotina Jones	NCAE
Karla Conyers	NCAE
Molly McCormick	NCAE
Pat Worley	NCAE
Kim Hargett	NCAE
Tyson Mills	NCAE
Monica Willis	NCAE/Guilford Co.
Maynard Hyles	NCAE/Guilford Co.
Katherine Connette	NCAE Lenoir County
Jane P. Hamel	NCAE
Sandra L. Schaller	NCAE Guilford County

VISITOR REGISTRATION SHEET

J. H
Name of Committee

6/19/01
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Hugh Tilson	NCHA
Allison Schafer	NCSBA
Joanne Winnick	NCSBA
Susan Harrison	WCPSS
Tony Taylor	NCAHP
Bill Coggin	Kennedy Cov. Norton
Ann Bellamy	Bellamy Associates
Ardis Watkins	SEANC
[illegible]	NCDOI

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

July 3, 2001

The House Committee on JUDICIARY II met at 10:00 a.m. on Tuesday, July 3, 2001, in Room 421 of the Legislative Office Building. The following members were present: Chairman Baddour, Representatives Fitch, Haire, Bowie, Culpepper, Decker, Gulley, Hall, Jeffus, Justus, Miller, Pope, Sherrill, Weiss.

The Visitor Registration Sheet is attached as a part of the record of the Minutes.

Chairman Baddour presided. He called the meeting to order and recognized the Pages who were assigned to serve the Committee.

The following bills were discussed, but no vote was taken:

S.B. 746 – AN ACT TO AMEND THE LAW REGARDING ENHANCED SENTENCES AS RECOMMENDED BY THE SENTENCING COMMISSION, AND TO MAKE CONFORMING CHANGES. House Committee Substitute for SB 746 was ordered engrossed and recommitted to JUDICIARY II on July 2, 2001. Chairman Baddour announced that questions and concerns would be heard and directed staff to address any changes and present them at the next meeting. Representative(s) Bowie, Justice, and Miller expressed concern about the complexity of the bill. Representative Fitch and Vice Chairman Haire suggested a minimum approach to any changes. Chairman Baddour informed the Committee that it was his intention to have some representation from the Sentencing Commission present at the next meeting.

SB 278 – AN ACT TO PROVIDE THAT PERSONS CONVICTED OF SECOND OR SUBSEQUENT OFFENSES INVOLVING THE THEFT OF MOTOR FUEL SHALL HAVE THEIR DRIVERS LICENSES REVOKED. Senator Hagan, bill sponsor, explained the bill and distributed a printout (ATTACHMENT) showing decals used by the States of Virginia, Kentucky and South Carolina at gas pumps throughout the states. These decals have served to deter some people from pulling away from gas pumps without paying Members of the committee expressed concern in support of and in opposition to the legislation. The Chairman recognized Mr. Gary Harris of the Petroleum Marketers' Association who spoke in support of the bill. Questions were raised regarding *should drivers' licenses be revoked when there is a theft of retail merchandise, tires, automobiles, etc.?* There was also the question of *"how do you penalize a person who does not have a driver's license"*. Representative Decker offered a proposed amendment in support of the bill with a chart indicating Gasoline Theft/"Drive-Away" Laws in the

Southeast (ATTACHMENT). After some discussion, Representative Decker withdrew his amendment.

Representative Pope made a motion for a favorable report of SB 278. Without vote, the meeting was adjourned at 10:50 a.m.

Representative Philip a. Baddour, Jr.
Chairman, Presiding

Julie Allen
Committee Assistant

Jacquelyn A. Hamby
Transcribing Committee Assistant

HOUSE JUDICIARY II COMMITTEE
AGENDA

Tuesday, July 3, 2001
10:00 A.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF
Robin Johnson
Esther Manheimer
Jeff Hudson
Julie Allen (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDERED:

SB 278 Theft of Gasoline/License Suspension - Sen. Hagan
SB 746 Sentencing Enhancements Changes/Sent. Comm. –Sen. Miller

ADJOURNMENT

J-II
July 3, 2001
Rep. Decker Amend. withdrawn

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 278

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

S278-ASK-22 [v.2]

Date _____ ,2001

Comm. Sub. [NO]
Amends Title [YES]
Second Edition

Representative Decker

moves to amend the bill on pages 1-3, lines 2-9
by rewriting those lines to read:

"AN ACT TO PROVIDE THAT PERSONS CONVICTED OF OFFENSES INVOLVING DRIVING AWAY WITHOUT PAYING FOR GASOLINE OR MOTOR FUEL MAY, UNDER CERTAIN CIRCUMSTANCES, HAVE THEIR DRIVERS LICENSE SUSPENDED.
The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-72 is amended by adding a new subsection to read:

'(e) The following alternatives apply when the larceny or receiving or possession of stolen goods as described in subsection (a) of this section involves the theft of motor fuel:

(1) In addition to the fine and imprisonment otherwise authorized by this section, the court may order the suspension of the drivers license of a person convicted of violating this section for a first time for a period of not to exceed six months if the conviction involved a person driving his or her motor vehicle off the premises of an establishment where gasoline is offered for retail sale after dispensing gasoline or motor vehicle fuel into the fuel tank of a motor vehicle and failing to remit payment or make an authorized charge for the gasoline or motor vehicle fuel that was dispensed.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 278

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

S278-ASK-22 [v.2]

(2) In addition to the fine or imprisonment otherwise authorized by this section, the court shall order the suspension of the drivers license of a person convicted of violating this section for a second time for a period of six months if both convictions involved are of the type specified in subdivision (1) of this subsection.

(3) In addition to the fine and imprisonment otherwise authorized by this section, the court shall order the suspension of the drivers license of a person convicted of violating this section for a third or subsequent time for a period of one year if all of the convictions involved are of the type specified in subdivision (1) of this subsection.

(4) If a person's drivers license has been suspended under the provisions of subdivision (1) of this subsection, then the court may allow the continued use of a restricted drivers license under the applicable provisions of G.S. 20-16.1(b) and (g). The person shall pay the restoration fee required by G.S. 20-7(i1) prior to the restoration of a drivers license suspended under this subsection.'

SECTION 2. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 4

SENATE BILL 746

Judiciary II Committee Substitute Adopted 4/17/01
House Committee Substitute Favorable 6/13/01
Fourth Edition Engrossed 7/2/01

Short Title: Sentencing Enhancements Changes/Sent. Comm. (Public)

Sponsors:

Referred to:

April 2, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING ENHANCED SENTENCES AS RECOMMENDED BY THE SENTENCING COMMISSION, AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-2.2 is repealed.

SECTION 2. G.S. 15A-1340.16A reads as rewritten:

"**§ 15A-1340.16A. Enhanced sentence if defendant is convicted of a Class A, B1, B2, C, D, or E felony and the defendant used, displayed, or threatened to use or display a firearm during the commission of the felony.**

~~(a) If a person is convicted of a Class A, B1, B2, C, D, or E felony and the court finds that the person used, displayed, or threatened to use or display a firearm at the time of the felony, the court shall increase the minimum term of imprisonment to which the person is sentenced by 60 months. The court shall not suspend the 60-month minimum term of imprisonment imposed as an enhanced sentence under this section and shall not place any person sentenced under this section on probation for the enhanced sentence.~~

~~(b) Subsection (a) of this section does not apply in any of the following circumstances:~~

~~(1) The person is not sentenced to an active term of imprisonment.~~

~~(2) The evidence of the use, display, or threatened use or display of a firearm is needed to prove an element of the underlying Class A, B1, B2, C, D, or E felony.~~

~~(3) The person did not actually possess a firearm about his or her person.~~

(a) If a person is convicted of a Class A, B1, B2, C, D, or E felony and it is found as provided in this section that: (i) the person committed the felony by using, displaying, or threatening the use or display of a firearm, and (ii) the person actually

possessed the firearm about his or her person, then the person shall have the minimum term of imprisonment to which the person is sentenced for that felony increased by 60 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 60 months, as specified in G.S. 15A-1340.17(e) and (e1). The court shall not suspend any sentence imposed under this section and shall not place a person sentenced under this section on probation for the sentence imposed under this section.

(b) An indictment or information for the Class A, B1, B2, C, D, or E felony shall allege in that indictment or information the facts set out in subsection (a) of this section. The pleading is sufficient if it alleges that the defendant committed the felony by using, displaying, or threatening the use or display of a firearm and the defendant actually possessed the firearm about the defendant's person. One pleading is sufficient for all Class A, B1, B2, C, D, or E felonies that are tried at a single trial.

(c) The State shall prove the issues set out in subsection (a) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony unless the defendant pleads guilty or no contest to that issue. If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issue set out in subsection (a) of this section, then a jury shall be impaneled to determine that issue.

(d) Subsection (a) of this section does not apply if the evidence of the use, display, or threatened use or display of the firearm is needed to prove an element of the felony or if the person is not sentenced to an active term of imprisonment."

SECTION 3. G.S. 15A-1340.16B reads as rewritten:

"**§ 15A-1340.16B. Life imprisonment without parole for a second or subsequent conviction of a Class B1 ~~felony.~~felony, the victim was 13 years of age or younger, and there are no mitigating factors.**

(a) ~~Notwithstanding the sentencing dispositions in G.S. 15A-1340.17, If~~ a person is convicted of a Class B1 felony and it is found as provided in this section that: (i) ~~shall be sentenced to life imprisonment without parole if:~~

~~(1)~~ ~~The offense was committed~~the person committed the felony against a victim who was 13 years of age or younger at the time of the offense; and

~~(2)~~ ~~The~~ (ii) the person has one or more prior convictions of a Class B1 ~~felony; and~~

~~(3)~~ ~~The court finds that there are no mitigating factors in accordance with G.S. 15A-1340.16(e).~~felony, then the person shall be sentenced to life imprisonment without parole.

~~(b) If the sentencing court finds that there are mitigating circumstances, then the court shall sentence the person in accordance with G.S. 15A-1340.17.~~

~~(c) A prior conviction of a Class B1 felony shall be proved in accordance with G.S. 15A-1340.14.~~

(b) An indictment or information for the Class B1 felony shall allege in that indictment or information or in a separate indictment or information the facts set out in

subsection (a) of this section. The pleading is sufficient if it alleges that the defendant committed the felony against a victim who was 13 years of age or younger at the time of the felony and had one or more prior convictions of a Class B1 felony. One pleading is sufficient for all Class B1 felonies that are tried at a single trial.

(c) The State shall prove the issues set out in subsection (a) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony unless the defendant pleads guilty or no contest to that issue. The issue shall be presented in the same manner as provided in G.S. 15A-928(c). If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issue set out in subsection (a) of this section, then a jury shall be impaneled to determine that issue.

(d) Subsection (a) of this section does not apply if there are mitigating factors present under G.S. 15A-1340.16(e)."

SECTION 4. G.S. 15A-1340.16C reads as rewritten:

"**§ 15A-1340.16C. Enhanced sentence if defendant is convicted of a felony and the defendant was wearing or had in his or her immediate possession a bulletproof vest during the commission of the felony.**

(a) If a person is convicted of a felony and ~~the court finds that~~ it is found as provided in this section that the person ~~was wearing~~ wore or had in his or her immediate possession a bulletproof vest at the time of the felony, then the person is guilty of a felony that is one class higher than the underlying felony for which the person was convicted.

~~(b) This section does not apply if the evidence that the person possessed a bullet-proof vest is needed to prove an element of the underlying felony for which the person was convicted. This section does not apply to law enforcement officers.~~

(b) An indictment or information for the felony shall allege in that indictment or information or in a separate indictment or information the facts set out in subsection (a) of this section. The pleading is sufficient if it alleges that the defendant committed the felony while wearing or having in the defendant's immediate possession a bulletproof vest. One pleading is sufficient for all felonies that are tried as a single trial.

(c) The State shall prove the issue set out in subsection (a) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony unless the defendant pleads guilty or no contest to that issue. If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issue set out in subsection (a) of this section, then a jury shall be impaneled to determine that issue.

(d) Subsection (a) of this section does not apply if the evidence that the person wore or had in the person's immediate possession a bulletproof vest is needed to prove an element of the felony."

SECTION 5. G.S. 14-269.1 reads as rewritten:

"**§ 14-269.1. Confiscation and disposition of deadly weapons.**

Upon conviction of any person for violation of G.S. ~~14-2.2,~~ 14-269, 14-269.7, or any other offense involving the use of a deadly weapon of a type referred to in G.S. 14-269, the deadly weapon with reference to which the defendant shall have been convicted

shall be ordered confiscated and disposed of by the presiding judge at the trial in one of the following ways in the discretion of the presiding judge.

(1) By ordering the weapon returned to its rightful owner, but only when such owner is a person other than the defendant and has filed a petition for the recovery of such weapon with the presiding judge at the time of the defendant's conviction, and upon a finding by the presiding judge that petitioner is entitled to possession of same and that he was unlawfully deprived of the same without his consent.

(2), (3) Repealed by Session Laws 1994, Ex. Sess., c. 16, s. 2.

(4) By ordering such weapon turned over to the sheriff of the county in which the trial is held or his duly authorized agent to be destroyed. The sheriff shall maintain a record of the destruction thereof.

(4a) By ordering the weapon, if the weapon has a legible unique identification number, turned over to a law enforcement agency in the county of trial for the official use of such agency, but only upon the written request by the head or chief of such agency. The receiving law enforcement agency shall maintain a record and inventory of all such weapons received.

(5) By ordering such weapon turned over to the North Carolina State Bureau of Investigation's Crime Laboratory Weapons Reference Library for official use by that agency. The State Bureau of Investigation shall maintain a record and inventory of all such weapons received.

(6) By ordering such weapons turned over to the North Carolina Justice Academy for official use by that agency. The North Carolina Justice Academy shall maintain a record and inventory of all such weapons received."

SECTION 6. G.S. 15A-1340.16(d) reads as rewritten:

"(d) Aggravating Factors. -- The following are aggravating factors:

(1) The defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants.

(2) The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.

(2a) The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy. A "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of felony or violent misdemeanor offenses, or delinquent acts that would be felonies or violent

misdemeanors if committed by an adult, and having a common name or common identifying sign, colors, or symbols.

(3) The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(4) The defendant was hired or paid to commit the offense.

(5) The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(6) The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.

(7) The offense was especially heinous, atrocious, or cruel.

(8) The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.

(9) The defendant held public office at the time of the offense and the offense related to the conduct of the office.

(10) The defendant was armed with or used a deadly weapon at the time of the crime.

(11) The victim was very young, or very old, or mentally or physically infirm, or handicapped.

(12) The defendant committed the offense while on pretrial release on another charge.

(13) The defendant involved a person under the age of 16 in the commission of the crime.

(14) The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.

(15) The defendant took advantage of a position of trust or confidence to commit the offense.

(16) The offense involved the sale or delivery of a controlled substance to a minor.

(17) The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.

(18) The defendant does not support the defendant's family.

(18a) The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.

(19) The serious injury inflicted upon the victim is permanent and debilitating.

(20) Any other aggravating factor reasonably related to the purposes of sentencing.

Evidence necessary to prove an element of the offense shall not be used to prove any factor in aggravation, and the same item of evidence shall not be used to prove more than one factor in aggravation. Evidence necessary to establish ~~that~~ an enhanced sentence ~~is required under G.S. 14-2.2~~ may not be used to prove any factor in aggravation.

The judge shall not consider as an aggravating factor the fact that the defendant exercised the right to a jury trial."

SECTION 7. This act is effective when it becomes law and applies to offenses committed on or after that date. Prosecutions for offenses occurring before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable before this act remain applicable to those prosecutions.

SENATE BILL 278:
Theft of Gasoline/License Suspension

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Hagan
Date:	July 3, 2001	**Summary by:**	Esther Manheimer*
Version:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 278 creates a new section for the theft of motor fuel valued at less than $1,000 from a retail establishment. In addition to the existing penalty for misdemeanor larceny, this bill would also authorize the DMV to revoke a person's driver's license for a second or subsequent conviction of the same offense.***

This act would become effective December 1, 2001, and would apply to offenses occurring on or after that date.

CURRENT LAW: To convict a person of larceny, it must be proven that the person:

1. Took the property of another
2. Carried it away
3. Without the owner's consent
4. With the intent to deprive the owner of the property permanently.

Larceny of property valued at less than $1,000 is a Class 1 misdemeanor. Depending on the number of prior convictions, a person convicted of this offense could have a minimum sentence of 1-45 days suspended, community punishment, plus a fine or a maximum sentence of 120 days active and a fine. The amount of the fine is within the discretion of the judge. Larceny of property valued at more than $1,000 is a Class H felony. The range of punishment for a Class H felony is from four months with a suspended sentence to 30 months active depending on the number of prior convictions and other various mitigating and aggravating factors. Senate Bill 278 does not address the felonious theft of gasoline.

BILL ANALYSIS:

1. <u>Theft of Motor Fuel</u>

Senate Bill 278 makes the offense of stealing motor fuel valued at less than $1,000 from an establishment where motor fuel is offered for retail sale a separate section among the various larceny statutes. The offense would still be a Class 1 misdemeanor, as under current law, but an additional penalty would be created.

2. <u>Additional Penalty</u>

In addition to the fine and imprisonment authorized for Class 1 misdemeanors, the court would be required to report final convictions to DMV. The bill then requires DMV to revoke a person's driver's license for a period of time depending on the number of prior convictions within the past seven years for the same offense:

1st conviction = No additional penalty
2nd conviction = Mandatory revocation for 90 days
3rd or subsequent conviction = Mandatory revocation for six months

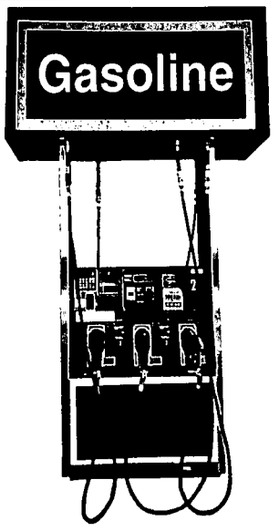
3. **Second or Subsequent Conviction Defined** – At the time of the current offense, the person has previous conviction for the same offense that occurred in the seven years immediately preceding the date of the current offense.

4. **Limited Driving Privilege** – If a person is convicted for theft of motor fuel for a second or subsequent time, a judge may allow a limited driving privilege.

* Trina Griffin, Counsel to Senate Judiciary II, substantially contributed to this summary.

Gasoline Theft/ "Drive-Away" Laws in the Southeast

	NC- HB 45	NC- SB 278	Tennessee	South Carolina	Virginia	Florida	Georgia
1st Offense	License **may** be suspended for up to 6 months; *fined* according to judge's discretion and *imprisoned up to 45 days.*	Driver's license **NOT** suspended; *fined* according to judge's discretion and *imprisoned up to 45 days.*	License **may** be suspended for up to *6 months*; fined up to *$2500* and *imprisoned for up to 1 year.* (If stolen property less than $500 value).	License **may** be suspended for up to *30 days*; fined up to *$500* and *imprisoned for up to 30 days.*	License **may** be suspended for up to *30 days.*	License **may** be suspended for up to *6 months*; fined up to *$500* and *imprisoned for up to 60 days.*	License **shall** be suspended for *6 months*; fined up to *$100* and *imprisoned for up to 60 days.*
2nd Offense	License **shall** be suspended for 6 months; *fined* according to judge's discretion and *imprisoned up to 45 days.*	License **shall** be suspended for *90 days*; *fined* according to judge's discretion and *imprisoned up to 45 days.*	License **shall** be suspended for *6 months*; fined up to *$2500* and *imprisoned for up to 1 year.* (If stolen property less than $500 value).	License **may** be suspended for up to *90 days*; fined up to *$500* and *imprisoned for up to 30 days.*	License **shall** be suspended for *30 days.*	License **may** be suspended for up to *1 year*; fined up to *$500* and *imprisoned for up to 60 days.*	License **shall** be suspended for *1 year*; fined up to *$100* and *imprisoned for up to 60 days.*
Subsequent Offenses	License **shall** be suspended for 1 year; *fined* according to judge's discretion and *imprisoned up to 45 days.*	License **shall** be suspended for *6 months*; *fined* according to judge's discretion and *imprisoned up to 45 days.*	License **shall** be suspended for *1 year*; fined up to *$2500* and *imprisoned for up to 1 year.* (If stolen property less than $500 value).	License **may** be suspended for up to *90 days*; fined up to *$500* and *imprisoned for up to 30 days.*	License **shall** be suspended for *30 days.*	License **may** be suspended for up to *1 year*; fined up to *$500* and *imprisoned for up to 60 days.*	License **shall** be suspended for *1 year*; fined up to *$100* and *imprisoned for up to 60 days.*



If you take this...



We're going to take this.

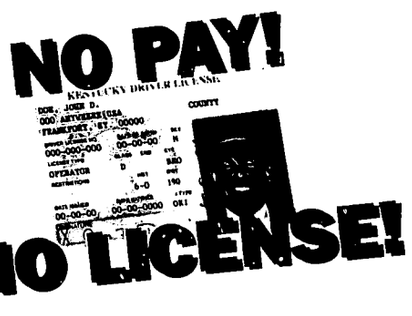
If you pump, and don't pay, you could be walking. In 2000, South Carolina passed a law that says if you drive off without paying for gasoline, you could lose your driver's license.

South Carolina Code Section 16-13-185

This information brought to you by the S.C. Petroleum Marketer's Association

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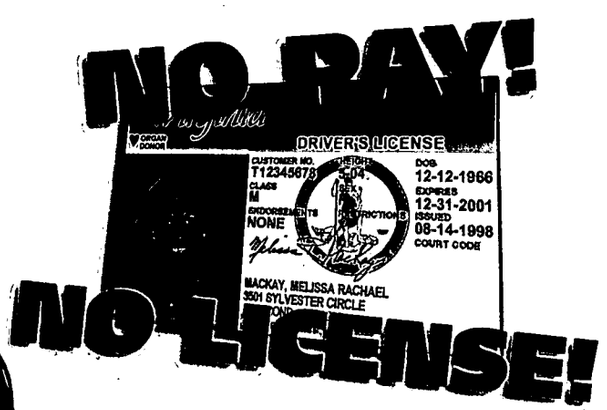


Drive away without paying for gas...it could be the last time you drive.

Under Kentucky Law, if you pump and run, you can lose your driver's license.

This crime prevention message is brought to you by the Kentucky Petroleum Marketers Association.
(502) 875-3738 info@kpma.net www.kpma.net





Drive away without paying for gas...it could be the last time you drive.

Under Virginia law, if you pump and run, you can lose your driver's license.

This message brought to you by:

Virginia Department of Motor Vehicles Virginia State Police
Virginia Petroleum Marketers & Convenience Store Association, Inc.

VISITOR REGISTRATION SHEET

Jud. II — Name of Committee

7-3-01 — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lorrin Freeman	NC Sentencing
John Phelps	NCLM
Michael E. Bryant	DL/DMV
Matt Osborne	AOC
Sharon Matthews	DOT/DMV
Doug Hawes	NCPMR
George Hartis	"
Robert Wilson	Sec of State
Andy Ellen	NCLMA
Carl Geyer	BPMHC
Paul Stam	Author
Dean Proctor	Hagan
Emily Kluttz	Sen Hagan's Intern

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

July 10, 2001

The House Committee on JUDICIARY II met at 10:00 a.m. on Tuesday, July 10, 2001 in Room 421 of the Legislative Office Building. The following members were present: Chairman Baddour, Representatives Haire, Bowie, Culpepper, Decker, Gulley, Hall, Jeffus, Justus, Miller, Pope, Weiss.

The Visitor Registration Sheet is attached as a part of the record of the Minutes. Related handouts are listed as ATTACHMENTS for the record. .

Chairman Baddour presided and called the meeting to order. He recognized the Pages who were assigned to serve the Committee. The following bills were considered:

CS for SB 278 – THEFT OF GASOLINE/LICENSE SUSPENSION. Discussion of SB 278 was continued from last meeting and the Chairman reminded the committee that there was a motion on the table for a favorable report offered at the last meeting by Representative Pope. Senator Hagan, sponsor, was recognized to further explain the bill. Representative Hall expressed his support for mandatory gas pump stickers to be administered by the service providers and suggested an amendment. Mr. Gary Harris of the Petroleum Association was asked to comment and said that the Association supports a volunteer basis for the stickers. In response to a question, he stated that the Association pays for the costs of the stickers. Ms. Ruth Sappie of Department of Transportation was asked to speak on behalf of the DOT. Representative Hall withdrew his proposed amendment and the Chairman called the previous question. The motion carried. CS for SB 278 was given a favorable report.

CS for SB 751 – NO DRUGS AT CHILD CARE CENTERS. Senator Thomas, sponsor, was recognized to explain the bill. Under current law, any person 21 years of age or older who manufactures, sells, or delivers, or who possesses with intent to manufacture, sell, or deliver a controlled substance on or within 300 feet of an elementary or secondary school will be punished as a Class E felon. The term "elementary and secondary school" has been interpreted to include public and private schools of grades K-12, but not child care centers that are not associated with an elementary or secondary school; therefore, Senator Thomas'amendment amended the bill to add 'child care centers'. Representative Bowie expressed concern that the term "users" was not addressed in the legislation. Representative Justus made a motion for a favorable report for CS for SB 751, and the motion carried.

Representative Philip A. Baddour
Presiding Chairman

Julie R. Allen
Committee Assistant

Jacquelyn A. Hamby
Transcribing Committee Assistant

ATTACHMENTS:

HOUSE JUDICIARY II COMMITTEE
AGENDA

Tuesday, July 10, 2001

10:00 A.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF

Robin Johnson
Esther Manheimer
Jeff Hudson
Julie Allen (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDERED:

SB 278 Theft of Gasoline/License Suspension - Sen. Hagan

SB 751 No Drugs at Child Care Centers – Sen. Thomas

SB 746 Sentencing Enhancements Changes/Sent. Comm. –Sen. Miller

ADJOURNMENT

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

filed
7-10-01

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

☒ Committee Substitute for
S.B. 278 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT PERSONS CONVICTED OF SECOND OR SUBSEQUENT OFFENSES INVOLVING THE THEFT OF MOTOR FUEL SHALL HAVE THEIR DRIVERS LICENSES REVOKED.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

SENATE BILL 278:
Theft of Gasoline/License Suspension

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Hagan
Date:	July 10, 2001	**Summary by:**	Esther Manheimer*
Version:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 278 creates a new section for the theft of motor fuel valued at less than $1,000 from a retail establishment. In addition to the existing penalty for misdemeanor larceny, this bill would also authorize the DMV to revoke a person's driver's license for a second or subsequent conviction of the same offense.***

This act would become effective December 1, 2001, and would apply to offenses occurring on or after that date.

CURRENT LAW: To convict a person of larceny, it must be proven that the person:

1. Took the property of another
2. Carried it away
3. Without the owner's consent
4. With the intent to deprive the owner of the property permanently.

Larceny of property valued at less than $1,000 is a Class 1 misdemeanor. Depending on the number of prior convictions, a person convicted of this offense could have a minimum sentence of 1-45 days suspended, community punishment, plus a fine or a maximum sentence of 120 days active and a fine. The amount of the fine is within the discretion of the judge. Larceny of property valued at more than $1,000 is a Class H felony. The range of punishment for a Class H felony is from four months with a suspended sentence to 30 months active depending on the number of prior convictions and other various mitigating and aggravating factors. Senate Bill 278 does not address the felonious theft of gasoline.

BILL ANALYSIS:

1. <u>Theft of Motor Fuel</u>

Senate Bill 278 makes the offense of stealing motor fuel valued at less than $1,000 from an establishment where motor fuel is offered for retail sale a separate section among the various larceny statutes. The offense would still be a Class 1 misdemeanor, as under current law, but an additional penalty would be created.

2. <u>Additional Penalty</u>

In addition to the fine and imprisonment authorized for Class 1 misdemeanors, the court would be required to report final convictions to DMV. The bill then requires DMV to revoke a person's driver's license for a period of time depending on the number of prior convictions within the past seven years for the same offense:

1st conviction = No additional penalty
2nd conviction = Mandatory revocation for 90 days
3rd or subsequent conviction = Mandatory revocation for six months

3. **Second or Subsequent Conviction Defined** – At the time of the current offense, the person has a previous conviction for the same offense that occurred in the seven years immediately preceding the date of the current offense.

4. **Limited Driving Privilege** – If a person is convicted for theft of motor fuel for a second or subsequent time, a judge may allow a limited driving privilege.

* Trina Griffin, Counsel to Senate Judiciary II, substantially contributed to this summary.

MISDEMEANOR PUNISHMENT CHART
(Effective for offenses committed on or after 12/1/95)

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

A - Active Punishment I - Intermediate Punishment C - Community Punishment

Cells with slash allow either disposition at the discretion of the judge.

Revised: 08-04-95

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

7-10-01

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

☒ Committee Substitute for
S.B. 751 A BILL TO BE ENTITLED AN ACT TO INCREASE THE PUNISHMENT FOR DRUG OFFENSES COMMITTED AT OR NEAR CHILD CARE CENTERS.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

SENATE BILL 751:
No Drugs at Child Care Centers

7-10-01

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Thomas
Date:	July 10, 2001	**Summary by:**	Jeff Hudson
Version:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 751 would provide that any person 21 years of age or older who manufactures, sells, or delivers, or who possesses with intent to manufacture, sell, or deliver a controlled substance on or within 300 feet of a licensed child care center will be punished as a Class E felon. The act is effective December 1, 2001, and applies to offenses committed on or after that date.***

CURRENT LAW: Under current law, any person 21 years of age or older who manufactures, sells, or delivers, or who possesses with intent to manufacture, sell, or deliver a controlled substance on or within 300 feet of an elementary or secondary school will be punished as a Class E felon. The term "elementary and secondary school" has been interpreted to include public and private schools of grades K-12, but not child care centers that are not associated with an elementary or secondary school.

BILL ANALYSIS: Senate Bill 751 would provide that any person 21 years of age or older who manufactures, sells, or delivers, or who possesses with intent to manufacture, sell, or deliver a controlled substance on or within 300 feet of a licensed child care center will be punished as a Class E felon. This provision would not apply to the transfer of less than five grams of marijuana for no payment.

"Child care center" is defined as an arrangement where, at any one time, there are three or more preschool-age children or nine or more school-age children receiving child care. "Child care" is defined as a program or arrangement where three or more children less than 13 years old, who do not reside where the care is provided, receive care on a regular basis of at least once per week for more than four hours but less than 24 hours per day from persons other than their guardians or full-time custodians, or from persons not related to them by birth, marriage, or adoption. The following arrangements do not constitute "child care":

- Arrangements operated in the home of any child receiving care if all of the children in care are related to each other and no more than two additional children are in care.
- Recreational programs operated for less than four consecutive months in a year.
- Specialized activities or instruction such as athletics, dance, art, music lessons, horseback riding, gymnastics, or organized clubs for children, such as Boy Scouts, Girl Scouts, 4-H groups, or boys and girls clubs.
- Drop-in or short-term care provided while parents participate in activities that are not employment related and where the parents are on the premises or otherwise easily accessible, such as drop-in or short-term care provided in health spas, bowling alleys, shopping malls, resort hotels, or churches.
- Public schools.
- Nonpublic schools that are accredited by the Southern Association of Colleges and Schools and that operate a child care facility for less than six and one-half hours per day either on or off the school site.
- Bible schools conducted during vacation periods.
- Care provided by facilities for the mentally ill, the developmentally disabled, and substance abusers.
- Cooperative arrangements among parents to provide care for their own children as a convenience rather than for employment.

- Any child care program or arrangement consisting of two or more separate components, each of which operates for four hours or less per day with different children attending each component.

The Secretary of the Department of Health and Human Services must license all child care centers. However, child care facilities or summer day camps operated by a church, synagogue, or school of religious charter are exempt from the licensing requirement. A licensed child care facility must display its current license in a prominent place at all times so that the public is on notice that the facility is licensed.

Kory Goldsmith, Counsel, Senate Judiciary II, contributed to the preparation of this summary.

OFFENSE	LENGTH OF TIME REVOKED/ SUSPENDED	N.C. GEN. STAT.
Any misdemeanor or felony, as a condition of probation	Varies	§ 15A- 1334(b1)(4)
Failure to report a reportable accident	Suspended until report received, then up to 30 additional days.	§ 20-279.31 (a)
Failure to appear or pay fines, penalties or costs of court	Revoked until show good faith effort to pay, pay all fines and charges, or otherwise disposes of the charges.	§ 20-24.1 (a) &(b)
Failure to perform community service in connection with delinquent child support payments	Mandatory revocation until community service completed.	§ 20-17 (b)(2)
Felony convictions	Revoked for the full time the individual is on probation if individual refuses probation with a suspended sentence or probation is revoked and judge finds individual failed to make reasonable efforts to comply with conditions of probation.	§ 15A- 1331A
Refusal to consent to chemical analysis; if the individual is under the influence (alcohol concentration of 0.08 or higher); or under 21 (with any alcohol concentration)	Immediate revocation for at least 30 days, possible additional 12-month revocation by the DMV.	§ 20-16.2
Excessive speeding (more than 15 m.p.h. over the speed limit and over 55 total, or driving faster than 80 m.p.h. at the time of the offense)	Shall suspend for 30 days for 1st offense, shall suspend for 60 days for subsequent offense within one year of 1st offense.	§ 20-16.1 (a), 20-16.1 (e), 20-16.1 (c)
Acquiring too many points – (12 points within 3 year period)	1st offense – revoked for not more than 60 days, 2nd offense – revoked for up to six months, subsequent offense -- revoked for up to one year.	§ 20-16 (c)
False or fictitious name or address on application for a drivers license	Mandatory revocation for up to six months	§ 20-17 (a)(8); 20-19 (a)
Death by vehicle (conviction)	Mandatory revocation for up to six months	§ 20-17(a)(9); 20-19 (a)
Impaired driving (federal conviction)	May revoke up to one year	§ 20-23.2; 20-19 (c)
Impaired driving (conviction in another state)	May revoke up to one year	§ 20-23: 20-19 (c)
Open container law violations	May revoke for up to one year; mandatory revocation for up to one year for second or subsequent conviction	§ 20-138.7; 20-17(c)
Racing vehicles on streets and highways	If not prearranged race – suspended for up to one year. If prearranged race – revoked for 3 years.	§ 20-141.3 (d)-(f)
Failure to stop and render aid	Mandatory revocation up to one year	§ 20-17(a)(4); 20-19(c)
Assault with a motor vehicle (conviction)	Mandatory revocation up to one year	§ 20-17 (a)(11) ; 20-19 (c)
Delinquent in child support payment	Mandatory revocation up to one year	§ 20-17 (b); 20-19 (c)
Felony in commission of which motor vehicle was used	Mandatory revocation up to one year	§ 20-17(a)(3); 20-19 (c)
Manslaughter or negligent homicide	Mandatory revocation up to one year	§ 20-17 (a)(1); 20-19 (c)
Perjury or false affidavit or statement under oath to	Mandatory revocation up to one year	§ 20-17 (a)(5); 20-19(c)

division		
Reckless driving (2 charges committed within 12 month period)	Mandatory revocation up to one year	§ 20-17(a)(6)
Reckless driving (while engaged in the transportation of intoxicants for the purpose of sale)	Mandatory revocation up to one year	§ 20-17(a)(7)
Driving commercial vehicle while under the influence	Mandatory revocation for up to one year after second or subsequent conviction	§ 20-17(a)(13); 20-19(c)
Driving school bus, school activity bus, or child care vehicle while impaired	Mandatory revocation for up to one year	§ 20-17(a)(14); 20-19 (c)
Malicious use of explosive or incendiary device to damage property; conspiracy to injure or damage by use of an explosive or incendiary device, making a false report concerning a destructive device in a public building, perpetrating a hoax concerning a destructive device in a public building, possessing or carrying a dynamite cartridge, bomb, grenade, mine or powerful explosive on educational property, or causing, encouraging or aiding a minor to carry a dynamite cartridge, bomb, grenade, mine, or powerful explosive on educational property.	Mandatory revocation for up to one year	§ 20-17(a)(15); 20-19(c)
Impaired driving	Mandatory revocation for up to one year for 1st offense; revocation for 4 years if additional offense within 3 years preceding second revocation; permanent revocation if 2 or more previous offenses with last one within 5 years.	§ 20-17(a)(2); 20-19 (c1) to (e)
Underage purchasers of alcohol	Shall revoke for one year	§20-17.3
Explosives offenses by minors; includes convictions for malicious use of an incendiary device to damage property, conspiracy to injure or damage by use of an incendiary device, making a false report concerning a destructive device in a public building, perpetrating a hoax concerning a destructive device in a public building, possessing or carrying a dynamite cartridge, bomb, grenade, mine or powerful explosive on educational property, or causing, encouraging or aiding a minor to carry a dynamite cartridge, bomb, grenade, mine, or powerful explosive on educational property.	Shall revoke for one year	§ 20-13.2 (c2); 20-13.2 (d)
Driving while license suspended or revoked (conviction)	1st offense – shall be revoked for additional one year, 2nd offense – shall be revoked for an additional two years, 3rd	§ 20-28 (a)

	offense – shall be permanently revoked.	
Habitual impaired driving	Permanent revocation	§ 20-138.5 (d)
Lose Control, Lose Your License	1 year, but may reduced under certain circumstances	§ 20-13.2(c1)
Failing to make progress towards obtaining a high school diploma	18th birthday, but may reduced under certain circumstances	§ 20-13.2(c1)

Prepared by Christy Wilhelm, Legal Clerk, Research Division (7/10/01)

SENATE BILL 751:
No Drugs at Child Care Centers

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Thomas
Date:	July 10, 2001	**Summary by:**	Jeff Hudson
Version:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 751 would provide that any person 21 years of age or older who manufactures, sells, or delivers, or who possesses with intent to manufacture, sell, or deliver a controlled substance on or within 300 feet of a licensed child care center will be punished as a Class E felon. The act is effective December 1, 2001, and applies to offenses committed on or after that date.***

CURRENT LAW: Under current law, any person 21 years of age or older who manufactures, sells, or delivers, or who possesses with intent to manufacture, sell, or deliver a controlled substance on or within 300 feet of an elementary or secondary school will be punished as a Class E felon. The term "elementary and secondary school" has been interpreted to include public and private schools of grades K-12, but not child care centers that are not associated with an elementary or secondary school.

BILL ANALYSIS: Senate Bill 751 would provide that any person 21 years of age or older who manufactures, sells, or delivers, or who possesses with intent to manufacture, sell, or deliver a controlled substance on or within 300 feet of a licensed child care center will be punished as a Class E felon. This provision would not apply to the transfer of less than five grams of marijuana for no payment.

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- Specialized activities or instruction such as athletics, dance, art, music lessons, horseback riding, gymnastics, or organized clubs for children, such as Boy Scouts, Girl Scouts, 4-H groups, or boys and girls clubs.
- Drop-in or short-term care provided while parents participate in activities that are not employment related and where the parents are on the premises or otherwise easily accessible, such as drop-in or short-term care provided in health spas, bowling alleys, shopping malls, resort hotels, or churches.
- Public schools.
- Nonpublic schools that are accredited by the Southern Association of Colleges and Schools and that operate a child care facility for less than six and one-half hours per day either on or off the school site.
- Bible schools conducted during vacation periods.
- Care provided by facilities for the mentally ill, the developmentally disabled, and substance abusers.
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Kory Goldsmith, Counsel, Senate Judiciary II, contributed to the preparation of this summary.

VISITOR REGISTRATION SHEET

7-10-01

Judiciary II
Name of Committee

7/10/01
Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Gary Harris	NC Petroleum Marketers Assoc.
Cam Cover	BPMHC
Debby Tessler	DMV
Sharon Matthews	DOT/DMV
Mike Hodges	CBA/ABATE of NC
Ivy Avent-Farmer	DHHS-DCD
June Locklear	DHHS - DCD
Roz Savitt	NC Child Care Coalition
Phillip Gilkes	NC Senate
David Weiss	ACLU
Mel Chilton	NCVAN
Donna Pygott	NCVAN
Matt Osborne	AOC
Pat Bowen	Conference of DAs
Colon Willoughby	DA - 10th Dist.
John Phelps	NCLM
Harvin Freeman	Sentencing Commission
John Madden	Sentencing Commission
Hal Askins	NCDOJ
Ruth Sappfire	NCDOT
David Knight	NC Sierra

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

July 12, 2001

The House Committee on JUDICIARY II met at 10:00 a.m. on Thursday, July 12, 2001, in Room 421 of the Legislative Office Building. The following members were present: Chairman Baddour, Representatives Haire, Bowie, Culpepper, Gulley, Hall, Jeffus, Justus, Miller, Pope, Sherrill, Weiss.

The Visitor Registration Sheet is attached as a part of the record of the Minutes and related handouts are listed as ATTACHMENTS for the record.

Chairman Baddour presided and called the meeting to order. He recognized the Pages who were assigned to serve the Committee. The following bill was considered:

HCS for SB 1014 – AN ACT TO STRENGTHEN THE LITTERING LAWS.
Representative Weiss was recognized to review the House Proposed Committee Substitute for SB 1014 (ATTACHMENT). Senator Albertson, sponsor of the original bill, was in Senate Session and not able to attend. It was pointed out that the NC Department of Transportation has been involved as an advisor to the "litter bill".

A motion was made by Representative Haire to adopt the House Proposed Committee Substitute for SB 1014 for committee discussion, and the motion carried. Representative Weiss stated that she would review the PCS section-by-section and would take questions after each section. There was lengthy discussion regarding poundage; industry tarps and the costs thereof; dumping of litter, debris from the bed of pick-up trucks; clean up of right-of-way before mowing; campaign signs, and collection of recyclable materials.

Review and discussion of the PCS for SB 1014 took up the hour allowed and Chairman Baddour announced that the review would be continued at the next meeting.

The meeting adjourned at 10:45 a.m.

Representative Philip A. Baddour
Presiding Chairman

Julie R. Allen
Committee Assistant

Jacquelyn A. Hamby
Transcribing Committee Assistant

ATTACHMENTS

HOUSE JUDICIARY II COMMITTEE
AGENDA

Thursday, July 12, 2001

10:00 A.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF

Robin Johnson
Esther Manheimer
Jeff Hudson
Julie Allen (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDERED:

SB 746 Sentencing Enhancements Changes/Sent. Comm. –Sen. Miller

SB 1014 Strengthen Litter Laws – Sen. Albertson

ADJOURNMENT

Vote taken on 7/19/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 1014
Corrected Copy 4/9/01
Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/16/01
Fourth Edition Engrossed 4/25/01
House Committee Substitute Favorable 6/18/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1014-CSSB-46 [v.5]

7/6/2001 9:54:42 AM

Short Title: Strengthen Littering Laws. (Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LITTERING LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-399 reads as rewritten:

"**§ 14-399. Littering.**

(a) No person, including ~~but not limited to,~~ any firm, organization, private corporation, or governing body, agents or employees of any municipal corporation shall intentionally or recklessly throw, scatter, spill or place or intentionally or recklessly cause to be blown, scattered, spilled, thrown or placed or otherwise dispose of any litter upon any public property or private property not owned by ~~him~~ the person within this State or in the waters of this State ~~including, but not limited to,~~ including any public highway, public park, lake, river, ocean, beach, campground, ~~forest land,~~ forestland, recreational area, trailer park, highway, road, street or alley except:

(1) When ~~such~~ the property is designated by the State or political subdivision thereof for the disposal of garbage and refuse, and ~~such~~ the person is authorized to use ~~such~~ the property for ~~such~~ this purpose; or

(2) Into a litter receptacle in ~~such~~ a manner that the litter will be prevented from being carried away or deposited by the elements upon any part of ~~such~~ the private or public property or waters.

(a1) No person, including any firm, organization, private corporation, or governing body, agents, or employees of any municipal corporation shall scatter, spill, or place or cause to be blown, scattered, spilled, or placed or otherwise dispose of any litter upon any public property or private property not owned by the person within this State or in the waters of this State including any public highway, public park, lake,

river, ocean, beach, campground, forestland, recreational area, trailer park, highway, road, street, or alley except:

(1) When the property is designated by the State or political subdivision thereof for the disposal of garbage and refuse, and the person is authorized to use the property for this purpose; or

(2) Into a litter receptacle in a manner that the litter will be prevented from being carried away or deposited by the elements upon any part of the private or public property or waters.

(a2) Subsection (a1) of this section does not apply to the accidental blowing, scattering, or spilling of an insignificant amount of municipal solid waste, as defined in G.S. 130A-290(18a), during the automated loading of a vehicle designed and constructed to transport municipal solid waste if the vehicle is operated in a reasonable manner and according to manufacturer specifications.

(b) When litter is blown, scattered, spilled, thrown or placed from a vehicle or watercraft, the operator thereof shall be presumed to have committed ~~such~~ the offense. This presumption, however, does not apply to a vehicle transporting ~~agricultural products or supplies when the litter from that vehicle is a nontoxic, biodegradable agricultural product or supply.~~ nontoxic and biodegradable agricultural or garden products or supplies, including mulch, tree bark, wood chips, and raw logs.

(c) Any person who violates subsection (a) of this section in an amount not exceeding 15 pounds and not for commercial purposes is guilty of a Class 3 misdemeanor punishable by a fine of not less than two hundred fifty dollars ($250.00) nor more than one thousand dollars ($1,000) for the first offense. In addition, the court may require the violator to perform community service of not less than eight hours nor more than 24 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed. Any second or subsequent ~~offense~~ violation of subsection (a) of this section in an amount not exceeding 15 pounds and not for commercial purposes within three years after the date of a prior ~~offense~~ violation is a Class 3 misdemeanor punishable by a fine of not less than five hundred dollars ($500.00) nor more than two thousand dollars ($2,000). In addition, the court may require the violator to perform community service of not less than 16 hours nor more than 50 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed.

(c1) Any person who violates subsection (a1) of this section in an amount not exceeding 15 pounds is guilty of an infraction punishable by a fine of not more than one hundred dollars ($100.00). In addition, the court may require the violator to perform community service of not less than four hours nor more than 12 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed. Any second or subsequent violation of subsection (a1) of this section in an amount not exceeding 15 pounds within three years after the date of a prior violation is an infraction punishable by a fine of not more than

two hundred dollars ($200.00). In addition, the court may require the violator to perform community service of not less than eight hours nor more than 24 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed. For purposes of this subsection, the term "litter" shall not include nontoxic and biodegradable agricultural or garden products or supplies, including mulch, tree bark, and wood chips.

(d) Any person who violates subsection (a) of this section in an amount exceeding 15 pounds but not exceeding 500 pounds and not for commercial purposes is guilty of a Class 3 misdemeanor punishable by a fine of not less than five hundred dollars ($500.00) nor more than two thousand dollars ($2,000). In addition, the court shall require the violator to perform community service of not less than 24 hours nor more than 100 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other community service commensurate with the offense committed.

(d1) Any person who violates subsection (a1) of this section in an amount exceeding 15 pounds but not exceeding 500 pounds is guilty of an infraction punishable by a fine of not more than two hundred dollars ($200.00). In addition, the court may require the violator to perform community service of not less than eight hours nor more than 24 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed.

(e) Any person who violates subsection (a) of this section in an amount exceeding 500 pounds or in any quantity for commercial purposes, or who discards litter that is a hazardous waste as defined in G.S. 130A-290 is guilty of a Class I felony. In addition, the court shall order the violator to:

(1) Remove, or render harmless, the litter that he discarded in violation of this section;

(2) Repair or restore property damaged by, or pay damages for any damage arising out of, his discarding litter in violation of this section; or

(3) Perform community public service relating to the removal of litter discarded in violation of this section or to the restoration of an area polluted by litter discarded in violation of this section.

(e1) Any person who violates subsection (a1) of this section in an amount exceeding 500 pounds is guilty of an infraction punishable by a fine of not more than three hundred dollars ($300.00). In addition, the court may require the violator to perform community service of not less than 16 hours nor more than 50 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed.

(f) A court may enjoin a violation of this section.

(f1) If a violation of subsection (a) of this section involves the operation of a motor vehicle, upon a finding of guilt, the court shall forward a record of the finding to the Department of Transportation, Division of Motor Vehicles, which shall record a

penalty of one point on the violator's drivers license pursuant to the point system established by G.S. 20-16. There shall be no insurance premium surcharge or assessment of points under the classification plan adopted under G.S. 58-36-65 for a finding of guilt under this section.

(g) A motor vehicle, vessel, aircraft, container, crane, winch, or machine involved in the disposal of more than 500 pounds of litter in violation of subsection (a) of this section is declared contraband and is subject to seizure and summary forfeiture to the State.

(h) If a person sustains damages arising out of a violation of subsection (a) of this section that is punishable as a felony, a court, in a civil action for ~~such~~ the damages, shall order the person to pay the injured party threefold the actual damages or two hundred dollars ($200.00), whichever amount is greater. In addition, the court shall order the person to pay the injured party's court costs and attorney's fees.

(i) For the purpose of the section, unless the context requires otherwise:

(1) "Aircraft" means a motor vehicle or other vehicle that is used or designed to fly, but does not include a parachute or any other device used primarily as safety equipment.

(2) Repealed by Session Laws 1999-454, s. 1.

(2a) "Commercial purposes" means litter discarded by a business, corporation, association, partnership, sole proprietorship, or any other entity conducting business for economic gain, or by an employee or agent of ~~such~~ the entity.

(3) "Law enforcement officer" means any ~~officer of the North Carolina Highway Patrol, the State Bureau of Investigation, the Division of Motor Vehicles of the Department of Transportation, a county sheriff's department, a municipal law enforcement department, a law enforcement department of any other political subdivision, the Department, or the North Carolina Wildlife Resources Commission.~~ law enforcement officer sworn and certified pursuant to Chapter 17C or 17E of the General Statutes, except company police officers as defined in G.S. 74E-6(b)(3). In addition, and solely for the purposes of this section, "law enforcement officer" means any employee of a county or municipality designated by the county or municipality as a litter enforcement officer. ~~officer; or wildlife protectors as defined in G.S. 113-128(9);~~

(4) "Litter" means any garbage, rubbish, trash, refuse, can, bottle, box, container, wrapper, paper, paper product, tire, appliance, mechanical equipment or part, building or construction material, tool, machinery, wood, motor vehicle or motor vehicle part, vessel, aircraft, farm machinery or equipment, sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility, dead animal, or discarded material in any form resulting from domestic, industrial,

commercial, mining, agricultural, or governmental operations. ~~"Litter"~~ While being used for or distributed in accordance with their intended uses, "litter" does not include political pamphlets, handbills, religious tracts, newspapers, and other ~~such~~ similar printed materials the unsolicited distribution of which is protected by the Constitution of the United States or the Constitution of North Carolina.

(5) "Vehicle" has the same meaning as in ~~G.S. 20-4.01(49);~~ G.S. 20-4.01(49). ~~and~~

(6) "Watercraft" means any boat or vessel used for transportation across the water.

(j) It shall be the duty of all law enforcement officers to enforce the provisions of this section.

(k) This section does not limit the authority of any State or local agency to enforce other laws, rules or ordinances relating to litter or solid waste management."

SECTION 2. G.S. 20-116(g) reads as rewritten:

"(g) (1) No vehicle shall be driven or moved on any highway unless ~~such~~ the vehicle is ~~so~~ constructed ~~or~~ and loaded ~~as~~ to prevent any of its load from falling, blowing, dropping, sifting, leaking, or otherwise escaping therefrom, ~~except that~~ and the vehicle shall not contain any holes, cracks, or openings through which any of its load may escape. However, sand may be dropped for the purpose of securing traction, or water or other substance may be ~~sprinkled~~ sprinkled, dumped, or spread on a roadway in cleaning or maintaining ~~such~~ the roadway. For purposes of this subsection, load does not include water accumulated from precipitation.

(2) ~~Trucks, trailers or other vehicles when~~ A truck, trailer, or other vehicle licensed for more than 7,500 pounds gross vehicle weight loaded with rock, gravel, ~~stone~~ stone, or any other similar ~~substances which~~ substance that could fall, blow, leak, ~~sift~~ sift, or drop shall not be driven or moved on any highway unless the height of the load against all four walls does not extend above a horizontal line six inches below their tops when loaded at the loading ~~point, or if not so loaded, unless~~ point and the load shall be securely covered by tarpaulin or some other suitable ~~covering, or unless it is otherwise constructed so as~~ covering to prevent any of its load from falling, dropping, sifting, leaking, blowing, or otherwise escaping therefrom.

(3) Except as provided in this subdivision, a truck, trailer, or other vehicle licensed for 7,500 pounds or less gross vehicle weight loaded with rock, gravel, stone, or any other similar substance that could fall, blow, leak, sift, or drop shall not be driven or moved on any highway unless the height of the load against all four walls does not extend above a horizontal line six inches below the top when loaded at the loading

point. If a vehicle subject to this subdivision is not loaded in accordance with this subdivision, the vehicle's load shall be securely covered by tarpaulin or some other suitable covering or the vehicle shall be constructed so as to prevent any of its load from falling, dropping, sifting, leaking, blowing, or otherwise escaping therefrom.

(4) ~~Provided this~~ This section shall not be applicable to or in any manner restrict the transportation of seed cotton, ~~of poultry or livestock~~ poultry or livestock, or silage or other feed grain used in the feeding of poultry or livestock."

SECTION 3. Article 2 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-28.11. Litter removal coordinated with mowing of highway rights-of-way.**

The Department of Transportation shall, to the extent practicable, schedule the removal of debris, trash, and litter from highways and highway rights-of-way prior to the mowing of highway rights-of-way. The Department of Transportation shall include as a term of any contract that it enters into for the mowing of a highway right-of-way that the contracting party shall, to the extent practicable, schedule the removal of debris, trash, and litter from the highway and highway right-of-way prior to the mowing of the highway right-of-way."

SECTION 4. Article 2 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-32.3. Litter enforcement signs.**

The Department of Transportation shall place signs on the Interstate Highway System notifying motorists of the penalties for littering. The signs shall include the amount of the maximum penalty for littering. The Department of Transportation shall determine the locations of and distance between the signs."

SECTION 5. G.S. 153A-136 reads as rewritten:

"**§ 153A-136. Regulation of solid wastes.**

(a) A county may by ordinance regulate the storage, collection, transportation, use, disposal, and other disposition of solid wastes. Such an ordinance may:

(1) Regulate the activities of persons, firms, and corporations, both public and private.

(2) Require each person wishing to commercially collect or dispose of solid wastes to secure a license from the county and prohibit any person from commercially collecting or disposing of solid wastes without a license. A fee may be charged for a license.

(3) Grant a franchise to one or more persons for the exclusive right to commercially collect or dispose of solid wastes within all or a defined portion of the county and prohibit any other person from commercially collecting or disposing of solid wastes in that area. The board of commissioners may set the terms of any franchise, except that no franchise may be granted for a period exceeding 30 years, nor may any

franchise by its terms impair the authority of the board of commissioners to regulate fees as authorized by this section.

(4) Regulate the fees, if any, that may be charged by licensed or franchised persons for collecting or disposing of solid wastes.

(5) Require the source separation of materials prior to collection of solid waste for disposal.

(6) Require participation in a recycling program by requiring separation of designated materials by the owner or occupant of the property prior to disposal. An owner of recovered materials as defined by G.S. 130A-290(a)(24) retains ownership of the recovered materials until the owner conveys, sells, donates, or otherwise transfers the recovered materials to a person, firm, company, corporation, or unit of local government. A county may not require an owner to convey, sell, donate, or otherwise transfer recovered materials to the county or its designee. If an owner places recovered materials in receptacles or delivers recovered materials to specific locations, receptacles, and facilities that are owned or operated by the county or its designee, then ownership of these materials is transferred to the county or its designee.

(6a) Regulate the illegal disposal of solid waste, including littering on public and private property, provide for enforcement by civil penalties as well as other remedies, and provide that such regulations may be enforced by specially appointed environmental enforcement officers.

(7) Include any other proper matter.

(b) Any ordinance adopted pursuant to this section shall be consistent with and supplementary to any rules adopted by the Commission for Health Services or the Department of Environment and Natural Resources.

(c) The board of commissioners of a county shall consider alternative sites and socioeconomic and demographic data and shall hold a public hearing prior to selecting or approving a site for a new sanitary landfill that receives residential solid waste that is located within one mile of an existing sanitary landfill within the State. The distance between an existing and a proposed site shall be determined by measurement between the closest points on the outer boundary of each site. The definitions set out in G.S. 130A-290 apply to this subsection. As used in this subsection:

(1) "Approving a site" refers to prior approval of a site under G.S. 130A-294(a)(4).

(2) "Existing sanitary landfill" means a sanitary landfill that is in operation or that has been in operation within the five-year period immediately prior to the date on which an application for a permit is submitted.

(3) "New sanitary landfill" means a sanitary landfill that includes areas not within the legal description of an existing sanitary landfill as set out in the permit for the existing sanitary landfill.

(4) "Socioeconomic and demographic data" means the most recent socioeconomic and demographic data compiled by the United States Bureau of the Census and any additional socioeconomic and demographic data submitted at the public hearing.

(d) As used in this section, "solid waste" means nonhazardous solid waste, that is, solid waste as defined in G.S. 130A-290 but not including hazardous waste."

SECTION 6. G.S. 160A-185 reads as rewritten:

"**§ 160A-185. Emission of pollutants or contaminants.**

A city may by ordinance regulate, restrict, or prohibit the emission or disposal of substances or effluents that tend to pollute or contaminate land, water, or air, rendering or tending to render it injurious to human health or welfare, to animal or plant life or to property, or interfering or tending to interfere with the enjoyment of life or property. A city may by ordinance regulate the illegal disposal of solid waste, including littering on public and private property, provide for enforcement by civil penalties as well as other remedies, and provide that such regulations may be enforced by specially appointed environmental enforcement officers. Any such ordinance shall be consistent with and supplementary to State and federal laws and regulations."

SECTION 7. Article 3 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-22.3. State Board of Elections littering notification.**

At the time an individual files with the State Board of Elections a notice of candidacy pursuant to G.S. 163-106, 163-112, 163-291, 163-294.2, or 163-323, is certified to the State Board of Elections by a political party executive committee to fill a nomination vacancy pursuant to G.S. 163-114, is certified to the State Board of Elections by a new political party as that party's nominee pursuant to G.S. 163-98, qualifies with the State Board of Elections as an unaffiliated or write-in candidate pursuant to Article 11 of this Chapter, or formally initiates a candidacy with the State Board of Elections pursuant to any statute or local act, the State Board of Elections shall notify the candidate of the provisions concerning campaign signs in G.S. 136-32 and G.S. 14-156, and the rules adopted by the Department of Transportation pursuant to G.S. 136-18."

SECTION 8. Article 4 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-33.3. County board of elections littering notification.**

At the time an individual files with a county board of elections a notice of candidacy pursuant to G.S. 163-106, 163-112, 163-291, or 163-294.2, is certified to a county board of elections by a political party executive committee to fill a nomination vacancy pursuant to G.S. 163-114, qualifies with a county board of elections as an unaffiliated or write-in candidate pursuant to Article 11 of this Chapter, or formally initiates with a county board of elections a candidacy pursuant to any statute or local act, the county board of elections shall notify the candidate of the provisions concerning campaign

signs in G.S. 136-32 and G.S. 14-156 and the rules adopted by the Department of Transportation pursuant to G.S. 136-18.

SECTION 9. The text of G.S. 147-12 is designated as subsection (a) of that section, and G.S. 147-12 is further amended by adding a new subsection to read:

"(b) The Department of Transportation, the Department of Correction, the Department of Crime Control and Public Safety, the State Highway Patrol, the Wildlife Resources Commission, the Division of Parks and Recreation in the Department of Environment and Natural Resources, and the Division of Marine Fisheries in the Department of Environment and Natural Resources shall deliver to the Governor by February 1 and August 1 of each year detailed information on the agency's litter enforcement, litter prevention, and litter removal efforts. The Administrative Office of the Courts shall deliver to the Governor by February 1 and August 1 of each year detailed information on the enforcement of the littering laws of the State, including the number of citations issued and arrests made pursuant to the littering laws of the State and the conviction rate associated with the specific offenses. The Governor shall gather the information submitted by the respective agencies and deliver a consolidated semiannual report on or before March 1 and September 1 of each year to the Environmental Review Commission, the Joint Legislative Transportation Oversight Committee, and the House of Representatives and the Senate Appropriations Subcommittees on Natural and Economic Resources."

SECTION 10. The first reports required to be delivered by the Department of Transportation, the Department of Correction, the Department of Crime Control and Public Safety, the State Highway Patrol, the Wildlife Resources Commission, the Division of Parks and Recreation in the Department of Environment and Natural Resources, the Division of Marine Fisheries in the Department of Environment and Natural Resources, and the Administrative Office of the Courts to the Governor under G.S. 147-12(b), as enacted by Section 10 of this act, shall be due February 1, 2002. The first report required to be delivered by the Governor to the Environmental Review Commission, the Joint Legislative Transportation Oversight Committee, and the House of Representatives and the Senate Appropriations Subcommittees on Natural and Economic Resources under G.S. 147-12(b), as enacted by Section 10 of this act, shall be due March 1, 2002.

SECTION 11. G.S. 115C-12 is amended by adding a new subdivision to read:

"(30) Duty to Report on Recycling Efforts of Public Schools. – The State Board of Education shall report to the Joint Legislative Education Oversight Committee and the Environmental Review Commission by September 15 of each year on the recycling efforts of the public schools in the State. This report shall include information on the number of public schools that have recycling programs and the types of recyclable materials that are collected."

SECTION 12. The first report required to be delivered by the State Board of Education to the Joint Legislative Education Oversight Committee and the

Environmental Review Commission pursuant to G.S. 115C-12(30), as enacted by Section 11 of this act, shall be due September 15, 2002.

SECTION 13. G.S. 115C-47 is amended by adding a new subdivision to read:

"(39) To Encourage Recycling in Public Schools. – Local boards of education shall encourage recycling in public schools and may develop and implement recycling programs at public schools."

SECTION 14. G.S. 130A-309.14 is amended by adding new subsections to read:

"(k) The Department of Transportation shall provide and maintain recycling bins at each rest area located in this State on a highway in the Interstate Highway System or in the State highway system for the collection of all of the following recyclable materials for which recycling is feasible:

(1) Aluminum.
(2) Newspaper.
(3) Sorted office paper.
(4) Mixed office paper.
(5) Recyclable glass.
(6) Plastic bottles.

(l) As used in this section, the following definitions apply:

(1) Mixed office paper. – Nearly all waste paper generated in offices that is not sorted office paper and includes colored paper, fax paper, computer paper, junk mail, notepads, manila and bleached file folders, envelopes without plastic windows, magazines, and corrugated cardboard. Mixed office paper does not include glossy paper, tape, and envelopes with plastic windows.

(2) Sorted office paper. – Paper used in offices that is of a high quality for purposes of recycling and includes copier paper, computer paper, letterhead, ledger, white envelopes, and bond paper."

SECTION 15. G.S. 130A-309.14(a)(1) reads as rewritten:

"(1) Establish a program in cooperation with the Department and the Department of ~~Administration,~~ Administration for the collection of all recyclable ~~aluminum and wastepaper~~ materials generated in State offices throughout the ~~State, including, at a minimum, high grade office paper and corrugated paper.~~ State. The program shall provide that recycling bins are readily accessible on each floor where State employees are located in a building occupied by a State agency. The program shall provide for the collection of all of the following recyclable materials.

a. Aluminum.
b. Newspaper.
c. Sorted office paper.

d. Recyclable glass.
e. Plastic bottles."

SECTION 16. This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. Every agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated or available to the agency.

SECTION 17. Sections 1 and 2 of this act become effective December 1, 2001, and apply to offenses committed on or after that date. Sections 5, 6, 9, 10, 11, 12, 13, 16, and 17 of this act are effective when it becomes law. Sections 7 and 8 of this act become effective December 1, 2001. Sections 3, 4, 14 and 15 of this act become effective January 1, 2002.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 5

SENATE BILL 1014

Corrected Copy 4/9/01

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/16/01

Fourth Edition Engrossed 4/25/01

House Committee Substitute Favorable 6/18/01

Short Title: Strengthen Littering Laws. (Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LITTERING LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-399 reads as rewritten:

"**§ 14-399. Littering.**

(a) No person, including ~~but not limited to,~~ any firm, organization, private corporation, or governing body, agents or employees of any municipal corporation shall intentionally or recklessly throw, scatter, spill or place or intentionally or recklessly cause to be blown, scattered, spilled, thrown or placed or otherwise dispose of any litter upon any public property or private property not owned by ~~him~~ the person within this State or in the waters of this State ~~including, but not limited to,~~ including any public highway, public park, lake, river, ocean, beach, campground, ~~forest land,~~ forestland, recreational area, trailer park, highway, road, street or alley except:

(1) When ~~such~~ the property is designated by the State or political subdivision thereof for the disposal of garbage and refuse, and ~~such~~ the person is authorized to use ~~such~~ the property for ~~such~~ this purpose; or

(2) Into a litter receptacle in ~~such~~ a manner that the litter will be prevented from being carried away or deposited by the elements upon any part of ~~such~~ the private or public property or waters.

(a1) No person, including any firm, organization, private corporation, or governing body, agents, or employees of any municipal corporation shall scatter, spill, or place or cause to be blown, scattered, spilled, or placed or otherwise dispose of any litter upon any public property or private property not owned by the person within this State or in the waters of this State including any public highway, public park, lake,

river, ocean, beach, campground, forestland, recreational area, trailer park, highway, road, street, or alley except:

(1) When the property is designated by the State or political subdivision thereof for the disposal of garbage and refuse, and the person is authorized to use the property for this purpose; or

(2) Into a litter receptacle in a manner that the litter will be prevented from being carried away or deposited by the elements upon any part of the private or public property or waters.

(a2) Subsection (a1) of this section does not apply to the accidental blowing, scattering, or spilling of an insignificant amount of municipal solid waste, as defined in G.S. 130A-290(18a), during the automated loading of a vehicle designed and constructed to transport municipal solid waste if the vehicle is operated in a reasonable manner and according to manufacturer specifications.

(b) When litter is blown, scattered, spilled, thrown or placed from a vehicle or watercraft, the operator thereof shall be presumed to have committed ~~such~~ the offense. This presumption, however, does not apply to a vehicle transporting ~~agricultural products or supplies when the litter from that vehicle is a nontoxic, biodegradable agricultural product or supply.~~ nontoxic and biodegradable agricultural or garden products or supplies, including mulch, tree bark, wood chips, and raw logs.

(c) Any person who violates subsection (a) of this section in an amount not exceeding 15 pounds and not for commercial purposes is guilty of a Class 3 misdemeanor punishable by a fine of not less than two hundred fifty dollars ($250.00) nor more than one thousand dollars ($1,000) for the first offense. In addition, the court may require the violator to perform community service of not less than eight hours nor more than 24 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed. Any second or subsequent ~~offense~~ violation of subsection (a) of this section in an amount not exceeding 15 pounds and not for commercial purposes within three years after the date of a prior ~~offense~~ violation is guilty of a Class 3 misdemeanor punishable by a fine of not less than five hundred dollars ($500.00) nor more than two thousand dollars ($2,000). In addition, the court may require the violator to perform community service of not less than 16 hours nor more than 50 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed.

(c1) Any person who violates subsection (a1) of this section in an amount not exceeding 15 pounds is guilty of an infraction punishable by a fine of not more than one hundred dollars ($100.00). In addition, the court may require the violator to perform community service of not less than four hours nor more than 12 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed. Any second or subsequent violation of subsection (a1) of this section in an amount not exceeding 15 pounds within three years after the date of a prior violation is an infraction punishable by a fine of not more than

two hundred dollars ($200.00). In addition, the court may require the violator to perform community service of not less than eight hours nor more than 24 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed. For purposes of this subsection, the term "litter" shall not include nontoxic and biodegradable agricultural or garden products or supplies, including mulch, tree bark, and wood chips.

(d) Any person who violates subsection (a) of this section in an amount exceeding 15 pounds but not exceeding 500 pounds and not for commercial purposes is guilty of a Class 3 misdemeanor punishable by a fine of not less than five hundred dollars ($500.00) nor more than two thousand dollars ($2,000). In addition, the court shall require the violator to perform community service of not less than 24 hours nor more than 100 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other community service commensurate with the offense committed.

(d1) Any person who violates subsection (a1) of this section in an amount exceeding 15 pounds but not exceeding 500 pounds is guilty of an infraction punishable by a fine of not more than two hundred dollars ($200.00). In addition, the court may require the violator to perform community service of not less than eight hours nor more than 24 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed.

(e) Any person who violates subsection (a) of this section in an amount exceeding 500 pounds or in any quantity for commercial purposes, or who discards litter that is a hazardous waste as defined in G.S. 130A-290 is guilty of a Class I felony. In addition, the court shall order the violator to:

(1) Remove, or render harmless, the litter that he discarded in violation of this section;

(2) Repair or restore property damaged by, or pay damages for any damage arising out of, his discarding litter in violation of this section; or

(3) Perform community public service relating to the removal of litter discarded in violation of this section or to the restoration of an area polluted by litter discarded in violation of this section.

(e1) Any person who violates subsection (a1) of this section in an amount exceeding 500 pounds is guilty of an infraction punishable by a fine of not more than three hundred dollars ($300.00). In addition, the court may require the violator to perform community service of not less than 16 hours nor more than 50 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed.

(f) A court may enjoin a violation of this section.

(f1) If a violation of subsection (a) of this section involves the operation of a motor vehicle, upon a finding of guilt, the court shall forward a record of the finding to the Department of Transportation, Division of Motor Vehicles, which shall record a

penalty of one point on the violator's drivers license pursuant to the point system established by G.S. 20-16. There shall be no insurance premium surcharge or assessment of points under the classification plan adopted under G.S. 58-36-65 for a finding of guilt under this section.

(g) A motor vehicle, vessel, aircraft, container, crane, winch, or machine involved in the disposal of more than 500 pounds of litter in violation of subsection (a) of this section is declared contraband and is subject to seizure and summary forfeiture to the State.

(h) If a person sustains damages arising out of a violation of subsection (a) of this section that is punishable as a felony, a court, in a civil action for ~~such~~ the damages, shall order the person to pay the injured party threefold the actual damages or two hundred dollars ($200.00), whichever amount is greater. In addition, the court shall order the person to pay the injured party's court costs and attorney's fees.

(i) For the purpose of the section, unless the context requires otherwise:

(1) "Aircraft" means a motor vehicle or other vehicle that is used or designed to fly, but does not include a parachute or any other device used primarily as safety equipment.

(2) Repealed by Session Laws 1999-454, s. 1.

(2a) "Commercial purposes" means litter discarded by a business, corporation, association, partnership, sole proprietorship, or any other entity conducting business for economic gain, or by an employee or agent of ~~such~~ the entity.

(3) "Law enforcement officer" means any ~~officer of the North Carolina Highway Patrol, the State Bureau of Investigation, the Division of Motor Vehicles of the Department of Transportation, a county sheriff's department, a municipal law enforcement department, a law enforcement department of any other political subdivision, the Department, or the North Carolina Wildlife Resources Commission.~~ law enforcement officer sworn and certified pursuant to Chapter 17C or 17E of the General Statutes, except company police officers as defined in G.S. 74E-6(b)(3). In addition, and solely for the purposes of this section, "law enforcement officer" means any employee of a county or municipality designated by the county or municipality as a litter enforcement officer. ~~officer; or wildlife protectors as defined in G.S. 113-128(9);~~

(4) "Litter" means any garbage, rubbish, trash, refuse, can, bottle, box, container, wrapper, paper, paper product, tire, appliance, mechanical equipment or part, building or construction material, tool, machinery, wood, motor vehicle or motor vehicle part, vessel, aircraft, farm machinery or equipment, sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility, dead animal, or discarded material in any form resulting from domestic, industrial,

commercial, mining, agricultural, or governmental operations. ~~"Litter"~~ While being used for or distributed in accordance with their intended uses, "litter" does not include political pamphlets, handbills, religious tracts, newspapers, and other ~~such~~ similar printed materials the unsolicited distribution of which is protected by the Constitution of the United States or the Constitution of North Carolina.

(5) "Vehicle" has the same meaning as in ~~G.S. 20-4.01(49); G.S.~~ 20-4.01(49). ~~and~~

(6) "Watercraft" means any boat or vessel used for transportation across the water.

(j) It shall be the duty of all law enforcement officers to enforce the provisions of this section.

(k) This section does not limit the authority of any State or local agency to enforce other laws, rules or ordinances relating to litter or solid waste management."

SECTION 2. G.S. 20-116(g) reads as rewritten:

"(g) (1) No vehicle shall be driven or moved on any highway unless ~~such~~ the vehicle is ~~so~~ constructed ~~or~~ and loaded ~~as~~ to prevent any of its load from falling, blowing, dropping, sifting, leaking, or otherwise escaping therefrom, ~~except that~~ and the vehicle shall not contain any holes, cracks, or openings through which any of its load may escape. However, sand may be dropped for the purpose of securing traction, or water or other substance may be ~~sprinkled~~ sprinkled, dumped, or spread on a roadway in cleaning or maintaining ~~such~~ the roadway. For purposes of this subsection, load does not include water accumulated from precipitation.

(2) Trucks, ~~trailers~~ trailers, or other vehicles when loaded with rock, gravel, ~~stone~~ stone, or any other similar ~~substances which~~ substance that could fall, blow, leak, ~~sift~~ sift, or drop shall not be driven or moved on any highway unless the height of the load against all four walls does not extend above a horizontal line six inches below their tops when loaded at the loading ~~point, or if not so loaded, unless~~ point and the load shall be securely covered by tarpaulin or some other suitable ~~covering, or unless it is otherwise constructed so as~~ covering to prevent any of its load from falling, dropping, sifting, leaking, blowing, or otherwise escaping therefrom. This subdivision does not apply to a vehicle licensed for 7,500 pounds or less gross vehicle weight.

(3) ~~Provided this~~ This section shall not be applicable to or in any manner restrict the transportation of seed cotton, ~~of poultry~~ poultry, or livestock or silage or other feed grain used in the feeding of poultry or livestock."

SECTION 3. G.S. 115C-12 is amended by adding a new subdivision to read:

"(29) Duty to Study the Inclusion of Litter Prevention in the State's Standard Course of Study. – The State Board of Education shall study ways to include the topic of litter prevention in the State's Standard Course of Study."

SECTION 4. Article 2 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-28.11. Litter removal coordinated with mowing of highway rights-of-way and maintenance of highways.**

The Department of Transportation shall coordinate the removal of debris, trash, and litter from highways and highway rights-of-way with the mowing of highway rights-of-way and the maintenance of highways. The Department of Transportation shall include as a term of any contract that it enters into for the mowing of a highway right-of-way or the maintenance of a highway that the contracting party must coordinate the removal of debris, trash, and litter from the highway and highway right-of-way with the mowing of the highway right-of-way or the maintenance of the highway."

SECTION 5. Article 2 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-32.3. Litter enforcement signs.**

The Department of Transportation shall place signs on the Interstate Highway System notifying motorists of the penalties for littering. The signs shall include the amount of the maximum penalty for littering. The Department of Transportation shall determine the locations of and distance between the signs."

SECTION 6. G.S. 153A-136 reads as rewritten:

"**§ 153A-136. Regulation of solid wastes.**

(a) A county may by ordinance regulate the storage, collection, transportation, use, disposal, and other disposition of solid wastes. Such an ordinance may:

(1) Regulate the activities of persons, firms, and corporations, both public and private.

(2) Require each person wishing to commercially collect or dispose of solid wastes to secure a license from the county and prohibit any person from commercially collecting or disposing of solid wastes without a license. A fee may be charged for a license.

(3) Grant a franchise to one or more persons for the exclusive right to commercially collect or dispose of solid wastes within all or a defined portion of the county and prohibit any other person from commercially collecting or disposing of solid wastes in that area. The board of commissioners may set the terms of any franchise, except that no franchise may be granted for a period exceeding 30 years, nor may any franchise by its terms impair the authority of the board of commissioners to regulate fees as authorized by this section.

(4) Regulate the fees, if any, that may be charged by licensed or franchised persons for collecting or disposing of solid wastes.

(5) Require the source separation of materials prior to collection of solid waste for disposal.

(6) Require participation in a recycling program by requiring separation of designated materials by the owner or occupant of the property prior to disposal. An owner of recovered materials as defined by G.S. 130A-290(a)(24) retains ownership of the recovered materials until the owner conveys, sells, donates, or otherwise transfers the recovered materials to a person, firm, company, corporation, or unit of local government. A county may not require an owner to convey, sell, donate, or otherwise transfer recovered materials to the county or its designee. If an owner places recovered materials in receptacles or delivers recovered materials to specific locations, receptacles, and facilities that are owned or operated by the county or its designee, then ownership of these materials is transferred to the county or its designee.

(6a) Regulate the illegal disposal of solid waste, including littering on public and private property, provide for enforcement by civil penalties as well as other remedies, and provide that such regulations may be enforced by specially appointed environmental enforcement officers.

(7) Include any other proper matter.

(b) Any ordinance adopted pursuant to this section shall be consistent with and supplementary to any rules adopted by the Commission for Health Services or the Department of Environment and Natural Resources.

(c) The board of commissioners of a county shall consider alternative sites and socioeconomic and demographic data and shall hold a public hearing prior to selecting or approving a site for a new sanitary landfill that receives residential solid waste that is located within one mile of an existing sanitary landfill within the State. The distance between an existing and a proposed site shall be determined by measurement between the closest points on the outer boundary of each site. The definitions set out in G.S. 130A-290 apply to this subsection. As used in this subsection:

(1) "Approving a site" refers to prior approval of a site under G.S. 130A-294(a)(4).

(2) "Existing sanitary landfill" means a sanitary landfill that is in operation or that has been in operation within the five-year period immediately prior to the date on which an application for a permit is submitted.

(3) "New sanitary landfill" means a sanitary landfill that includes areas not within the legal description of an existing sanitary landfill as set out in the permit for the existing sanitary landfill.

(4) "Socioeconomic and demographic data" means the most recent socioeconomic and demographic data compiled by the United States Bureau of the Census and any additional socioeconomic and demographic data submitted at the public hearing.

(d) As used in this section, "solid waste" means nonhazardous solid waste, that is, solid waste as defined in G.S. 130A-290 but not including hazardous waste."

SECTION 7. G.S. 160A-185 reads as rewritten:

"**§ 160A-185. Emission of pollutants or contaminants.**

A city may by ordinance regulate, restrict, or prohibit the emission or disposal of substances or effluents that tend to pollute or contaminate land, water, or air, rendering or tending to render it injurious to human health or welfare, to animal or plant life or to property, or interfering or tending to interfere with the enjoyment of life or property. A city may by ordinance regulate the illegal disposal of solid waste, including littering on public and private property, provide for enforcement by civil penalties as well as other remedies, and provide that such regulations may be enforced by specially appointed environmental enforcement officers. Any such ordinance shall be consistent with and supplementary to State and federal laws and regulations."

SECTION 8. Article 3 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-22.3. Littering notification and pledge.**

At the time an individual files with the State Board of Elections a notice of candidacy pursuant to G.S. 163-106, 163-112, 163-291, 163-294.2, or 163-323, is certified to the State Board of Elections by a political party executive committee to fill a nomination vacancy pursuant to G.S. 163-114, is certified to the State Board of Elections by a new political party as that party's nominee pursuant to G.S. 163-98, qualifies with the State Board of Elections as an unaffiliated or write-in candidate pursuant to Article 11 of this Chapter, or formally initiates a candidacy with the State Board of Elections pursuant to any statute or local act, the State Board of Elections shall do both of the following:

(1) Notify the candidate of the provisions concerning campaign signs in G.S. 136-32 and G.S. 14-156, and the rules adopted by the Department of Transportation pursuant to G.S. 136-18.

(2) Require that the candidate sign a pledge to comply with those statutes and rules. The State Board of Elections shall prepare a form for the pledge."

SECTION 9. Article 4 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-33.3. Littering notification and pledge.**

At the time an individual files with a county board of elections a notice of candidacy pursuant to G.S. 163-106, 163-112, 163-291, or 163-294.2, is certified to a county board of elections by a political party executive committee to fill a nomination vacancy pursuant to G.S. 163-114, qualifies with a county board of elections as an unaffiliated or write-in candidate pursuant to Article 11 of this Chapter, or formally initiates with a county board of elections a candidacy pursuant to any statute or local act, that county board of elections shall do both of the following:

(1) Notify the candidate of the provisions concerning campaign signs in G.S. 136-32 and G.S. 14-156 and the rules adopted by the Department of Transportation pursuant to G.S. 136-18.

(2) Require that the candidate sign a pledge to comply with those statutes and rules. The State Board of Elections shall prepare a form for the pledge."

SECTION 10. The text of G.S. 147-12 is designated as subsection (a) of that section, and G.S. 147-12 is further amended by adding a new subsection to read:

"(b) The Division of Motor Vehicles of the Department of Transportation, the State Highway Patrol, the Wildlife Resources Commission, the Division of Parks and Recreation in the Department of Environment and Natural Resources, and the Division of Marine Fisheries in the Department of Environment and Natural Resources shall deliver to the Governor by February 1 and August 1 of each year detailed information on the agency's litter enforcement, litter prevention, and litter removal efforts. The Administrative Office of the Courts shall deliver to the Governor by February 1 and August 1 of each year detailed information on the enforcement of the littering laws of the State, including the number of citations issued and arrests conducted pursuant to the littering laws of the State and the conviction rate associated with the specific offenses. The Governor shall gather the information submitted by the respective agencies and deliver a consolidated semiannual report on or before March 1 and September 1 of each year to the Environmental Review Commission, the Joint Legislative Transportation Oversight Committee, and the House of Representatives and the Senate Appropriations Subcommittees on Natural and Economic Resources."

SECTION 11. The first reports required to be delivered by the Division of Motor Vehicles of the Department of Transportation, the State Highway Patrol, the Wildlife Resources Commission, the Division of Parks and Recreation in the Department of Environment and Natural Resources, the Division of Marine Fisheries in the Department of Environment and Natural Resources, and the Administrative Office of the Courts to the Governor under G.S. 147-12(b), as enacted by Section 10 of this act, shall be due February 1, 2002. The first report required to be delivered by the Governor to the Environmental Review Commission, the Joint Legislative Transportation Oversight Committee, and the House of Representatives and the Senate Appropriations Subcommittees on Natural and Economic Resources under G.S. 147-12(b), as enacted by Section 10 of this act, shall be due March 1, 2002.

SECTION 12. Article 11 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-476.1. Community Service Work Program report.**

The Department of Crime Control and Public Safety shall report to the Environmental Review Commission on or before September 1 of each year on the litter removal efforts of the Community Service Work Program. This report shall include the amount of litter removed and the number of community service hours committed to the removal of litter."

SECTION 13. The first report required to be delivered by the Department of Crime Control and Public Safety to the Environmental Review Commission pursuant to G.S. 143B-476.1, as enacted by Section 12 of this act, shall be due September 1, 2001.

SECTION 14. The General Assembly of North Carolina acknowledges the establishment of North Carolina First in the North Carolina Division of Tourism, Film and Sports Development in the Department of Commerce and shall encourage and facilitate its litter prevention efforts.

SECTION 15. G.S. 130A-309.14 is amended by adding new subsections to read:

"(k) The Department of Transportation shall provide and maintain recycling bins at each rest area located in this State on a highway in the Interstate Highway System or in the State highway system for the collection of all of the following recyclable materials for which recycling is feasible:

(1) Aluminum.
(2) Newspaper.
(3) Sorted office paper.
(4) Mixed office paper.
(5) Recyclable glass.
(6) Plastic bottles.

(l) As used in this section, the following definitions apply:

(1) Mixed office paper. – Nearly all waste paper generated in offices that is not sorted office paper and includes colored paper, fax paper, computer paper, junk mail, notepads, manila and bleached file folders, envelopes without plastic windows, magazines, and corrugated cardboard. Mixed office paper does not include glossy paper, tape, and envelopes with plastic windows.

(2) Sorted office paper. – Paper used in offices that is of a high quality for purposes of recycling and includes copier paper, computer paper, letterhead, ledger, white envelopes, and bond paper."

SECTION 16. G.S. 130A-309.14(a)(1) reads as rewritten:

"(1) Establish a program in cooperation with the Department and the Department of Administration, for the collection on each floor of each building occupied by a State agency of all of the following recyclable ~~aluminum and wastepaper~~ materials generated in State offices throughout the ~~State, including, at a minimum, high-grade office paper and corrugated paper.~~ State:

a. Aluminum.
b. Newspaper.
c. Sorted office paper.
d. Recyclable glass.
e. Plastic bottles."

SECTION 17. This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. Every agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated or available to the agency.

SECTION 18. Sections 1 and 2 of this act become effective December 1, 2001, and apply to offenses committed on or after that date. Sections 3, 6, 7, 10, 11, 12, 13, 14, 17, and 18 of this act are effective when it becomes law. Sections 4, 5, 8, and 9 of this act become effective December 1, 2001. Sections 15 and 16 of this act become effective January 1, 2002.

SENATE BILL 1014:
Strengthen Littering Laws

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Albertson
Date:	July 12, 2001	**Summary by:**	Rick Zechini
Version:	Proposed Committee Substitute		Staff Attorney, Research Division

SUMMARY: **The Proposed House Committee Substitute for Senate Bill 1014 establishes new littering offenses for unintentional littering; requires that a vehicle licensed for more than 7,500 pounds and loaded with rock, gravel, stone, or similar substance be covered by a tarp; requires the Department of Transportation to schedule, to the extent practicable, the removal of debris, trash, and litter from the highway and the highway right-of-way prior to mowing; requires the Department of Transportation to install signs notifying motorists of the penalties for littering; provides explicit authority to counties and municipalities to adopt littering ordinances; mandates that candidates be informed of the laws and rules applicable to campaign signs; provides that the Governor is responsible for submitting a semiannual report to various legislative entities on litter prevention, litter removal, and litter enforcement; directs local boards of education to encourage recycling in public schools and requires the State Board of Education to report on recycling in public schools; requires the Department of Transportation to provide and maintain recycling bins at highway rest stops when feasible; and requires the Department of Administration to provide for the collection of recyclable materials on each floor of each building occupied by a State agency.**

BILL ANALYSIS: The PCS for Senate Bill 1014 does the following:

Section 1. Section 1 amends G.S. 14-399 to establish new littering offenses for unintentional littering. The offenses and penalties for intentional or reckless littering under existing law remain the same. Unintentional littering does not include the accidental blowing, scattering, or spilling of an insignificant amount of municipal solid waste during the automated loading of a vehicle designed and constructed to transport municipal solid waste if the vehicle is operated in a reasonable manner and according to manufacturer specifications.

A person who, without acting intentionally or recklessly, litters in the amount of 15 pounds or less is guilty of an infraction punishable by a fine of up to $100 and possible community service of between four and 12 hours. A second or subsequent violation within three years is an infraction punishable by a fine of up to $200 and possible community service of between eight and 24 hours. For unintentional violations in the amount of 15 pounds or less, the term "litter" does not include nontoxic and biodegradable, agricultural or garden products or supplies, including mulch, tree bark, and wood chips.

An unintentional violation in the amount of over 15 pounds up to 500 pounds is an infraction punishable by a fine of up to $200 and possible community service of between eight and 24 hours.

An unintentional violation involving over 500 pounds is an infraction punishable by a fine of up to $300 and possible community service of between 16 and 50 hours.

A drivers license point will only be assessed for intentional or reckless littering violations and only vehicles involved in the intentional or reckless disposal of over 500 pounds of litter are subject to seizure as contraband. Only intentional or reckless littering offenses subject the violator to treble

damages and payment of the plaintiff's court costs and attorney's fees in a civil action if the littering violation resulted in the plaintiff suffering damages.

This section clarifies that all law enforcement officers sworn and certified pursuant to Chapter 17C or 17E of the General Statutes, except company police officers, have the duty of enforcing G.S. 14-399. County and municipal litter enforcement officers are also charged with enforcing G.S. 14-399. The North Carolina Criminal Justice Education and Training System, established by Chapter 17C, is responsible for training all law enforcement officers in the State except for Sheriffs. Sheriffs are trained by the Justice Officers' Standards Division within the Department of Justice, established by Chapter 17E. This section also adds language to the definition of "littering" to provide that political pamphlets, handbills, religious tracts, newspapers, and other similar materials are not considered "litter" only when they are being used for or distributed in accordance with their intended use.

Section 2. Section 2 amends G.S. 20-116(g) to provide that when a vehicle licensed for more than 7,500 pounds gross vehicle weight is loaded with rock, gravel, stone, or any similar substance the height of the load against all four walls shall not extend above a horizontal line six inches below the top of the vehicle when loaded and the load must be securely covered by a tarp or other covering. This section does not change the existing law as it applies to a vehicle licensed for 7,500 pounds or less gross vehicle weight, and such a vehicle must be either loaded as described above, tarped, or constructed so as to prevent any of its load from escaping from the vehicle. This section amends G.S. 20-116(g)(1), which requires that all vehicles be loaded to prevent their load from falling or blowing off, to require that vehicles must be free from any holes, cracks, or openings through which any material may escape. This section also provides that for purposes of G.S. 20-116(g)(1), load does not include water accumulated from precipitation.

Section 3. Section 3 creates a new section requiring the Department of Transportation to schedule, to the extent practicable, the removal of debris, trash, and litter from the highway and the highway right-of-way prior to any mowing of the highway right-of-way.

Section 4. Section 4 requires the Department of Transportation to place signs on the Interstate Highway System notifying motorists of the penalties for littering.

Sections 5 and 6. Sections 5 and 6 provide explicit authority to counties and municipalities to adopt littering ordinances enforceable by civil penalties and other remedies. In addition, counties and municipalities may appoint environmental officers to enforce these ordinances.

Sections 7 and 8. Sections 7 and 8 create two new sections that require, at the time a candidacy is formally initiated with the State Board of Elections or a county board of elections, the respective board of elections to notify the candidate of the provisions concerning campaign signs in G.S. 136-32 and G.S. 14-156 and the rules adopted by the Department of Transportation pursuant to G.S. 136-18.

Sections 9 and 10. Section 9 provides that the Governor shall compile information from the Department of Transportation, the Department of Correction, the Department of Crime Control and Public Safety, the State Highway Patrol, the Wildlife Resources Commission, the Division of Parks and Recreation in the Department of Environment and Natural Resources, the Division of Marine Fisheries in the Department of Environment and Natural Resources, and the Administrative Office of the Courts, and present a consolidated semiannual report to the Environmental Review Commission, the Joint Legislative Transportation Oversight Committee, and the House of Representatives and the Senate Appropriations Subcommittees on Natural and Economic Resources. Section 10 requires the first semiannual report to be delivered to the respective legislative entities by March 1, 2002.

Sections 11, 12, and 13. Section 13 provides that local school boards shall encourage recycling in public schools and may develop and implement recycling programs at public schools. Section 11 provides that the State Board of Education shall report to the Joint Legislative Education Oversight Committee and the Environmental Review Commission by September 15 of each year on the recycling efforts of public schools. Section 12 requires that the first report by the State Board of Education be delivered by September 15, 2002.

Section 14. Section 14 requires the Department of Transportation to provide and maintain recycling bins at highway rest stops for all of the following recyclable materials for which recycling is feasible:

- Aluminum
- Newspaper
- Sorted office paper
- Mixed office paper
- Recyclable glass
- Plastic bottles

Section 15. Section 15 requires the Department of Administration to expand its recycling program to provide that recycling bins are readily accessible on each floor where State employees are located in a building occupied by a State agency. The program must provide for the collection of the following materials:

- Aluminum
- Newspaper
- Sorted office paper
- Recyclable glass
- Plastic bottles

Section 16. Section 16 provides that the act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of the act. Every agency to which the act applies shall implement the provisions of this act from funds otherwise appropriated or available to the agency.

Section 17. Section 17 is the effective date clause of the act.

VISITOR REGISTRATION SHEET

J.U.D.T.T — 7-12-01

Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ruth Sappie	NCDOT
Helen Landi	NCDOT
Lt. Col. A. Moody	N.C. DMV ENFORCEMENT
John McHugh	Gov. OFFICE
Nancy Cossoda	NC Sentencing Comm (INTERN)
Lodrin Freeman	NC Sentencing Commission
John Madler	" "
Beatrice Thompson	NCDOT
Elizabeth Ouzts	NCPIRG
Susan Valaika	Nationwide
John McMillan	McFos P.A.
Bill Eggold	Kennedy Covington
Fred Aller	NC Aggregates Assn.
Mac Boxley	NC Aggregates Assn
Steve Wodka	NC Farm Bureau
Butch Bunnells	NCSDA
George Siddath	PVB
Nat Mund	CCNC
T. Powell	ADC
Dale McKeel	SCENIC NORTH CAROLINA, INC.
Catherine Liao	Governors Office
Benjamin Sollis	NC Sierra Club
Carol Lauer	EGHS
Kim Hibbard	NCLM
Leanne Winner	NCSBA
Ed Regan	N.C.A.C.C
Anne Bulam	Bulam Associates
VL McBride	NCDOT

VISITOR REGISTRATION SHEET

Judiciary II — 7-12-01

Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Williams	NCHBA
Amy Fullbright	Hunton & Williams
EDDIE CALDWELL	NC Sheriff's Assn / NC Law Enf. Off Assn

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

July 17, 2001

The House Committee on JUDICIARY II met at 10:00 a.m. on Thursday, July 17, 2001, in Room 421 of the Legislative Office Building. The following members were present: Chairman Baddour, Representatives Haire, Bowie, Culpepper, Decker, Gulley, Jeffus, Justus, Miller, Sherrill, Weiss.

The Visitor Registration Sheet is attached as a part of the record of the Minutes and related handouts are listed as ATTACHMENTS for the record.

Chairman Baddour presided and called the meeting to order. He recognized the Pages who were assigned to serve the Committee. The following bill was considered:

HCS for SB 1014 – AN ACT TO STRENGTHEN THE LITTERING LAWS.
The House Proposed Committee Substitute for SB 1014 was again before the committee for review and discussion. Senator Albertson, sponsor, and Representative Weiss were recognized to continue a review of the bill section-by-section.

There was lengthy discussion regarding *poundage; industry tarps and the costs thereof; dumping of litter; debris from the bed of pick-up trucks; clean up of right-of-way before mowing; campaign signs, and collection of recyclable materials.* Representative of the NC Department of Transportation, the League of Municipalities and Nationwide Insurance Company were recognized for their input. Ms. Susan Valauri of Nationwide was asked to give a cost analysis of automobile windshield damage in regards to litter from moving vehicles and curbside.

Review and discussion of the PCS for SB 1014 took up the hour allowed and Chairman Baddour announced that the review would be continued at the next meeting.

The meeting adjourned at 10:45 a.m.

Julie R. Allen

Representative Philip A. Baddour
Presiding Chairman

Julie R. Allen
Committee Assistant

Jacquelyn A. Hamby
Transcribing Committee Assistant

ATTACHMENTS

HOUSE JUDICIARY II COMMITTEE
AGENDA

Tuesday, July 17, 2001

10:00 A.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF

Robin Johnson
Esther Manheimer
Jeff Hudson
Julie Allen (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDERED:

SB 1014 Strengthen Litter Laws – Sen. Albertson

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 1014

Corrected Copy 4/9/01

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/16/01

Fourth Edition Engrossed 4/25/01

House Committee Substitute Favorable 6/18/01

PROPOSED HOUSE COMMITTEE SUBSTITUTE S1014-CSSB-46 [v.5]

7/6/2001 9:54:42 AM

Short Title: Strengthen Littering Laws. (Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LITTERING LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-399 reads as rewritten:

"**§ 14-399. Littering.**

(a) No person, including ~~but not limited to,~~ any firm, organization, private corporation, or governing body, agents or employees of any municipal corporation shall intentionally or recklessly throw, scatter, spill or place or intentionally or recklessly cause to be blown, scattered, spilled, thrown or placed or otherwise dispose of any litter upon any public property or private property not owned by ~~him~~ the person within this State or in the waters of this State ~~including, but not limited to,~~ including any public highway, public park, lake, river, ocean, beach, campground, ~~forest land,~~ forestland, recreational area, trailer park, highway, road, street or alley except:

(1) When ~~such~~ the property is designated by the State or political subdivision thereof for the disposal of garbage and refuse, and ~~such~~ the person is authorized to use ~~such~~ the property for ~~such~~ this purpose; or

(2) Into a litter receptacle in ~~such~~ a manner that the litter will be prevented from being carried away or deposited by the elements upon any part of ~~such~~ the private or public property or waters.

(a1) No person, including any firm, organization, private corporation, or governing body, agents, or employees of any municipal corporation shall scatter, spill, or place or cause to be blown, scattered, spilled, or placed or otherwise dispose of any litter upon any public property or private property not owned by the person within this State or in the waters of this State including any public highway, public park, lake,

river, ocean, beach, campground, forestland, recreational area, trailer park, highway, road, street, or alley except:

(1) When the property is designated by the State or political subdivision thereof for the disposal of garbage and refuse, and the person is authorized to use the property for this purpose; or

(2) Into a litter receptacle in a manner that the litter will be prevented from being carried away or deposited by the elements upon any part of the private or public property or waters.

(a2) Subsection (a1) of this section does not apply to the accidental blowing, scattering, or spilling of an insignificant amount of municipal solid waste, as defined in G.S. 130A-290(18a), during the automated loading of a vehicle designed and constructed to transport municipal solid waste if the vehicle is operated in a reasonable manner and according to manufacturer specifications.

(b) When litter is blown, scattered, spilled, thrown or placed from a vehicle or watercraft, the operator thereof shall be presumed to have committed ~~such~~ the offense. This presumption, however, does not apply to a vehicle transporting ~~agricultural products or supplies when the litter from that vehicle is a nontoxic, biodegradable agricultural product or supply.~~ nontoxic and biodegradable agricultural or garden products or supplies, including mulch, tree bark, wood chips, and raw logs.

(c) Any person who violates subsection (a) of this section in an amount not exceeding 15 pounds and not for commercial purposes is guilty of a Class 3 misdemeanor punishable by a fine of not less than two hundred fifty dollars ($250.00) nor more than one thousand dollars ($1,000) for the first offense. In addition, the court may require the violator to perform community service of not less than eight hours nor more than 24 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed. Any second or subsequent ~~offense~~ violation of subsection (a) of this section in an amount not exceeding 15 pounds and not for commercial purposes within three years after the date of a prior ~~offense~~ violation is a Class 3 misdemeanor punishable by a fine of not less than five hundred dollars ($500.00) nor more than two thousand dollars ($2,000). In addition, the court may require the violator to perform community service of not less than 16 hours nor more than 50 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed.

(c1) Any person who violates subsection (a1) of this section in an amount not exceeding 15 pounds is guilty of an infraction punishable by a fine of not more than one hundred dollars ($100.00). In addition, the court may require the violator to perform community service of not less than four hours nor more than 12 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed. Any second or subsequent violation of subsection (a1) of this section in an amount not exceeding 15 pounds within three years after the date of a prior violation is an infraction punishable by a fine of not more than

two hundred dollars ($200.00). In addition, the court may require the violator to perform community service of not less than eight hours nor more than 24 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed. For purposes of this subsection, the term "litter" shall not include nontoxic and biodegradable agricultural or garden products or supplies, including mulch, tree bark, and wood chips.

(d) Any person who violates subsection (a) of this section in an amount exceeding 15 pounds but not exceeding 500 pounds and not for commercial purposes is guilty of a Class 3 misdemeanor punishable by a fine of not less than five hundred dollars ($500.00) nor more than two thousand dollars ($2,000). In addition, the court shall require the violator to perform community service of not less than 24 hours nor more than 100 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other community service commensurate with the offense committed.

(d1) Any person who violates subsection (a1) of this section in an amount exceeding 15 pounds but not exceeding 500 pounds is guilty of an infraction punishable by a fine of not more than two hundred dollars ($200.00). In addition, the court may require the violator to perform community service of not less than eight hours nor more than 24 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed.

(e) Any person who violates subsection (a) of this section in an amount exceeding 500 pounds or in any quantity for commercial purposes, or who discards litter that is a hazardous waste as defined in G.S. 130A-290 is guilty of a Class I felony. In addition, the court shall order the violator to:

(1) Remove, or render harmless, the litter that he discarded in violation of this section;

(2) Repair or restore property damaged by, or pay damages for any damage arising out of, his discarding litter in violation of this section; or

(3) Perform community public service relating to the removal of litter discarded in violation of this section or to the restoration of an area polluted by litter discarded in violation of this section.

(e1) Any person who violates subsection (a1) of this section in an amount exceeding 500 pounds is guilty of an infraction punishable by a fine of not more than three hundred dollars ($300.00). In addition, the court may require the violator to perform community service of not less than 16 hours nor more than 50 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed.

(f) A court may enjoin a violation of this section.

(f1) If a violation of subsection (a) of this section involves the operation of a motor vehicle, upon a finding of guilt, the court shall forward a record of the finding to the Department of Transportation, Division of Motor Vehicles, which shall record a

penalty of one point on the violator's drivers license pursuant to the point system established by G.S. 20-16. There shall be no insurance premium surcharge or assessment of points under the classification plan adopted under G.S. 58-36-65 for a finding of guilt under this section.

(g) A motor vehicle, vessel, aircraft, container, crane, winch, or machine involved in the disposal of more than 500 pounds of litter in violation of subsection (a) of this section is declared contraband and is subject to seizure and summary forfeiture to the State.

(h) If a person sustains damages arising out of a violation of subsection (a) of this section that is punishable as a felony, a court, in a civil action for ~~such~~ the damages, shall order the person to pay the injured party threefold the actual damages or two hundred dollars ($200.00), whichever amount is greater. In addition, the court shall order the person to pay the injured party's court costs and attorney's fees.

(i) For the purpose of the section, unless the context requires otherwise:

(1) "Aircraft" means a motor vehicle or other vehicle that is used or designed to fly, but does not include a parachute or any other device used primarily as safety equipment.

(2) Repealed by Session Laws 1999-454, s. 1.

(2a) "Commercial purposes" means litter discarded by a business, corporation, association, partnership, sole proprietorship, or any other entity conducting business for economic gain, or by an employee or agent of ~~such~~ the entity.

(3) "Law enforcement officer" means any ~~officer of the North Carolina Highway Patrol, the State Bureau of Investigation, the Division of Motor Vehicles of the Department of Transportation, a county sheriff's department, a municipal law enforcement department, a law enforcement department of any other political subdivision, the Department, or the North Carolina Wildlife Resources Commission.~~ law enforcement officer sworn and certified pursuant to Chapter 17C or 17E of the General Statutes, except company police officers as defined in G.S. 74E-6(b)(3). In addition, and solely for the purposes of this section, "law enforcement officer" means any employee of a county or municipality designated by the county or municipality as a litter enforcement officer. ~~officer; or wildlife protectors as defined in G.S. 113-128(9);~~

(4) "Litter" means any garbage, rubbish, trash, refuse, can, bottle, box, container, wrapper, paper, paper product, tire, appliance, mechanical equipment or part, building or construction material, tool, machinery, wood, motor vehicle or motor vehicle part, vessel, aircraft, farm machinery or equipment, sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility, dead animal, or discarded material in any form resulting from domestic, industrial,

commercial, mining, agricultural, or governmental operations. ~~"Litter"~~ While being used for or distributed in accordance with their intended uses, "litter" does not include political pamphlets, handbills, religious tracts, newspapers, and other ~~such~~ similar printed materials the unsolicited distribution of which is protected by the Constitution of the United States or the Constitution of North Carolina.

(5) "Vehicle" has the same meaning as in ~~G.S. 20-4.01(49);~~ G.S. 20-4.01(49). ~~and~~

(6) "Watercraft" means any boat or vessel used for transportation across the water.

(j) It shall be the duty of all law enforcement officers to enforce the provisions of this section.

(k) This section does not limit the authority of any State or local agency to enforce other laws, rules or ordinances relating to litter or solid waste management."

SECTION 2. G.S. 20-116(g) reads as rewritten:

"(g) (1) No vehicle shall be driven or moved on any highway unless ~~such~~ the vehicle is ~~so~~ constructed ~~or~~ and loaded ~~as~~ to prevent any of its load from falling, blowing, dropping, sifting, leaking, or otherwise escaping therefrom, ~~except that~~ and the vehicle shall not contain any holes, cracks, or openings through which any of its load may escape. However, sand may be dropped for the purpose of securing traction, or water or other substance may be ~~sprinkled~~ sprinkled, dumped, or spread on a roadway in cleaning or maintaining ~~such~~ the roadway. For purposes of this subsection, load does not include water accumulated from precipitation.

(2) ~~Trucks, trailers or other vehicles when~~ A truck, trailer, or other vehicle licensed for more than 7,500 pounds gross vehicle weight loaded with rock, gravel, ~~stone~~ stone, or any other similar ~~substances which~~ substance that could fall, blow, leak, ~~sift~~ sift, or drop shall not be driven or moved on any highway unless the height of the load against all four walls does not extend above a horizontal line six inches below their tops when loaded at the loading ~~point, or if not so loaded, unless~~ point and the load shall be securely covered by tarpaulin or some other suitable ~~covering, or unless it is otherwise constructed so as~~ covering to prevent any of its load from falling, dropping, sifting, leaking, blowing, or otherwise escaping therefrom.

(3) Except as provided in this subdivision, a truck, trailer, or other vehicle licensed for 7,500 pounds or less gross vehicle weight loaded with rock, gravel, stone, or any other similar substance that could fall, blow, leak, sift, or drop shall not be driven or moved on any highway unless the height of the load against all four walls does not extend above a horizontal line six inches below the top when loaded at the loading

point. If a vehicle subject to this subdivision is not loaded in accordance with this subdivision, the vehicle's load shall be securely covered by tarpaulin or some other suitable covering or the vehicle shall be constructed so as to prevent any of its load from falling, dropping, sifting, leaking, blowing, or otherwise escaping therefrom.

(4) ~~Provided this~~ This section shall not be applicable to or in any manner restrict the transportation of seed cotton, ~~of poultry or livestock~~ poultry or livestock, or silage or other feed grain used in the feeding of poultry or livestock."

SECTION 3. Article 2 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-28.11. Litter removal coordinated with mowing of highway rights-of-way.**

The Department of Transportation shall, to the extent practicable, schedule the removal of debris, trash, and litter from highways and highway rights-of-way prior to the mowing of highway rights-of-way. The Department of Transportation shall include as a term of any contract that it enters into for the mowing of a highway right-of-way that the contracting party shall, to the extent practicable, schedule the removal of debris, trash, and litter from the highway and highway right-of-way prior to the mowing of the highway right-of-way."

SECTION 4. Article 2 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-32.3. Litter enforcement signs.**

The Department of Transportation shall place signs on the Interstate Highway System notifying motorists of the penalties for littering. The signs shall include the amount of the maximum penalty for littering. The Department of Transportation shall determine the locations of and distance between the signs."

SECTION 5. G.S. 153A-136 reads as rewritten:

"**§ 153A-136. Regulation of solid wastes.**

(a) A county may by ordinance regulate the storage, collection, transportation, use, disposal, and other disposition of solid wastes. Such an ordinance may:

(1) Regulate the activities of persons, firms, and corporations, both public and private.

(2) Require each person wishing to commercially collect or dispose of solid wastes to secure a license from the county and prohibit any person from commercially collecting or disposing of solid wastes without a license. A fee may be charged for a license.

(3) Grant a franchise to one or more persons for the exclusive right to commercially collect or dispose of solid wastes within all or a defined portion of the county and prohibit any other person from commercially collecting or disposing of solid wastes in that area. The board of commissioners may set the terms of any franchise, except that no franchise may be granted for a period exceeding 30 years, nor may any

franchise by its terms impair the authority of the board of commissioners to regulate fees as authorized by this section.

(4) Regulate the fees, if any, that may be charged by licensed or franchised persons for collecting or disposing of solid wastes.

(5) Require the source separation of materials prior to collection of solid waste for disposal.

(6) Require participation in a recycling program by requiring separation of designated materials by the owner or occupant of the property prior to disposal. An owner of recovered materials as defined by G.S. 130A-290(a)(24) retains ownership of the recovered materials until the owner conveys, sells, donates, or otherwise transfers the recovered materials to a person, firm, company, corporation, or unit of local government. A county may not require an owner to convey, sell, donate, or otherwise transfer recovered materials to the county or its designee. If an owner places recovered materials in receptacles or delivers recovered materials to specific locations, receptacles, and facilities that are owned or operated by the county or its designee, then ownership of these materials is transferred to the county or its designee.

(6a) Regulate the illegal disposal of solid waste, including littering on public and private property, provide for enforcement by civil penalties as well as other remedies, and provide that such regulations may be enforced by specially appointed environmental enforcement officers.

(7) Include any other proper matter.

(b) Any ordinance adopted pursuant to this section shall be consistent with and supplementary to any rules adopted by the Commission for Health Services or the Department of Environment and Natural Resources.

(c) The board of commissioners of a county shall consider alternative sites and socioeconomic and demographic data and shall hold a public hearing prior to selecting or approving a site for a new sanitary landfill that receives residential solid waste that is located within one mile of an existing sanitary landfill within the State. The distance between an existing and a proposed site shall be determined by measurement between the closest points on the outer boundary of each site. The definitions set out in G.S. 130A-290 apply to this subsection. As used in this subsection:

(1) "Approving a site" refers to prior approval of a site under G.S. 130A-294(a)(4).

(2) "Existing sanitary landfill" means a sanitary landfill that is in operation or that has been in operation within the five-year period immediately prior to the date on which an application for a permit is submitted.

(3) "New sanitary landfill" means a sanitary landfill that includes areas not within the legal description of an existing sanitary landfill as set out in the permit for the existing sanitary landfill.

(4) "Socioeconomic and demographic data" means the most recent socioeconomic and demographic data compiled by the United States Bureau of the Census and any additional socioeconomic and demographic data submitted at the public hearing.

(d) As used in this section, "solid waste" means nonhazardous solid waste, that is, solid waste as defined in G.S. 130A-290 but not including hazardous waste."

SECTION 6. G.S. 160A-185 reads as rewritten:

"**§ 160A-185. Emission of pollutants or contaminants.**

A city may by ordinance regulate, restrict, or prohibit the emission or disposal of substances or effluents that tend to pollute or contaminate land, water, or air, rendering or tending to render it injurious to human health or welfare, to animal or plant life or to property, or interfering or tending to interfere with the enjoyment of life or property. A city may by ordinance regulate the illegal disposal of solid waste, including littering on public and private property, provide for enforcement by civil penalties as well as other remedies, and provide that such regulations may be enforced by specially appointed environmental enforcement officers. Any such ordinance shall be consistent with and supplementary to State and federal laws and regulations."

SECTION 7. Article 3 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-22.3. State Board of Elections littering notification.**

At the time an individual files with the State Board of Elections a notice of candidacy pursuant to G.S. 163-106, 163-112, 163-291, 163-294.2, or 163-323, is certified to the State Board of Elections by a political party executive committee to fill a nomination vacancy pursuant to G.S. 163-114, is certified to the State Board of Elections by a new political party as that party's nominee pursuant to G.S. 163-98, qualifies with the State Board of Elections as an unaffiliated or write-in candidate pursuant to Article 11 of this Chapter, or formally initiates a candidacy with the State Board of Elections pursuant to any statute or local act, the State Board of Elections shall notify the candidate of the provisions concerning campaign signs in G.S. 136-32 and G.S. 14-156, and the rules adopted by the Department of Transportation pursuant to G.S. 136-18."

SECTION 8. Article 4 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-33.3. County board of elections littering notification.**

At the time an individual files with a county board of elections a notice of candidacy pursuant to G.S. 163-106, 163-112, 163-291, or 163-294.2, is certified to a county board of elections by a political party executive committee to fill a nomination vacancy pursuant to G.S. 163-114, qualifies with a county board of elections as an unaffiliated or write-in candidate pursuant to Article 11 of this Chapter, or formally initiates with a county board of elections a candidacy pursuant to any statute or local act, the county board of elections shall notify the candidate of the provisions concerning campaign

signs in G.S. 136-32 and G.S. 14-156 and the rules adopted by the Department of Transportation pursuant to G.S. 136-18.

SECTION 9. The text of G.S. 147-12 is designated as subsection (a) of that section, and G.S. 147-12 is further amended by adding a new subsection to read:

"(b) The Department of Transportation, the Department of Correction, the Department of Crime Control and Public Safety, the State Highway Patrol, the Wildlife Resources Commission, the Division of Parks and Recreation in the Department of Environment and Natural Resources, and the Division of Marine Fisheries in the Department of Environment and Natural Resources shall deliver to the Governor by February 1 and August 1 of each year detailed information on the agency's litter enforcement, litter prevention, and litter removal efforts. The Administrative Office of the Courts shall deliver to the Governor by February 1 and August 1 of each year detailed information on the enforcement of the littering laws of the State, including the number of citations issued and arrests made pursuant to the littering laws of the State and the conviction rate associated with the specific offenses. The Governor shall gather the information submitted by the respective agencies and deliver a consolidated semiannual report on or before March 1 and September 1 of each year to the Environmental Review Commission, the Joint Legislative Transportation Oversight Committee, and the House of Representatives and the Senate Appropriations Subcommittees on Natural and Economic Resources."

SECTION 10. The first reports required to be delivered by the Department of Transportation, the Department of Correction, the Department of Crime Control and Public Safety, the State Highway Patrol, the Wildlife Resources Commission, the Division of Parks and Recreation in the Department of Environment and Natural Resources, the Division of Marine Fisheries in the Department of Environment and Natural Resources, and the Administrative Office of the Courts to the Governor under G.S. 147-12(b), as enacted by Section 10 of this act, shall be due February 1, 2002. The first report required to be delivered by the Governor to the Environmental Review Commission, the Joint Legislative Transportation Oversight Committee, and the House of Representatives and the Senate Appropriations Subcommittees on Natural and Economic Resources under G.S. 147-12(b), as enacted by Section 10 of this act, shall be due March 1, 2002.

SECTION 11. G.S. 115C-12 is amended by adding a new subdivision to read:

"(30) Duty to Report on Recycling Efforts of Public Schools. – The State Board of Education shall report to the Joint Legislative Education Oversight Committee and the Environmental Review Commission by September 15 of each year on the recycling efforts of the public schools in the State. This report shall include information on the number of public schools that have recycling programs and the types of recyclable materials that are collected."

SECTION 12. The first report required to be delivered by the State Board of Education to the Joint Legislative Education Oversight Committee and the

Environmental Review Commission pursuant to G.S. 115C-12(30), as enacted by Section 11 of this act, shall be due September 15, 2002.

SECTION 13. G.S. 115C-47 is amended by adding a new subdivision to read:

"(39) To Encourage Recycling in Public Schools. – Local boards of education shall encourage recycling in public schools and may develop and implement recycling programs at public schools."

SECTION 14. G.S. 130A-309.14 is amended by adding new subsections to read:

"(k) The Department of Transportation shall provide and maintain recycling bins at each rest area located in this State on a highway in the Interstate Highway System or in the State highway system for the collection of all of the following recyclable materials for which recycling is feasible:

(1) Aluminum.
(2) Newspaper.
(3) Sorted office paper.
(4) Mixed office paper.
(5) Recyclable glass.
(6) Plastic bottles.

(l) As used in this section, the following definitions apply:

(1) Mixed office paper. – Nearly all waste paper generated in offices that is not sorted office paper and includes colored paper, fax paper, computer paper, junk mail, notepads, manila and bleached file folders, envelopes without plastic windows, magazines, and corrugated cardboard. Mixed office paper does not include glossy paper, tape, and envelopes with plastic windows.

(2) Sorted office paper. – Paper used in offices that is of a high quality for purposes of recycling and includes copier paper, computer paper, letterhead, ledger, white envelopes, and bond paper."

SECTION 15. G.S. 130A-309.14(a)(1) reads as rewritten:

"(1) Establish a program in cooperation with the Department and the Department of ~~Administration,~~ Administration for the collection of all recyclable ~~aluminum and wastepaper~~ materials generated in State offices throughout the ~~State, including, at a minimum, high-grade office paper and corrugated paper.~~ State. The program shall provide that recycling bins are readily accessible on each floor where State employees are located in a building occupied by a State agency. The program shall provide for the collection of all of the following recyclable materials.

a. Aluminum.
b. Newspaper.
c. Sorted office paper.

d. Recyclable glass.
e. Plastic bottles."

SECTION 16. This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. Every agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated or available to the agency.

SECTION 17. Sections 1 and 2 of this act become effective December 1, 2001, and apply to offenses committed on or after that date. Sections 5, 6, 9, 10, 11, 12, 13, 16, and 17 of this act are effective when it becomes law. Sections 7 and 8 of this act become effective December 1, 2001. Sections 3, 4, 14 and 15 of this act become effective January 1, 2002.

SENATE BILL 1014:
Strengthen Littering Laws

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Albertson
Date:	July 12, 2001	**Summary by:**	Rick Zechini
Version:	Proposed Committee Substitute		Staff Attorney, Research Division

SUMMARY: **The Proposed House Committee Substitute for Senate Bill 1014 establishes new littering offenses for unintentional littering; requires that a vehicle licensed for more than 7,500 pounds and loaded with rock, gravel, stone, or similar substance be covered by a tarp; requires the Department of Transportation to schedule, to the extent practicable, the removal of debris, trash, and litter from the highway and the highway right-of-way prior to mowing; requires the Department of Transportation to install signs notifying motorists of the penalties for littering; provides explicit authority to counties and municipalities to adopt littering ordinances; mandates that candidates be informed of the laws and rules applicable to campaign signs; provides that the Governor is responsible for submitting a semiannual report to various legislative entities on litter prevention, litter removal, and litter enforcement; directs local boards of education to encourage recycling in public schools and requires the State Board of Education to report on recycling in public schools; requires the Department of Transportation to provide and maintain recycling bins at highway rest stops when feasible; and requires the Department of Administration to provide for the collection of recyclable materials on each floor of each building occupied by a State agency.**

BILL ANALYSIS: The PCS for Senate Bill 1014 does the following:

Section 1. Section 1 amends G.S. 14-399 to establish new littering offenses for unintentional littering. The offenses and penalties for intentional or reckless littering under existing law remain the same. Unintentional littering does not include the accidental blowing, scattering, or spilling of an insignificant amount of municipal solid waste during the automated loading of a vehicle designed and constructed to transport municipal solid waste if the vehicle is operated in a reasonable manner and according to manufacturer specifications.

A person who, without acting intentionally or recklessly, litters in the amount of 15 pounds or less is guilty of an infraction punishable by a fine of up to $100 and possible community service of between four and 12 hours. A second or subsequent violation within three years is an infraction punishable by a fine of up to $200 and possible community service of between eight and 24 hours. For unintentional violations in the amount of 15 pounds or less, the term "litter" does not include nontoxic and biodegradable, agricultural or garden products or supplies, including mulch, tree bark, and wood chips.

An unintentional violation in the amount of over 15 pounds up to 500 pounds is an infraction punishable by a fine of up to $200 and possible community service of between eight and 24 hours.

An unintentional violation involving over 500 pounds is an infraction punishable by a fine of up to $300 and possible community service of between 16 and 50 hours.

A drivers license point will only be assessed for intentional or reckless littering violations and only vehicles involved in the intentional or reckless disposal of over 500 pounds of litter are subject to seizure as contraband. Only intentional or reckless littering offenses subject the violator to treble

damages and payment of the plaintiff's court costs and attorney's fees in a civil action if the litt violation resulted in the plaintiff suffering damages.

This section clarifies that all law enforcement officers sworn and certified pursuant to Chapter 17C or 17E of the General Statutes, except company police officers, have the duty of enforcing G.S. 14-399. County and municipal litter enforcement officers are also charged with enforcing G.S. 14-399. The North Carolina Criminal Justice Education and Training System, established by Chapter 17C, is responsible for training all law enforcement officers in the State except for Sheriffs. Sheriffs are trained by the Justice Officers' Standards Division within the Department of Justice, established by Chapter 17E. This section also adds language to the definition of "littering" to provide that political pamphlets, handbills, religious tracts, newspapers, and other similar materials are not considered "litter" only when they are being used for or distributed in accordance with their intended use.

Section 2. Section 2 amends G.S. 20-116(g) to provide that when a vehicle licensed for more than 7,500 pounds gross vehicle weight is loaded with rock, gravel, stone, or any similar substance the height of the load against all four walls shall not extend above a horizontal line six inches below the top of the vehicle when loaded and the load must be securely covered by a tarp or other covering. This section does not change the existing law as it applies to a vehicle licensed for 7,500 pounds or less gross vehicle weight, and such a vehicle must be either loaded as described above, tarped, or constructed so as to prevent any of its load from escaping from the vehicle. This section amends G.S. 20-116(g)(1), which requires that all vehicles be loaded to prevent their load from falling or blowing off, to require that vehicles must be free from any holes, cracks, or openings through which any material may escape. This section also provides that for purposes of G.S. 20-116(g)(1), load does not include water accumulat from precipitation.

Section 3. Section 3 creates a new section requiring the Department of Transportation to schedule, to the extent practicable, the removal of debris, trash, and litter from the highway and the highway right-of-way prior to any mowing of the highway right-of-way.

Section 4. Section 4 requires the Department of Transportation to place signs on the Interstate Highway System notifying motorists of the penalties for littering.

Sections 5 and 6. Sections 5 and 6 provide explicit authority to counties and municipalities to adopt littering ordinances enforceable by civil penalties and other remedies. In addition, counties and municipalities may appoint environmental officers to enforce these ordinances.

Sections 7 and 8. Sections 7 and 8 create two new sections that require, at the time a candidacy is formally initiated with the State Board of Elections or a county board of elections, the respective board of elections to notify the candidate of the provisions concerning campaign signs in G.S. 136-32 and G.S. 14-156 and the rules adopted by the Department of Transportation pursuant to G.S. 136-18.

Sections 9 and 10. Section 9 provides that the Governor shall compile information from the Department of Transportation, the Department of Correction, the Department of Crime Control and Public Safety, the State Highway Patrol, the Wildlife Resources Commission, the Division of Parks and Recreation in the Department of Environment and Natural Resources, the Division of Marine Fisheries in the Department of Environment and Natural Resources, and the Administrative Office of the Courts, and present a consolidated semiannual report to the Environmental Review Commission, the Joint Legislative Transportation Oversight Committee, and the House of Representatives and the Senate Appropriations Subcommittees on Natural and Economic Resources. Section 10 requires the first semiannual report to delivered to the respective legislative entities by March 1, 2002.

Sections 11, 12, and 13. Section 13 provides that local school boards shall encourage recycling in public schools and may develop and implement recycling programs at public schools. Section 11 provides that the State Board of Education shall report to the Joint Legislative Education Oversight Committee and the Environmental Review Commission by September 15 of each year on the recycling efforts of public schools. Section 12 requires that the first report by the State Board of Education be delivered by September 15, 2002.

Section 14. Section 14 requires the Department of Transportation to provide and maintain recycling bins at highway rest stops for all of the following recyclable materials for which recycling is feasible:

- Aluminum
- Newspaper
- Sorted office paper
- Mixed office paper
- Recyclable glass
- Plastic bottles

Section 15. Section 15 requires the Department of Administration to expand its recycling program to provide that recycling bins are readily accessible on each floor where State employees are located in a building occupied by a State agency. The program must provide for the collection of the following materials:

- Aluminum
- Newspaper
- Sorted office paper
- Recyclable glass
- Plastic bottles

Section 16. Section 16 provides that the act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of the act. Every agency to which the act applies shall implement the provisions of this act from funds otherwise appropriated or available to the agency.

Section 17. Section 17 is the effective date clause of the act.

VISITOR REGISTRATION SHEET

JII
Name of Committee

7/17/01
Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Theresa Kostrzewa	Cap Adv. Assoc.
Kim Hibbard	NCLM
J. McCants	AOC
Leanne Winner	NCSBA
Ellen Phelps	SBE
Ann Bellamy	Bellamy Associates
Dee Brewer	SERVE/SBE/NCDPI
Bill Scoggin	Kennedy Covington
DAVID BARNES	Poyner & Spruill, LLP
Dale McKeel	Scenic North Carolina, Inc.
Lois Dixon	Wake Co. KAB
Bob Slocum	NC Forestry Assoc
R. Paul Williams	NCHBA
Sarah Spurlock	WCSA
Butch Dunnells	NC SDA
Katie Mills	Rep. Culpepper Intern
Fred Allen	N.C. Aggregates Ass'n.
Mac Roxley	NC Aggregates
John Lunsford	Martin Marietta
Steve Woodside	NC Farm Bureau
Charles Case	Hunton & Williams
Susan Valauri	Nationwide
Helen Landi	NCDOT
David Allsbrook	NCDOT
Sharon Matthews	DOT/DMV
Lt. James A Moody	N.C. DMV ENFORCEMENT
Lt. T.R. Jones	DMV ENFORCEMENT
David Pope	NCINS
Catherine Liao	Governors office

VISITOR REGISTRATION SHEET

JII
Name of Committee

7/17/01
Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Katie Simons	Gov.'s Office
Tim Minton	NC Home Builders Assn
Martha Glass	DOR
	NCDA

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

July 19, 2001

The House Committee on JUDICIARY II met at 10:00 a.m. on Thursday, July 19, 2001, in Room 421 of the Legislative Office Building. The following members were present: Chairman Baddour, Representatives Haire, Bowie, Culpepper, Decker, Hall, Jeffus, Justus, Miller, Sherrill, Weiss.

The Visitor Registration Sheet is attached as a part of the record of the Minutes and related handouts are listed as ATTACHMENTS for the record.

Chairman Baddour presided and called the meeting to order. He recognized the Pages who were assigned to serve the Committee. Discussion of the following bill was continued from the last meeting:

HCS for SB 1014 –AN ACT TO STRENGTHEN THE LITTERING LAWS.
The House Proposed Committee Substitute for SB 1014 was again before the committee for review and discussion. Senator Albertson and Representative Weiss were recognized to respond to member questions. Amendments (ATTACHED) were offered by Representative Weiss, Representative Miller, Representative Bowie and Representative Decker. A motion was made by each member and the amendments were adopted.

At the request of Representative Allred and Representative McComas, Chairman Baddour offered an amendment (ATTACHED) regarding tree debris from unintentional fallen trees. Ms. Susan Valauri, a representative of Nationwide Insurance Company , explained the insurance coverage on personal property as it relates to storms, etc. that would create debris. Representative Culpepper suggested that the amendment not be made a part of this particular bill, but be considered in other legislation since the statute does not address it. Representative Baddour withdrew Representative Allred's amendment.

Representative Weiss moved that the *Weiss, Miller, Bowie and Decker amendments* be rolled into House Committee Substitute #2 and that the proposed House Committee Substitute # 2 for SB 1014 be given a favorable report, unfavorable to House Committee Substitute #1. The motion carried.

The meeting adjourned at 10:45 a.m.

Phil Baddour
Representative Philip A. Baddour
Presiding Chairman

Julie R. Allen
Julie R. Allen
Committee Assistant

ATTACHMENTS:

HOUSE JUDICIARY II COMMITTEE
AGENDA

Thursday, July 19, 2001

10:00 A.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF

Robin Johnson
Esther Manheimer
Jeff Hudson
Julie Allen (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDERED:

SB 1014 Strengthen Litter Laws – Sen. Albertson

HB 385 Consolidate Business Provisions – Rep. Culpepper

SB 790 Good Funds Settlement Act Revisions – Sen. Hartsell

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 1014

Corrected Copy 4/9/01

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/16/01

Fourth Edition Engrossed 4/25/01

House Committee Substitute Favorable 6/18/01

PROPOSED HOUSE COMMITTEE SUBSTITUTE S1014-CSSB-46 [v.5]

7/6/2001 9:54:42 AM

Short Title: Strengthen Littering Laws. (Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LITTERING LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-399 reads as rewritten:

"**§ 14-399. Littering.**

(a) No person, including ~~but not limited to,~~ any firm, organization, private corporation, or governing body, agents or employees of any municipal corporation shall intentionally or recklessly throw, scatter, spill or place or intentionally or recklessly cause to be blown, scattered, spilled, thrown or placed or otherwise dispose of any litter upon any public property or private property not owned by ~~him~~ the person within this State or in the waters of this State ~~including, but not limited to,~~ including any public highway, public park, lake, river, ocean, beach, campground, ~~forest land,~~ forestland, recreational area, trailer park, highway, road, street or alley except:

(1) When ~~such~~ the property is designated by the State or political subdivision thereof for the disposal of garbage and refuse, and ~~such~~ the person is authorized to use ~~such~~ the property for ~~such~~ this purpose; or

(2) Into a litter receptacle in ~~such~~ a manner that the litter will be prevented from being carried away or deposited by the elements upon any part of ~~such~~ the private or public property or waters.

(a1) No person, including any firm, organization, private corporation, or governing body, agents, or employees of any municipal corporation shall scatter, spill, or place or cause to be blown, scattered, spilled, or placed or otherwise dispose of any litter upon any public property or private property not owned by the person within this State or in the waters of this State including any public highway, public park, lake,

river, ocean, beach, campground, forestland, recreational area, trailer park, highway, road, street, or alley except:

(1) When the property is designated by the State or political subdivision thereof for the disposal of garbage and refuse, and the person is authorized to use the property for this purpose; or

(2) Into a litter receptacle in a manner that the litter will be prevented from being carried away or deposited by the elements upon any part of the private or public property or waters.

(a2) Subsection (a1) of this section does not apply to the accidental blowing, scattering, or spilling of an insignificant amount of municipal solid waste, as defined in G.S. 130A-290(18a), during the automated loading of a vehicle designed and constructed to transport municipal solid waste if the vehicle is operated in a reasonable manner and according to manufacturer specifications.

(b) When litter is blown, scattered, spilled, thrown or placed from a vehicle or watercraft, the operator thereof shall be presumed to have committed ~~such~~ the offense. This presumption, however, does not apply to a vehicle transporting ~~agricultural products or supplies when the litter from that vehicle is a nontoxic, biodegradable agricultural product or supply.~~ nontoxic and biodegradable agricultural or garden products or supplies, including mulch, tree bark, wood chips, and raw logs.

(c) Any person who violates subsection (a) of this section in an amount not exceeding 15 pounds and not for commercial purposes is guilty of a Class 3 misdemeanor punishable by a fine of not less than two hundred fifty dollars ($250.00) nor more than one thousand dollars ($1,000) for the first offense. In addition, the court may require the violator to perform community service of not less than eight hours nor more than 24 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed. Any second or subsequent ~~offense~~ violation of subsection (a) of this section in an amount not exceeding 15 pounds and not for commercial purposes within three years after the date of a prior ~~offense~~ violation is a Class 3 misdemeanor punishable by a fine of not less than five hundred dollars ($500.00) nor more than two thousand dollars ($2,000). In addition, the court may require the violator to perform community service of not less than 16 hours nor more than 50 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed.

(c1) Any person who violates subsection (a1) of this section in an amount not exceeding 15 pounds is guilty of an infraction punishable by a fine of not more than one hundred dollars ($100.00). In addition, the court may require the violator to perform community service of not less than four hours nor more than 12 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed. Any second or subsequent violation of subsection (a1) of this section in an amount not exceeding 15 pounds within three years after the date of a prior violation is an infraction punishable by a fine of not more than

two hundred dollars ($200.00). In addition, the court may require the violator to perform community service of not less than eight hours nor more than 24 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed. For purposes of this subsection, the term "litter" shall not include nontoxic and biodegradable agricultural or garden products or supplies, including mulch, tree bark, and wood chips.

(d) Any person who violates subsection (a) of this section in an amount exceeding 15 pounds but not exceeding 500 pounds and not for commercial purposes is guilty of a Class 3 misdemeanor punishable by a fine of not less than five hundred dollars ($500.00) nor more than two thousand dollars ($2,000). In addition, the court shall require the violator to perform community service of not less than 24 hours nor more than 100 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other community service commensurate with the offense committed.

(d1) Any person who violates subsection (a1) of this section in an amount exceeding 15 pounds but not exceeding 500 pounds is guilty of an infraction punishable by a fine of not more than two hundred dollars ($200.00). In addition, the court may require the violator to perform community service of not less than eight hours nor more than 24 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed.

(e) Any person who violates subsection (a) of this section in an amount exceeding 500 pounds or in any quantity for commercial purposes, or who discards litter that is a hazardous waste as defined in G.S. 130A-290 is guilty of a Class I felony. In addition, the court shall order the violator to:

(1) Remove, or render harmless, the litter that he discarded in violation of this section;

(2) Repair or restore property damaged by, or pay damages for any damage arising out of, his discarding litter in violation of this section; or

(3) Perform community public service relating to the removal of litter discarded in violation of this section or to the restoration of an area polluted by litter discarded in violation of this section.

(e1) Any person who violates subsection (a1) of this section in an amount exceeding 500 pounds is guilty of an infraction punishable by a fine of not more than three hundred dollars ($300.00). In addition, the court may require the violator to perform community service of not less than 16 hours nor more than 50 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed.

(f) A court may enjoin a violation of this section.

(f1) If a violation of subsection (a) of this section involves the operation of a motor vehicle, upon a finding of guilt, the court shall forward a record of the finding to the Department of Transportation, Division of Motor Vehicles, which shall record a

penalty of one point on the violator's drivers license pursuant to the point system established by G.S. 20-16. There shall be no insurance premium surcharge or assessment of points under the classification plan adopted under G.S. 58-36-65 for a finding of guilt under this section.

(g) A motor vehicle, vessel, aircraft, container, crane, winch, or machine involved in the disposal of more than 500 pounds of litter in violation of subsection (a) of this section is declared contraband and is subject to seizure and summary forfeiture to the State.

(h) If a person sustains damages arising out of a violation of subsection (a) of this section that is punishable as a felony, a court, in a civil action for ~~such~~ the damages, shall order the person to pay the injured party threefold the actual damages or two hundred dollars ($200.00), whichever amount is greater. In addition, the court shall order the person to pay the injured party's court costs and attorney's fees.

(i) For the purpose of the section, unless the context requires otherwise:

(1) "Aircraft" means a motor vehicle or other vehicle that is used or designed to fly, but does not include a parachute or any other device used primarily as safety equipment.

(2) Repealed by Session Laws 1999-454, s. 1.

(2a) "Commercial purposes" means litter discarded by a business, corporation, association, partnership, sole proprietorship, or any other entity conducting business for economic gain, or by an employee or agent of ~~such~~ the entity.

(3) "Law enforcement officer" means any ~~officer of the North Carolina Highway Patrol, the State Bureau of Investigation, the Division of Motor Vehicles of the Department of Transportation, a county sheriff's department, a municipal law enforcement department, a law enforcement department of any other political subdivision, the Department, or the North Carolina Wildlife Resources Commission.~~ law enforcement officer sworn and certified pursuant to Chapter 17C or 17E of the General Statutes, except company police officers as defined in G.S. 74E-6(b)(3). In addition, and solely for the purposes of this section, "law enforcement officer" means any employee of a county or municipality designated by the county or municipality as a litter enforcement officer. ~~officer; or wildlife protectors as defined in G.S. 113-128(9);~~

(4) "Litter" means any garbage, rubbish, trash, refuse, can, bottle, box, container, wrapper, paper, paper product, tire, appliance, mechanical equipment or part, building or construction material, tool, machinery, wood, motor vehicle or motor vehicle part, vessel, aircraft, farm machinery or equipment, sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility, dead animal, or discarded material in any form resulting from domestic, industrial,

commercial, mining, agricultural, or governmental operations. ~~"Litter"~~ While being used for or distributed in accordance with their intended uses, "litter" does not include political pamphlets, handbills, religious tracts, newspapers, and other ~~such~~ similar printed materials the unsolicited distribution of which is protected by the Constitution of the United States or the Constitution of North Carolina.

(5) "Vehicle" has the same meaning as in ~~G.S. 20-4.01(49);~~ G.S. 20-4.01(49). ~~and~~

(6) "Watercraft" means any boat or vessel used for transportation across the water.

(j) It shall be the duty of all law enforcement officers to enforce the provisions of this section.

(k) This section does not limit the authority of any State or local agency to enforce other laws, rules or ordinances relating to litter or solid waste management."

SECTION 2. G.S. 20-116(g) reads as rewritten:

"(g) (1) No vehicle shall be driven or moved on any highway unless ~~such~~ the vehicle is ~~so~~ constructed ~~or~~ and loaded ~~as~~ to prevent any of its load from falling, blowing, dropping, sifting, leaking, or otherwise escaping therefrom, ~~except that~~ and the vehicle shall not contain any holes, cracks, or openings through which any of its load may escape. However, sand may be dropped for the purpose of securing traction, or water or other substance may be ~~sprinkled~~ sprinkled, dumped, or spread on a roadway in cleaning or maintaining ~~such~~ the roadway. For purposes of this subsection, load does not include water accumulated from precipitation.

(2) ~~Trucks, trailers or other vehicles when~~ A truck, trailer, or other vehicle licensed for more than 7,500 pounds gross vehicle weight loaded with rock, gravel, ~~stone~~ stone, or any other similar ~~substances which~~ substance that could fall, blow, leak, ~~sift~~ sift, or drop shall not be driven or moved on any highway unless the height of the load against all four walls does not extend above a horizontal line six inches below their tops when loaded at the loading ~~point, or if not so loaded, unless~~ point and the load shall be securely covered by tarpaulin or some other suitable ~~covering, or unless it is otherwise constructed so as~~ covering to prevent any of its load from falling, dropping, sifting, leaking, blowing, or otherwise escaping therefrom.

(3) Except as provided in this subdivision, a truck, trailer, or other vehicle licensed for 7,500 pounds or less gross vehicle weight loaded with rock, gravel, stone, or any other similar substance that could fall, blow, leak, sift, or drop shall not be driven or moved on any highway unless the height of the load against all four walls does not extend above a horizontal line six inches below the top when loaded at the loading

point. If a vehicle subject to this subdivision is not loaded in accordance with this subdivision, the vehicle's load shall be securely covered by tarpaulin or some other suitable covering or the vehicle shall be constructed so as to prevent any of its load from falling, dropping, sifting, leaking, blowing, or otherwise escaping therefrom.

(4) ~~Provided this~~ This section shall not be applicable to or in any manner restrict the transportation of seed cotton, ~~of poultry or livestock~~ poultry or livestock, or silage or other feed grain used in the feeding of poultry or livestock."

SECTION 3. Article 2 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-28.11. Litter removal coordinated with mowing of highway rights-of-way.**

The Department of Transportation shall, to the extent practicable, schedule the removal of debris, trash, and litter from highways and highway rights-of-way prior to the mowing of highway rights-of-way. The Department of Transportation shall include as a term of any contract that it enters into for the mowing of a highway right-of-way that the contracting party shall, to the extent practicable, schedule the removal of debris, trash, and litter from the highway and highway right-of-way prior to the mowing of the highway right-of-way."

SECTION 4. Article 2 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-32.3. Litter enforcement signs.**

The Department of Transportation shall place signs on the Interstate Highway System notifying motorists of the penalties for littering. The signs shall include the amount of the maximum penalty for littering. The Department of Transportation shall determine the locations of and distance between the signs."

SECTION 5. G.S. 153A-136 reads as rewritten:

"**§ 153A-136. Regulation of solid wastes.**

(a) A county may by ordinance regulate the storage, collection, transportation, use, disposal, and other disposition of solid wastes. Such an ordinance may:

(1) Regulate the activities of persons, firms, and corporations, both public and private.

(2) Require each person wishing to commercially collect or dispose of solid wastes to secure a license from the county and prohibit any person from commercially collecting or disposing of solid wastes without a license. A fee may be charged for a license.

(3) Grant a franchise to one or more persons for the exclusive right to commercially collect or dispose of solid wastes within all or a defined portion of the county and prohibit any other person from commercially collecting or disposing of solid wastes in that area. The board of commissioners may set the terms of any franchise, except that no franchise may be granted for a period exceeding 30 years, nor may any

franchise by its terms impair the authority of the board of commissioners to regulate fees as authorized by this section.

(4) Regulate the fees, if any, that may be charged by licensed or franchised persons for collecting or disposing of solid wastes.

(5) Require the source separation of materials prior to collection of solid waste for disposal.

(6) Require participation in a recycling program by requiring separation of designated materials by the owner or occupant of the property prior to disposal. An owner of recovered materials as defined by G.S. 130A-290(a)(24) retains ownership of the recovered materials until the owner conveys, sells, donates, or otherwise transfers the recovered materials to a person, firm, company, corporation, or unit of local government. A county may not require an owner to convey, sell, donate, or otherwise transfer recovered materials to the county or its designee. If an owner places recovered materials in receptacles or delivers recovered materials to specific locations, receptacles, and facilities that are owned or operated by the county or its designee, then ownership of these materials is transferred to the county or its designee.

(6a) Regulate the illegal disposal of solid waste, including littering on public and private property, provide for enforcement by civil penalties as well as other remedies, and provide that such regulations may be enforced by specially appointed environmental enforcement officers.

(7) Include any other proper matter.

(b) Any ordinance adopted pursuant to this section shall be consistent with and supplementary to any rules adopted by the Commission for Health Services or the Department of Environment and Natural Resources.

(c) The board of commissioners of a county shall consider alternative sites and socioeconomic and demographic data and shall hold a public hearing prior to selecting or approving a site for a new sanitary landfill that receives residential solid waste that is located within one mile of an existing sanitary landfill within the State. The distance between an existing and a proposed site shall be determined by measurement between the closest points on the outer boundary of each site. The definitions set out in G.S. 130A-290 apply to this subsection. As used in this subsection:

(1) "Approving a site" refers to prior approval of a site under G.S. 130A-294(a)(4).

(2) "Existing sanitary landfill" means a sanitary landfill that is in operation or that has been in operation within the five-year period immediately prior to the date on which an application for a permit is submitted.

(3) "New sanitary landfill" means a sanitary landfill that includes areas not within the legal description of an existing sanitary landfill as set out in the permit for the existing sanitary landfill.

(4) "Socioeconomic and demographic data" means the most recent socioeconomic and demographic data compiled by the United States Bureau of the Census and any additional socioeconomic and demographic data submitted at the public hearing.

(d) As used in this section, "solid waste" means nonhazardous solid waste, that is, solid waste as defined in G.S. 130A-290 but not including hazardous waste."

SECTION 6. G.S. 160A-185 reads as rewritten:

"**§ 160A-185. Emission of pollutants or contaminants.**

A city may by ordinance regulate, restrict, or prohibit the emission or disposal of substances or effluents that tend to pollute or contaminate land, water, or air, rendering or tending to render it injurious to human health or welfare, to animal or plant life or to property, or interfering or tending to interfere with the enjoyment of life or property. A city may by ordinance regulate the illegal disposal of solid waste, including littering on public and private property, provide for enforcement by civil penalties as well as other remedies, and provide that such regulations may be enforced by specially appointed environmental enforcement officers. Any such ordinance shall be consistent with and supplementary to State and federal laws and regulations."

SECTION 7. Article 3 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-22.3. State Board of Elections littering notification.**

At the time an individual files with the State Board of Elections a notice of candidacy pursuant to G.S. 163-106, 163-112, 163-291, 163-294.2, or 163-323, is certified to the State Board of Elections by a political party executive committee to fill a nomination vacancy pursuant to G.S. 163-114, is certified to the State Board of Elections by a new political party as that party's nominee pursuant to G.S. 163-98, qualifies with the State Board of Elections as an unaffiliated or write-in candidate pursuant to Article 11 of this Chapter, or formally initiates a candidacy with the State Board of Elections pursuant to any statute or local act, the State Board of Elections shall notify the candidate of the provisions concerning campaign signs in G.S. 136-32 and G.S. 14-156, and the rules adopted by the Department of Transportation pursuant to G.S. 136-18."

SECTION 8. Article 4 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-33.3. County board of elections littering notification.**

At the time an individual files with a county board of elections a notice of candidacy pursuant to G.S. 163-106, 163-112, 163-291, or 163-294.2, is certified to a county board of elections by a political party executive committee to fill a nomination vacancy pursuant to G.S. 163-114, qualifies with a county board of elections as an unaffiliated or write-in candidate pursuant to Article 11 of this Chapter, or formally initiates with a county board of elections a candidacy pursuant to any statute or local act, the county board of elections shall notify the candidate of the provisions concerning campaign

signs in G.S. 136-32 and G.S. 14-156 and the rules adopted by the Department of Transportation pursuant to G.S. 136-18.

SECTION 9. The text of G.S. 147-12 is designated as subsection (a) of that section, and G.S. 147-12 is further amended by adding a new subsection to read:

"(b) The Department of Transportation, the Department of Correction, the Department of Crime Control and Public Safety, the State Highway Patrol, the Wildlife Resources Commission, the Division of Parks and Recreation in the Department of Environment and Natural Resources, and the Division of Marine Fisheries in the Department of Environment and Natural Resources shall deliver to the Governor by February 1 and August 1 of each year detailed information on the agency's litter enforcement, litter prevention, and litter removal efforts. The Administrative Office of the Courts shall deliver to the Governor by February 1 and August 1 of each year detailed information on the enforcement of the littering laws of the State, including the number of citations issued and arrests made pursuant to the littering laws of the State and the conviction rate associated with the specific offenses. The Governor shall gather the information submitted by the respective agencies and deliver a consolidated semiannual report on or before March 1 and September 1 of each year to the Environmental Review Commission, the Joint Legislative Transportation Oversight Committee, and the House of Representatives and the Senate Appropriations Subcommittees on Natural and Economic Resources."

SECTION 10. The first reports required to be delivered by the Department of Transportation, the Department of Correction, the Department of Crime Control and Public Safety, the State Highway Patrol, the Wildlife Resources Commission, the Division of Parks and Recreation in the Department of Environment and Natural Resources, the Division of Marine Fisheries in the Department of Environment and Natural Resources, and the Administrative Office of the Courts to the Governor under G.S. 147-12(b), as enacted by Section 10 of this act, shall be due February 1, 2002. The first report required to be delivered by the Governor to the Environmental Review Commission, the Joint Legislative Transportation Oversight Committee, and the House of Representatives and the Senate Appropriations Subcommittees on Natural and Economic Resources under G.S. 147-12(b), as enacted by Section 10 of this act, shall be due March 1, 2002.

SECTION 11. G.S. 115C-12 is amended by adding a new subdivision to read:

"(30) Duty to Report on Recycling Efforts of Public Schools. – The State Board of Education shall report to the Joint Legislative Education Oversight Committee and the Environmental Review Commission by September 15 of each year on the recycling efforts of the public schools in the State. This report shall include information on the number of public schools that have recycling programs and the types of recyclable materials that are collected."

SECTION 12. The first report required to be delivered by the State Board of Education to the Joint Legislative Education Oversight Committee and the

Environmental Review Commission pursuant to G.S. 115C-12(30), as enacted by Section 11 of this act, shall be due September 15, 2002.

SECTION 13. G.S. 115C-47 is amended by adding a new subdivision to read:

"(39) To Encourage Recycling in Public Schools. – Local boards of education shall encourage recycling in public schools and may develop and implement recycling programs at public schools."

SECTION 14. G.S. 130A-309.14 is amended by adding new subsections to read:

"(k) The Department of Transportation shall provide and maintain recycling bins at each rest area located in this State on a highway in the Interstate Highway System or in the State highway system for the collection of all of the following recyclable materials for which recycling is feasible:

(1) Aluminum.
(2) Newspaper.
(3) Sorted office paper.
(4) Mixed office paper.
(5) Recyclable glass.
(6) Plastic bottles.

(l) As used in this section, the following definitions apply:

(1) Mixed office paper. – Nearly all waste paper generated in offices that is not sorted office paper and includes colored paper, fax paper, computer paper, junk mail, notepads, manila and bleached file folders, envelopes without plastic windows, magazines, and corrugated cardboard. Mixed office paper does not include glossy paper, tape, and envelopes with plastic windows.

(2) Sorted office paper. – Paper used in offices that is of a high quality for purposes of recycling and includes copier paper, computer paper, letterhead, ledger, white envelopes, and bond paper."

SECTION 15. G.S. 130A-309.14(a)(1) reads as rewritten:

"(1) Establish a program in cooperation with the Department and the Department of ~~Administration,~~ Administration for the collection of all recyclable ~~aluminum and wastepaper~~ materials generated in State offices throughout the ~~State, including, at a minimum, high-grade office paper and corrugated paper.~~ State. The program shall provide that recycling bins are readily accessible on each floor where State employees are located in a building occupied by a State agency. The program shall provide for the collection of all of the following recyclable materials.

a. Aluminum.
b. Newspaper.
c. Sorted office paper.

d. Recyclable glass.
e. Plastic bottles."

SECTION 16. This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. Every agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated or available to the agency.

SECTION 17. Sections 1 and 2 of this act become effective December 1, 2001, and apply to offenses committed on or after that date. Sections 5, 6, 9, 10, 11, 12, 13, 16, and 17 of this act are effective when it becomes law. Sections 7 and 8 of this act become effective December 1, 2001. Sections 3, 4, 14 and 15 of this act become effective January 1, 2002.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 5

SENATE BILL 1014

Corrected Copy 4/9/01

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/16/01

Fourth Edition Engrossed 4/25/01

House Committee Substitute Favorable 6/18/01

Short Title: Strengthen Littering Laws.	(Public)
Sponsors:	
Referred to:	

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LITTERING LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-399 reads as rewritten:

"**§ 14-399. Littering.**

(a) No person, including ~~but not limited to,~~ any firm, organization, private corporation, or governing body, agents or employees of any municipal corporation shall intentionally or recklessly throw, scatter, spill or place or intentionally or recklessly cause to be blown, scattered, spilled, thrown or placed or otherwise dispose of any litter upon any public property or private property not owned by ~~him~~ the person within this State or in the waters of this State ~~including, but not limited to,~~ including any public highway, public park, lake, river, ocean, beach, campground, ~~forest land,~~ forestland, recreational area, trailer park, highway, road, street or alley except:

(1) When ~~such~~ the property is designated by the State or political subdivision thereof for the disposal of garbage and refuse, and ~~such~~ the person is authorized to use ~~such~~ the property for ~~such~~ this purpose; or

(2) Into a litter receptacle in ~~such~~ a manner that the litter will be prevented from being carried away or deposited by the elements upon any part of ~~such~~ the private or public property or waters.

(a1) No person, including any firm, organization, private corporation, or governing body, agents, or employees of any municipal corporation shall scatter, spill, or place or cause to be blown, scattered, spilled, or placed or otherwise dispose of any litter upon any public property or private property not owned by the person within this State or in the waters of this State including any public highway, public park, lake,

river, ocean, beach, campground, forestland, recreational area, trailer park, highway, road, street, or alley except:

(1) When the property is designated by the State or political subdivision thereof for the disposal of garbage and refuse, and the person is authorized to use the property for this purpose; or

(2) Into a litter receptacle in a manner that the litter will be prevented from being carried away or deposited by the elements upon any part of the private or public property or waters.

(a2) Subsection (a1) of this section does not apply to the accidental blowing, scattering, or spilling of an insignificant amount of municipal solid waste, as defined in G.S. 130A-290(18a), during the automated loading of a vehicle designed and constructed to transport municipal solid waste if the vehicle is operated in a reasonable manner and according to manufacturer specifications.

(b) When litter is blown, scattered, spilled, thrown or placed from a vehicle or watercraft, the operator thereof shall be presumed to have committed ~~such~~ the offense. This presumption, however, does not apply to a vehicle transporting ~~agricultural products or supplies when the litter from that vehicle is a nontoxic, biodegradable agricultural product or supply.~~ nontoxic and biodegradable agricultural or garden products or supplies, including mulch, tree bark, wood chips, and raw logs.

(c) Any person who violates subsection (a) of this section in an amount not exceeding 15 pounds and not for commercial purposes is guilty of a Class 3 misdemeanor punishable by a fine of not less than two hundred fifty dollars ($250.00) nor more than one thousand dollars ($1,000) for the first offense. In addition, the court may require the violator to perform community service of not less than eight hours nor more than 24 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed. Any second or subsequent ~~offense~~ violation of subsection (a) of this section in an amount not exceeding 15 pounds and not for commercial purposes within three years after the date of a prior ~~offense~~ violation is guilty of a Class 3 misdemeanor punishable by a fine of not less than five hundred dollars ($500.00) nor more than two thousand dollars ($2,000). In addition, the court may require the violator to perform community service of not less than 16 hours nor more than 50 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed.

(c1) Any person who violates subsection (a1) of this section in an amount not exceeding 15 pounds is guilty of an infraction punishable by a fine of not more than one hundred dollars ($100.00). In addition, the court may require the violator to perform community service of not less than four hours nor more than 12 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed. Any second or subsequent violation of subsection (a1) of this section in an amount not exceeding 15 pounds within three years after the date of a prior violation is an infraction punishable by a fine of not more than

two hundred dollars ($200.00). In addition, the court may require the violator to perform community service of not less than eight hours nor more than 24 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed. For purposes of this subsection, the term "litter" shall not include nontoxic and biodegradable agricultural or garden products or supplies, including mulch, tree bark, and wood chips.

(d) Any person who violates subsection (a) of this section in an amount exceeding 15 pounds but not exceeding 500 pounds and not for commercial purposes is guilty of a Class 3 misdemeanor punishable by a fine of not less than five hundred dollars ($500.00) nor more than two thousand dollars ($2,000). In addition, the court shall require the violator to perform community service of not less than 24 hours nor more than 100 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other community service commensurate with the offense committed.

(d1) Any person who violates subsection (a1) of this section in an amount exceeding 15 pounds but not exceeding 500 pounds is guilty of an infraction punishable by a fine of not more than two hundred dollars ($200.00). In addition, the court may require the violator to perform community service of not less than eight hours nor more than 24 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed.

(e) Any person who violates subsection (a) of this section in an amount exceeding 500 pounds or in any quantity for commercial purposes, or who discards litter that is a hazardous waste as defined in G.S. 130A-290 is guilty of a Class I felony. In addition, the court shall order the violator to:

(1) Remove, or render harmless, the litter that he discarded in violation of this section;

(2) Repair or restore property damaged by, or pay damages for any damage arising out of, his discarding litter in violation of this section; or

(3) Perform community public service relating to the removal of litter discarded in violation of this section or to the restoration of an area polluted by litter discarded in violation of this section.

(e1) Any person who violates subsection (a1) of this section in an amount exceeding 500 pounds is guilty of an infraction punishable by a fine of not more than three hundred dollars ($300.00). In addition, the court may require the violator to perform community service of not less than 16 hours nor more than 50 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed.

(f) A court may enjoin a violation of this section.

(f1) If a violation of subsection (a) of this section involves the operation of a motor vehicle, upon a finding of guilt, the court shall forward a record of the finding to the Department of Transportation, Division of Motor Vehicles, which shall record a

penalty of one point on the violator's drivers license pursuant to the point system established by G.S. 20-16. There shall be no insurance premium surcharge or assessment of points under the classification plan adopted under G.S. 58-36-65 for a finding of guilt under this section.

(g) A motor vehicle, vessel, aircraft, container, crane, winch, or machine involved in the disposal of more than 500 pounds of litter in violation of subsection (a) of this section is declared contraband and is subject to seizure and summary forfeiture to the State.

(h) If a person sustains damages arising out of a violation of subsection (a) of this section that is punishable as a felony, a court, in a civil action for ~~such~~ the damages, shall order the person to pay the injured party threefold the actual damages or two hundred dollars ($200.00), whichever amount is greater. In addition, the court shall order the person to pay the injured party's court costs and attorney's fees.

(i) For the purpose of the section, unless the context requires otherwise:

(1) "Aircraft" means a motor vehicle or other vehicle that is used or designed to fly, but does not include a parachute or any other device used primarily as safety equipment.

(2) Repealed by Session Laws 1999-454, s. 1.

(2a) "Commercial purposes" means litter discarded by a business, corporation, association, partnership, sole proprietorship, or any other entity conducting business for economic gain, or by an employee or agent of ~~such~~ the entity.

(3) "Law enforcement officer" means any ~~officer of the North Carolina Highway Patrol, the State Bureau of Investigation, the Division of Motor Vehicles of the Department of Transportation, a county sheriff's department, a municipal law enforcement department, a law enforcement department of any other political subdivision, the Department, or the North Carolina Wildlife Resources Commission.~~ law enforcement officer sworn and certified pursuant to Chapter 17C or 17E of the General Statutes, except company police officers as defined in G.S. 74E-6(b)(3). In addition, and solely for the purposes of this section, "law enforcement officer" means any employee of a county or municipality designated by the county or municipality as a litter enforcement officer. ~~officer; or wildlife protectors as defined in G.S. 113-128(9);~~

(4) "Litter" means any garbage, rubbish, trash, refuse, can, bottle, box, container, wrapper, paper, paper product, tire, appliance, mechanical equipment or part, building or construction material, tool, machinery, wood, motor vehicle or motor vehicle part, vessel, aircraft, farm machinery or equipment, sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility, dead animal, or discarded material in any form resulting from domestic, industrial,

commercial, mining, agricultural, or governmental operations. ~~"Litter"~~ While being used for or distributed in accordance with their intended uses, "litter" does not include political pamphlets, handbills, religious tracts, newspapers, and other ~~such~~ similar printed materials the unsolicited distribution of which is protected by the Constitution of the United States or the Constitution of North Carolina.

(5) "Vehicle" has the same meaning as in ~~G.S. 20-4.01(49); G.S. 20-~~ G.S. 20-4.01(49). ~~and~~

(6) "Watercraft" means any boat or vessel used for transportation across the water.

(j) It shall be the duty of all law enforcement officers to enforce the provisions of this section.

(k) This section does not limit the authority of any State or local agency to enforce other laws, rules or ordinances relating to litter or solid waste management."

SECTION 2. G.S. 20-116(g) reads as rewritten:

"(g) (1) No vehicle shall be driven or moved on any highway unless ~~such~~ the vehicle is ~~so~~ constructed ~~or~~ and loaded ~~as~~ to prevent any of its load from falling, blowing, dropping, sifting, leaking, or otherwise escaping therefrom, ~~except that~~ and the vehicle shall not contain any holes, cracks, or openings through which any of its load may escape. However, sand may be dropped for the purpose of securing traction, or water or other substance may be ~~sprinkled~~ sprinkled, dumped, or spread on a roadway in cleaning or maintaining ~~such~~ the roadway. For purposes of this subsection, load does not include water accumulated from precipitation.

(2) Trucks, ~~trailers~~ trailers, or other vehicles when loaded with rock, gravel, ~~stone~~ stone, or any other similar ~~substances which~~ substance that could fall, blow, leak, ~~sift~~ sift, or drop shall not be driven or moved on any highway unless the height of the load against all four walls does not extend above a horizontal line six inches below their tops when loaded at the loading ~~point, or if not so loaded, unless~~ point and the load shall be securely covered by tarpaulin or some other suitable ~~covering, or unless it is otherwise constructed so as~~ covering to prevent any of its load from falling, dropping, sifting, leaking, blowing, or otherwise escaping therefrom. This subdivision does not apply to a vehicle licensed for 7,500 pounds or less gross vehicle weight.

(3) ~~Provided this~~ This section shall not be applicable to or in any manner restrict the transportation of seed cotton, ~~of poultry~~ poultry, or livestock or silage or other feed grain used in the feeding of poultry or livestock."

SECTION 3. G.S. 115C-12 is amended by adding a new subdivision to read:

"(29) Duty to Study the Inclusion of Litter Prevention in the State's Standard Course of Study. – The State Board of Education shall study ways to include the topic of litter prevention in the State's Standard Course of Study."

SECTION 4. Article 2 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-28.11. Litter removal coordinated with mowing of highway rights-of-way and maintenance of highways.**

The Department of Transportation shall coordinate the removal of debris, trash, and litter from highways and highway rights-of-way with the mowing of highway rights-of-way and the maintenance of highways. The Department of Transportation shall include as a term of any contract that it enters into for the mowing of a highway right-of-way or the maintenance of a highway that the contracting party must coordinate the removal of debris, trash, and litter from the highway and highway right-of-way with the mowing of the highway right-of-way or the maintenance of the highway."

SECTION 5. Article 2 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-32.3. Litter enforcement signs.**

The Department of Transportation shall place signs on the Interstate Highway System notifying motorists of the penalties for littering. The signs shall include the amount of the maximum penalty for littering. The Department of Transportation shall determine the locations of and distance between the signs."

SECTION 6. G.S. 153A-136 reads as rewritten:

"**§ 153A-136. Regulation of solid wastes.**

(a) A county may by ordinance regulate the storage, collection, transportation, use, disposal, and other disposition of solid wastes. Such an ordinance may:

(1) Regulate the activities of persons, firms, and corporations, both public and private.

(2) Require each person wishing to commercially collect or dispose of solid wastes to secure a license from the county and prohibit any person from commercially collecting or disposing of solid wastes without a license. A fee may be charged for a license.

(3) Grant a franchise to one or more persons for the exclusive right to commercially collect or dispose of solid wastes within all or a defined portion of the county and prohibit any other person from commercially collecting or disposing of solid wastes in that area. The board of commissioners may set the terms of any franchise, except that no franchise may be granted for a period exceeding 30 years, nor may any franchise by its terms impair the authority of the board of commissioners to regulate fees as authorized by this section.

(4) Regulate the fees, if any, that may be charged by licensed or franchised persons for collecting or disposing of solid wastes.

(5) Require the source separation of materials prior to collection of solid waste for disposal.

(6) Require participation in a recycling program by requiring separation of designated materials by the owner or occupant of the property prior to disposal. An owner of recovered materials as defined by G.S. 130A-290(a)(24) retains ownership of the recovered materials until the owner conveys, sells, donates, or otherwise transfers the recovered materials to a person, firm, company, corporation, or unit of local government. A county may not require an owner to convey, sell, donate, or otherwise transfer recovered materials to the county or its designee. If an owner places recovered materials in receptacles or delivers recovered materials to specific locations, receptacles, and facilities that are owned or operated by the county or its designee, then ownership of these materials is transferred to the county or its designee.

(6a) Regulate the illegal disposal of solid waste, including littering on public and private property, provide for enforcement by civil penalties as well as other remedies, and provide that such regulations may be enforced by specially appointed environmental enforcement officers.

(7) Include any other proper matter.

(b) Any ordinance adopted pursuant to this section shall be consistent with and supplementary to any rules adopted by the Commission for Health Services or the Department of Environment and Natural Resources.

(c) The board of commissioners of a county shall consider alternative sites and socioeconomic and demographic data and shall hold a public hearing prior to selecting or approving a site for a new sanitary landfill that receives residential solid waste that is located within one mile of an existing sanitary landfill within the State. The distance between an existing and a proposed site shall be determined by measurement between the closest points on the outer boundary of each site. The definitions set out in G.S. 130A-290 apply to this subsection. As used in this subsection:

(1) "Approving a site" refers to prior approval of a site under G.S. 130A-294(a)(4).

(2) "Existing sanitary landfill" means a sanitary landfill that is in operation or that has been in operation within the five-year period immediately prior to the date on which an application for a permit is submitted.

(3) "New sanitary landfill" means a sanitary landfill that includes areas not within the legal description of an existing sanitary landfill as set out in the permit for the existing sanitary landfill.

(4) "Socioeconomic and demographic data" means the most recent socioeconomic and demographic data compiled by the United States Bureau of the Census and any additional socioeconomic and demographic data submitted at the public hearing.

(d) As used in this section, "solid waste" means nonhazardous solid waste, that is, solid waste as defined in G.S. 130A-290 but not including hazardous waste."

SECTION 7. G.S. 160A-185 reads as rewritten:

"**§ 160A-185. Emission of pollutants or contaminants.**

A city may by ordinance regulate, restrict, or prohibit the emission or disposal of substances or effluents that tend to pollute or contaminate land, water, or air, rendering or tending to render it injurious to human health or welfare, to animal or plant life or to property, or interfering or tending to interfere with the enjoyment of life or property. A city may by ordinance regulate the illegal disposal of solid waste, including littering on public and private property, provide for enforcement by civil penalties as well as other remedies, and provide that such regulations may be enforced by specially appointed environmental enforcement officers. Any such ordinance shall be consistent with and supplementary to State and federal laws and regulations."

SECTION 8. Article 3 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-22.3. Littering notification and pledge.**

At the time an individual files with the State Board of Elections a notice of candidacy pursuant to G.S. 163-106, 163-112, 163-291, 163-294.2, or 163-323, is certified to the State Board of Elections by a political party executive committee to fill a nomination vacancy pursuant to G.S. 163-114, is certified to the State Board of Elections by a new political party as that party's nominee pursuant to G.S. 163-98, qualifies with the State Board of Elections as an unaffiliated or write-in candidate pursuant to Article 11 of this Chapter, or formally initiates a candidacy with the State Board of Elections pursuant to any statute or local act, the State Board of Elections shall do both of the following:

(1) Notify the candidate of the provisions concerning campaign signs in G.S. 136-32 and G.S. 14-156, and the rules adopted by the Department of Transportation pursuant to G.S. 136-18.

(2) Require that the candidate sign a pledge to comply with those statutes and rules. The State Board of Elections shall prepare a form for the pledge."

SECTION 9. Article 4 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-33.3. Littering notification and pledge.**

At the time an individual files with a county board of elections a notice of candidacy pursuant to G.S. 163-106, 163-112, 163-291, or 163-294.2, is certified to a county board of elections by a political party executive committee to fill a nomination vacancy pursuant to G.S. 163-114, qualifies with a county board of elections as an unaffiliated or write-in candidate pursuant to Article 11 of this Chapter, or formally initiates with a county board of elections a candidacy pursuant to any statute or local act, that county board of elections shall do both of the following:

(1) Notify the candidate of the provisions concerning campaign signs in G.S. 136-32 and G.S. 14-156 and the rules adopted by the Department of Transportation pursuant to G.S. 136-18.

(2) Require that the candidate sign a pledge to comply with those statutes and rules. The State Board of Elections shall prepare a form for the pledge."

SECTION 10. The text of G.S. 147-12 is designated as subsection (a) of that section, and G.S. 147-12 is further amended by adding a new subsection to read:

"(b) The Division of Motor Vehicles of the Department of Transportation, the State Highway Patrol, the Wildlife Resources Commission, the Division of Parks and Recreation in the Department of Environment and Natural Resources, and the Division of Marine Fisheries in the Department of Environment and Natural Resources shall deliver to the Governor by February 1 and August 1 of each year detailed information on the agency's litter enforcement, litter prevention, and litter removal efforts. The Administrative Office of the Courts shall deliver to the Governor by February 1 and August 1 of each year detailed information on the enforcement of the littering laws of the State, including the number of citations issued and arrests conducted pursuant to the littering laws of the State and the conviction rate associated with the specific offenses. The Governor shall gather the information submitted by the respective agencies and deliver a consolidated semiannual report on or before March 1 and September 1 of each year to the Environmental Review Commission, the Joint Legislative Transportation Oversight Committee, and the House of Representatives and the Senate Appropriations Subcommittees on Natural and Economic Resources."

SECTION 11. The first reports required to be delivered by the Division of Motor Vehicles of the Department of Transportation, the State Highway Patrol, the Wildlife Resources Commission, the Division of Parks and Recreation in the Department of Environment and Natural Resources, the Division of Marine Fisheries in the Department of Environment and Natural Resources, and the Administrative Office of the Courts to the Governor under G.S. 147-12(b), as enacted by Section 10 of this act, shall be due February 1, 2002. The first report required to be delivered by the Governor to the Environmental Review Commission, the Joint Legislative Transportation Oversight Committee, and the House of Representatives and the Senate Appropriations Subcommittees on Natural and Economic Resources under G.S. 147-12(b), as enacted by Section 10 of this act, shall be due March 1, 2002.

SECTION 12. Article 11 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-476.1. Community Service Work Program report.**

The Department of Crime Control and Public Safety shall report to the Environmental Review Commission on or before September 1 of each year on the litter removal efforts of the Community Service Work Program. This report shall include the amount of litter removed and the number of community service hours committed to the removal of litter."

SECTION 13. The first report required to be delivered by the Department of Crime Control and Public Safety to the Environmental Review Commission pursuant to G.S. 143B-476.1, as enacted by Section 12 of this act, shall be due September 1, 2001.

SECTION 14. The General Assembly of North Carolina acknowledges the establishment of North Carolina First in the North Carolina Division of Tourism, Film and Sports Development in the Department of Commerce and shall encourage and facilitate its litter prevention efforts.

SECTION 15. G.S. 130A-309.14 is amended by adding new subsections to read:

"(k) The Department of Transportation shall provide and maintain recycling bins at each rest area located in this State on a highway in the Interstate Highway System or in the State highway system for the collection of all of the following recyclable materials for which recycling is feasible:

(1) Aluminum.
(2) Newspaper.
(3) Sorted office paper.
(4) Mixed office paper.
(5) Recyclable glass.
(6) Plastic bottles.

(l) As used in this section, the following definitions apply:

(1) Mixed office paper. – Nearly all waste paper generated in offices that is not sorted office paper and includes colored paper, fax paper, computer paper, junk mail, notepads, manila and bleached file folders, envelopes without plastic windows, magazines, and corrugated cardboard. Mixed office paper does not include glossy paper, tape, and envelopes with plastic windows.

(2) Sorted office paper. – Paper used in offices that is of a high quality for purposes of recycling and includes copier paper, computer paper, letterhead, ledger, white envelopes, and bond paper."

SECTION 16. G.S. 130A-309.14(a)(1) reads as rewritten:

"(1) Establish a program in cooperation with the Department and the Department of Administration, for the collection on each floor of each building occupied by a State agency of all of the following recyclable ~~aluminum and wastepaper~~ materials generated in State offices throughout the ~~State, including, at a minimum, high-grade office paper and corrugated paper.~~ State:

a. Aluminum.
b. Newspaper.
c. Sorted office paper.
d. Recyclable glass.
e. Plastic bottles."

SECTION 17. This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. Every agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated or available to the agency.

SECTION 18. Sections 1 and 2 of this act become effective December 1, 2001, and apply to offenses committed on or after that date. Sections 3, 6, 7, 10, 11, 12, 13, 14, 17, and 18 of this act are effective when it becomes law. Sections 4, 5, 8, and 9 of this act become effective December 1, 2001. Sections 15 and 16 of this act become effective January 1, 2002.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1014

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

S1014-ASB-41 [v.1]

Date 7/19 ,2001

Comm. Sub. [YES]
Amends Title [NO]
S1014-CSSB-46 [v.5]

Representative Weiss

moves to amend the bill on page 9, lines 14 and 15,
by rewriting those lines to read:

"number of charges and convictions under the littering laws of the State. The Governor shall gather".

SIGNED Jennifer Weiss
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1014

AMENDMENT NO. 2 Weiss
(to be filled in by
Principal Clerk)

S1014-ASB-44 [v.2]

Date 7/19 ,2001

Comm. Sub. [YES]
Amends Title [NO]
S1014-CSSB-46 [v.5]

Representative Weiss

moves to amend the bill on page 6, line 17,
by rewriting that line to read:

"that the contracting party shall, to the extent practicable, coordinate with the scheduled removal of debris,".

SIGNED Jennifer Weiss
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1014

AMENDMENT NO. 3 Weiss
(to be filled in by
Principal Clerk)

S1014-ASB-45 [v.3]

Date 7/19 ,2001

Comm. Sub. [YES]
Amends Title [NO]
S1014-CSSB-46 [v.5]

Representative Weiss

moves to amend the bill on page 9, line 33, through page 10, line 2, by rewriting those lines to read:

"**SECTION 11.** The State Board of Education shall report to the Joint Legislative Education Oversight Committee and the Environmental Review Commission by December 15 of the years 2003 through 2007, on the recycling efforts of the public schools in the State. These reports shall include information provided by local school administrative units on the number of public schools that have recycling programs and the types of recyclable materials that are collected. If the Joint Legislative Education Oversight Committee or the Environmental Review Commission determines that sufficient progress in establishing recycling programs in the public schools of the State has not been made by January 1, 2008, the Committee or Commission shall recommend legislation to the 2008 Regular Session of the 2007 General Assembly to continue the reporting requirement established by this Section."

and

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1014

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S1014-ASB-45 [v.3]

by renumbering the subsequent subsections accordingly.

SIGNED Jennifer Weiss
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1014

AMENDMENT NO. 4 Miller
(to be filled in by
Principal Clerk)

S1014-ASG-56 [v.2]

Date 7/19 ,2001

Comm. Sub. [YES]
Amends Title [NO]
S1014-CSSB-46 [v.5]

Representative Miller

moves to amend the bill on page 10, lines 19 and 20, by inserting between the lines the following:

"For each rest area that has recycling bins the Department of Transportation shall install signs, or modify existing signs, that are proximately located to the rest area to notify motorists that the rest area has recycling bins.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1014

AMENDMENT NO. 5 Bowie
(to be filled in by
Principal Clerk)

S1014-ASB-42 [v.3]

Date 7/19 ,2001

Comm. Sub. [YES]
Amends Title [NO]
S1014-CSSB-46 [v.5]

Representative Bowie

moves to amend the bill on page 3, lines 21 through 38,
by rewriting those lines to read:

"(e) Any person who violates subsection (a) of this section in an amount exceeding 500 pounds or in any quantity for commercial purposes, or who discards litter that is a hazardous waste as defined in G.S. 130A-290 is guilty of a Class I felony.

(e1) Any person who violates subsection (a1) of this section in an amount exceeding 500 pounds is guilty of an infraction punishable by a fine of not more than three hundred dollars ($300.00). In addition, the court may require the violator to perform community service of not less than 16 hours nor more than 50 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed.

(e2) ~~In addition,~~ If any person violates subsection (a) or (a1) of this section in an amount exceeding 15 pounds or in any quantity for commercial purposes, or discards litter that is a hazardous waste as defined in G.S. 130A-290, the court shall order the violator to:

(1) Remove, or render harmless, the litter that he discarded in violation of this section;

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1014

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

S1014-ASB-42 [v.3]

(2) Repair or restore property damaged by, or pay damages for any damage arising out of, his discarding litter in violation of this section; or

(3) Perform community public service relating to the removal of litter discarded in violation of this section or to the restoration of an area polluted by litter discarded in violation of this section."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1014

AMENDMENT NO. 6 Decker
(to be filled in by
Principal Clerk)

S1014-ASB-43 [v.1]

Date 7/19 ,2001

Comm. Sub. [YES]
Amends Title [NO]
S1014-CSSB-46 [v.5]

Representative Decker

moves to amend the bill on page 7, line 23,
by rewriting that line to read:

"enforced by county employees specially appointed as environmental enforcement officers." and

on page 8, line 15,
by rewriting that line to read:

"remedies, and provide that such regulations may be enforced by city employees specially appointed as".

SIGNED M Decker
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

Withdrawn.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1014

AMENDMENT NO. 7 Baddour
(to be filled in by Principal Clerk)

S1014-ASB-46 [v.2]

Date 7/19/ ,2001

Comm. Sub. [YES]
Amends Title [NO]
S1014-CSSB-46 [v.5]

Representative Allred

moves to amend the bill on page 1, lines 8 and 9,
by rewriting those lines to read:

"intentionally or recklessly abandon, throw, scatter, spill or place or intentionally or recklessly cause to be abandoned, blown, scattered, spilled, thrown or placed or otherwise dispose of any litter"; and

on page 1, lines 21 and 22,
by rewriting those lines to read:

"governing body, agents, employees of any municipal corporation shall abandon, scatter, spill, or place or cause to be abandoned, blown, scattered, spilled, or placed or otherwise dispose of any"; and

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1014

AMENDMENT NO. 7 →
(to be filled in by
Principal Clerk)

S1014-ASB-46 [v.2]

on page 3, lines 38 and 39,
by inserting between those lines:

"(e2) If any person violates subsection (a) or (a1) of this section in any amount and the litter consists of tree debris, the court shall order the violator to remove or render harmless the litter that he discarded in violation of this section."; and

on page 4, line 39,
by inserting the word "tree debris," after the word "wood," on that line.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

Judiciary II
Name of Committee

7/19/01
Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joe Bowley	N.C Aggregates Association
John Long	Martin Marietta
R. Paul Wilms	NCHBA
Charlene Hawkins	Sec of State
Keith Bare	Sec. of State
Ray Hall	General Statutes Commission
Jo McClanta	AOC
Sandra Long	Martin Marietta
Tim Minton	NC Home Builders Assn
Bob Slocum	NC Forestry Assn
Floyd Lewis	General Statutes Commission
Nat Mundl	CCNL
Elizabeth Ouzts	NCPIRG
Kim Hibbard	NCLM
Margaret Westbrook	Kennedy Covington
Benjamin Ruffin	NC Sierra Club
Dale McKeel	Scenic NC, Inc.
Matt Brody	CCNC.
Lois Nixon	KAB
Tom Thurgood	WCSR
Lee-Ann Cox	NCABC
Steve Woodson	NC Farm Bureau
Paula Gupton	NC Farm Bureau
Dana Pope	NCINS
Susan Valaitis	Nationwide
Sandy Sands	WCSR
Catherine Otto	WCSR
Lt. James Moody	N.C. DMV ENFORCEMENT
Sharon Matthews	DOT | DMV
Butch Dunnells	NCSDA
David Shearon	Attorney

John Q Bears	NCBA
Michelle Frazier	NCBA
Catherine Liao	Governors office

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

July 24, 2001

The House Committee on JUDICIARY II met at 10:00 a.m. on Tuesday, July 24, 2001, in Room 421 of the Legislative Office Building. The following members were present: Chairman Baddour, Representatives Haire, Bowie, Culpepper, Decker, Gulley, Hall, Jeffus, Justus, Miller, Pope, Sherrill, Weiss.

The Visitor Registration Sheet is attached as a part of the record of the Minutes and related handouts are listed as ATTACHMENTS for the record.

Chairman Baddour presided and called the meeting to order. He recognized the Pages who were assigned to serve the Committee. Discussion of the following bill was continued from the last meeting:

SB 780 Amend Physicians' Liens Statutes. Chairman Baddour recognized Senator Hartsell, bill sponsor, to explain the bill. Mr. Dick Taylor, Academy of Trial Lawyers, was recognized to speak on the bill. Mr. Hugh Tilson, North Carolina Hospital Association, was recognized to speak on the bill. Chairman Baddour moved that the committee give the bill a favorable report. The motion passed by a majority voice vote.

HB 385 Consolidate Business Provisions. Chairman Baddour recognized Representative Culpepper, bill sponsor, to explain the bill. Vice Chair Haire recognized Bly Hall, General Statutes Commission to speak on the bill. Representative Baddour moves his bill for purpose of discussion. Representative Hall moved for favorable report of the Senate Committee Substitute. Motion passed by a majority voice vote. Representative Pope made a motion for a favorable report. Motion passed with a majority voice vote.

SB 842 Business Entity Changes. Mark Davidson, Brooks Pierce, recognized to speak on the bill. Chris Capel, Smith Anderson Law Firm, recognized to speak on the bill. Bill was displaced.

The meeting adjourned at 11:05 a.m.

Phil Baddour
Representative Philip A. Baddour
Presiding Chairman

Julie R. Allen
Julie R. Allen
Committee Assistant

ATTACHMENTS:

HOUSE JUDICIARY II COMMITTEE
AGENDA

Tuesday, July 24, 2001

10:00 A.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF

Robin Johnson
Esther Manheimer
Jeff Hudson
Julie Allen (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDERED:

SB 780 Amend Physicians' Liens Statutes – Sen. Hartsell

HB 385 Consolidate Business Provisions – Rep. Culpepper

SB 842 Business Entity Changes – Sen. Clodfelter

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 780

Judiciary I Committee Substitute Adopted 4/23/01

PROPOSED HOUSE COMMITTEE SUBSTITUTE S780-CSRH-47 [v.6]

7/23/2001 11:02:05 AM

Short Title: Amend Physicians' Liens Statutes. (Public)

Sponsors:

Referred to:

April 3, 2001

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE METHOD BY WHICH PHYSICIANS' LIENS ARE PERFECTED AND THE DUTIES OF ATTORNEYS WITH RESPECT TO PHYSICIANS' LIENS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 44-49 reads as rewritten:

"**§ 44-49. Lien created; applicable to persons non sui juris.**

(a) From and after March 26, 1935, there is hereby created a lien upon any sums recovered as damages for personal injury in any civil action in this ~~State, the said~~ State. This lien is in favor of any person, corporation, municipal corporation or county to whom the person so recovering, or the person in whose behalf the recovery has been made, may be indebted for any drugs, medical supplies, ambulance services, ~~and medical~~ services rendered by any physician, dentist, ~~trained~~ nurse, or ~~hospitalization,~~ hospital, or hospital ~~attention and/or services~~ attention or services rendered in connection with the injury in compensation for which the ~~said~~ damages have been recovered. Where damages are recovered for and in behalf of minors or persons non compos mentis, ~~such~~ the liens shall attach to the sum recovered as fully as if the ~~said~~ person were sui juris.

(b) Notwithstanding ~~the provisions of paragraph one~~ subsection (a) of this section, no lien ~~therein~~ provided for under subsection (a) of this section ~~shall be~~ is valid with respect to any claims whatsoever unless the ~~person or corporation entitled to the lien therein provided for shall file a claim with the clerk of the court in which said civil action is instituted within 30 days after the institution of such action and further provided that the~~ physician, dentist, ~~trained~~ nurse, ~~hospital~~ hospital, corporation, or ~~such~~ other person ~~as has a lien hereunder shall,~~ entitled to the lien furnishes, without charge to the attorney as a condition precedent to the creation of ~~such~~ the lien, ~~furnish~~ upon request to the attorney representing the person in whose behalf the claim for personal injury is made, an itemized statement, hospital record, or medical report for the use of

~~such~~ the attorney in the ~~negotiation~~ negotiation, settlement or trial of the claim arising by reason of the personal ~~injury.~~injury, and a written notice to the attorney of the lien claimed.

~~No liens of the character provided for in the first paragraph of this section shall hereafter be valid with respect to money that may be recovered in any pending civil actions in this State unless claims based on such liens are filed with the clerk of the court in which the action is pending within 90 days after April 5, 1947.~~

(c) No action shall lie against any clerk of court or any surety on any clerk's bond to recover any claims based upon any lien or liens created ~~by the first paragraph~~ under subsection (a) of this section when recovery has ~~heretofore~~ been had by the person injured, and no claims against ~~such~~ the recovery were filed with the clerk by any person or corporation, and the clerk has otherwise disbursed according to law the money recovered in ~~such~~ the action for personal injuries."

SECTION 2. G.S. 44-50 reads as rewritten:

"**§ 44-50. Receiving person charged with duty of retaining funds for purpose stated; evidence; attorney's fees; charges.**

~~Such a lien as provided for in~~ A lien as provided under G.S. 44-49 shall also attach upon all funds paid to any person in compensation for or settlement of the ~~said~~ injuries, whether in litigation or ~~otherwise; and it shall be the duty of any person receiving the same before disbursement thereof to~~ otherwise. If an attorney represents the injured person, the lien is perfected as provided under G.S. 44-49. Before their disbursement, any person that receives those funds shall retain out of any recovery or any compensation so received a sufficient amount to pay the just and bona fide claims for ~~such~~ any drugs, medical supplies, ambulance ~~service and~~ services, ~~medical attention and/or~~ services rendered by any physician, dentist, nurse, or hospital, or hospital ~~service,~~ attention or services, after having received ~~and accepted~~ notice ~~thereof: Provided, that evidence~~ of those claims. Evidence as to the amount of ~~such~~ the charges shall be competent in the trial of ~~any such action: Provided, further, that nothing herein contained~~ the action. Nothing in this section or in G.S. 44-49 shall be construed so as to interfere with any amount due for attorney's ~~services: Provided, further, that the lien hereinbefore~~ services. The lien provided for shall in no case, exclusive of attorneys' fees, exceed fifty percent (50%) of the amount of damages recovered. Except as provided in G.S. 44-51, a client's instructions for the disbursement of settlement or judgment proceeds are not binding on the disbursing attorney to the extent that the instructions conflict with the requirements of this Article."

SECTION 3. This act becomes effective October 1, 2001, and applies to liens perfected on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 2

SENATE BILL 780

Judiciary I Committee Substitute Adopted 4/23/01

Short Title: Amend Physicians' Liens Statutes. (Public)

Sponsors:

Referred to:

April 3, 2001

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE METHOD BY WHICH PHYSICIANS' LIENS ARE PERFECTED AND THE DUTIES OF ATTORNEYS WITH RESPECT TO PHYSICIANS' LIENS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 44-49 reads as rewritten:

"**§ 44-49. Lien created; applicable to persons non sui juris.**

(a) From and after March 26, 1935, there is hereby created a lien upon any sums recovered as damages for personal injury in any civil action in this State, the said lien in favor of any person, corporation, municipal corporation or county to whom the person so recovering, or the person in whose behalf the recovery has been made, may be indebted for drugs, medical supplies, ambulance services, and medical services rendered by any physician, dentist, ~~trained~~ nurse, or hospitalization, or hospital attention and/or services rendered in connection with the injury in compensation for which the said damages have been recovered. Where damages are recovered for and in behalf of minors or persons non compos mentis, such liens shall attach to the sum recovered as fully as if the said person were sui juris.

(b) Notwithstanding the provisions of ~~paragraph one~~ subsection (a) of this section, no lien ~~therein~~ provided for under subsection (a) of this section shall be valid with respect to any claims whatsoever unless the ~~person or corporation entitled to the lien therein provided for shall file a claim with the clerk of the court in which said civil action is instituted within 30 days after the institution of such action and further provided that the~~ physician, dentist, ~~trained~~ nurse, ~~hospital~~ hospital, corporation, or ~~such~~ other person ~~as has a lien hereunder~~ entitled to the lien shall, without charge to the attorney as a condition precedent to the creation of ~~such~~ the lien, furnish upon request to the attorney representing the person in whose behalf the claim for personal injury is made, an itemized statement, hospital record, or medical report for the use of ~~such~~ the attorney in the negotiation settlement or trial of the claim arising by reason of the

personal ~~injury.~~injury, accompanied by a written notice to the attorney of the lien claimed.

~~No liens of the character provided for in the first paragraph of this section shall hereafter be valid with respect to money that may be recovered in any pending civil actions in this State unless claims based on such liens are filed with the clerk of the court in which the action is pending within 90 days after April 5, 1947.~~

(c) No action shall lie against any clerk of court or any surety on any clerk's bond to recover any claims based upon any lien or liens created ~~by the first paragraph~~ under subsection (a) of this section when recovery has heretofore been had by the person injured, and no claims against such recovery were filed with the clerk by any person or corporation, and the clerk has otherwise disbursed according to law the money recovered in such action for personal injuries."

SECTION 2. G.S. 44-50 reads as rewritten:

"**§ 44-50. Receiving person charged with duty of retaining funds for purpose stated; evidence; attorney's fees; charges.**

Such a lien as provided for in G.S. 44-49 shall also attach upon all funds paid to any person in compensation for or settlement of the said injuries, whether in litigation or otherwise; and it shall be the duty of any person receiving the same before disbursement thereof to retain out of any recovery or any compensation so received a sufficient amount to pay the just and bona fide claims for such drugs, medical supplies, ambulance service and medical attention and/or hospital service, after having received ~~and accepted~~ notice thereof: Provided, that evidence as to the amount of such charges shall be competent in the trial of any such action: Provided, further, that nothing herein contained shall be construed so as to interfere with any amount due for attorney's services: Provided, further, that the lien hereinbefore provided for shall in no case, exclusive of attorneys' fees, exceed fifty percent (50%) of the amount of damages recovered. Except as provided in G.S. 44-51, a client's instructions for the disbursement of settlement or judgment proceeds shall not be binding on the disbursing attorney to the extent that the instructions conflict with the disbursement required under this Article."

SECTION 3. This act becomes effective October 1, 2001, and applies to liens perfected on or after that date.

SENATE BILL 780:
Amend Physicians' Liens Statutes

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Hartsell
Date:	July 24, 2001	**Summary by:**	Robin Johnson
Version:	S780-CSRH-47[v.6]		Committee Counsel

SUMMARY: ***Senate Bill 780 would clarify the method for a medical provider to be able to perfect a lien on funds arising from a personal injury claim owed to the patient of the medical provider, by specifying that a notice of lien must be delivered to the attorney representing the patient at the time that copies of the medical records and expenses are furnished. The bill also would require the attorney disbursing the personal injury funds to pay the medical provider's lien even if contrary to the patient's instructions.***

CURRENT LAW: Currently the law allows physicians, dentists, trained nurses and hospitals the right to claim a lien on a portion of the recovery a patient might receive as a result of a personal injury claim. The intention of the statute is to encourage medical providers to provide proper treatment for an injured patient who is likely going to recover the cost of his medical expenses in the future for a personal injury claim by providing the medical provider with assurance that a portion of any money recovered will be applied towards the patient's medical expenses. In order to perfect the lien the medical provider must give notice to the clerk of court within 30 days of the filing of the personal injury lawsuit by the patient provided that the medical provider furnishes to the patient's attorney the medical records and bills without charge that the patient needs to pursue his or her lawsuit. The maximum amount of the lien is 50% of the amount received by the patient, after deducting the patient's attorney fees. The patient is still responsible for the entire medical bill regardless of whether the funds arising from the personal injury claim are sufficient to satisfy the medical bill.

BILL ANALYSIS: Senate Bill 780 would eliminate the requirement that the medical provider file notice of the lien within 30 days of the filing of the personal injury lawsuit with the clerk of court and substitutes a requirement that the medical provider give notice to the patient's attorney at the time the medical provider provides to the patient's attorney the medical records and expenses necessary to pursue the lawsuit. Once a lien is properly perfected (and once any dispute concerning the amount of the medical bills is resolved), the patient's attorney would be required to disburse the proceeds of the lawsuit toward the medical lien despite instructions by the patient to the contrary.

EFFECTIVE DATE: The bill would become effective October 1, 2001 and apply to liens perfected on or after that date.

S780-SMRH-003: O. Walker Reagan, Senate Judiciary I Committee Counsel, substantially contributed to this summary.

Article 9.

Liens upon Recoveries for Personal Injuries to Secure Sums Due for Medical Attention, etc.

§ 44-49. Lien created; applicable to persons non sui juris.

From and after March 26, 1935, there is hereby created a lien upon any sums recovered as damages for personal injury in any civil action in this State, the said lien in favor of any person, corporation, municipal corporation or county to whom the person so recovering, or the person in whose behalf the recovery has been made, may be indebted for drugs, medical supplies, ambulance services, and medical services rendered by any physician, dentist, trained nurse, or hospitalization, or hospital attention and/or services rendered in connection with the injury in compensation for which the said damages have been recovered. Where damages are recovered for and in behalf of minors or persons non compos mentis, such liens shall attach to the sum recovered as fully as if the said person were sui juris.

Notwithstanding the provisions of paragraph one of this section, no lien therein provided for shall be valid with respect to any claims whatsoever unless the person or corporation entitled to the lien therein provided for shall file a claim with the clerk of the court in which said civil action is instituted within 30 days after the institution of such action and further provided that the physician, dentist, trained nurse, hospital or such other person as has a lien hereunder shall, without charge to the attorney as a condition precedent to the creation of such lien, furnish upon request to the attorney representing the person in whose behalf the claim for personal injury is made, an itemized statement, hospital record, or medical report for the use of such attorney in the negotiation settlement or trial of the claim arising by reason of the personal injury.

No liens of the character provided for in the first paragraph of this section shall hereafter be valid with respect to money that may be recovered in any pending civil actions in this State unless claims based on such liens are filed with the clerk of the court in which the action is pending within 90 days after April 5, 1947.

No action shall lie against any clerk of court or any surety on any clerk's bond to recover any claims based upon any lien or liens created by the first paragraph of this section when recovery has heretofore been had by the person injured, and no claims against such recovery were filed with the clerk by any person or corporation, and the clerk has otherwise disbursed according to law the money recovered in such action for personal injuries. (1935, c. 121, s. 1; 1947, c. 1027; 1959, c. 800, s. 1; 1967, c. 1204, s. 1; 1969, c. 450, s. 1.)

§ 44-50. Receiving person charged with duty of retaining funds for purpose stated; evidence; attorney's fees; charges.

Such a lien as provided for in G.S. 44-49 shall also attach upon all funds paid to any person in compensation for or settlement of the said injuries, whether in litigation or otherwise; and it shall be the duty of any person receiving the same before disbursement thereof to retain out of any recovery or any compensation so received a sufficient amount

to pay the just and bona fide claims for such drugs, medical supplies, ambulance service and medical attention and/or hospital service, after having received and accepted notice thereof: Provided, that evidence as to the amount of such charges shall be competent in the trial of any such action: Provided, further, that nothing herein contained shall be construed so as to interfere with any amount due for attorney's services: Provided, further, that the lien hereinbefore provided for shall in no case, exclusive of attorneys' fees, exceed fifty percent (50%) of the amount of damages recovered. (1935, c. 121, s. 2; 1959, c. 800, s. 2; 1969, c. 450, s. 2; 1995 (Reg. Sess., 1996), c. 674, s. 3.)

§ 44-51. Disputed claims to be settled before payments.

Whenever the sum or amount or amounts demanded for medical services or hospital fees shall be in dispute, nothing in this Article shall have any effect of compelling payment thereof until the claim is fully established and determined, in the manner provided by law: Provided, however, that when any such sums are in dispute the amount of the lien shall in no case exceed the amount of the bills in dispute. (1935, c. 121, s. 3; 1943, c. 543.)

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2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 842 A BILL TO BE ENTITLED AN ACT TO MAKE VARIOUS CHANGES TO THE NORTH CAROLINA BUSINESS CORPORATION ACT, THE NORTH CAROLINA NONPROFIT CORPORATION ACT, THE NORTH CAROLINA LIMITED LIABILITY COMPANY ACT, AND THE LAWS GOVERNING PARTNERSHIPS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ With a favorable report as to House committee substitute bill, ☐ ~~which changes the title~~, unfavorable as to Senate committee substitute bill, and recommendation that the House committee substitute bill be re-referred to the Committee on FINANCE.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 3

HOUSE BILL 385*

Committee Substitute Favorable 3/7/01

Senate Judiciary I Committee Substitute Adopted 7/3/01

Short Title: Consolidate Business Provisions. (Public)

Sponsors:

Referred to:

March 1, 2001

A BILL TO BE ENTITLED

AN ACT TO CONSOLIDATE IN ONE PLACE IN THE GENERAL STATUTES VARIOUS BUSINESS ASSOCIATION PROVISIONS TO AVOID UNNECESSARY REPETITION, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

PART I. CONSOLIDATION OF FILING REQUIREMENTS.

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 55D.

"Filings for

Corporations, Nonprofit Corporations, Limited Liability Companies, Limited Partnerships, and Limited Liability Partnerships.

"Article 1.

"General Provisions.

"**§ 55D-1. Applicable definitions.**

The following definitions apply in this Chapter:

(1) 'Corporation' or 'domestic corporation' is defined in G.S. 55-1-40(4).

(2) 'Deliver' is defined in G.S. 55-1-40(5).

(3) 'Entity' is defined in G.S. 55-1-40(9).

(4) 'Foreign corporation' is defined in G.S. 55-1-40(10).

(5) 'Foreign limited liability company' is defined in G.S. 57C-1-03(8).

(6) 'Foreign limited liability partnership' is defined in G.S. 59-32(4a).

(7) 'Foreign limited partnership' is defined in G.S. 59-102(5).

(8) 'Foreign nonprofit corporation' means a foreign corporation as defined in G.S. 55A-1-40(11).

(9) 'Individual' is defined in G.S. 55-1-40(13).
(10) 'Limited liability company' or 'domestic limited liability company' is defined in G.S. 57C-1-03(11).
(11) 'Limited liability partnership' or 'registered limited liability partnership' means a registered limited liability partnership as defined in G.S. 59-32(7).
(12) 'Limited partnership' or 'domestic limited partnership' is defined in G.S. 59-102(8).
(13) 'Nonprofit corporation' or 'domestic nonprofit corporation' means a corporation as defined in G.S. 55A-1-40(5).
(14) 'Person' is defined in G.S. 55-1-40(16).

"**§§ 55D-2 through 55D-4:** Reserved.

"**§ 55D-5. Rule-making authority.**

The Secretary of State may adopt rules to implement the Secretary of State's responsibilities under this Chapter."

SECTION 2. Chapter 55D of the General Statutes, as enacted by this act, is amended by adding a new Article to read:

"Article 2.

"Submission of Documents to the Secretary of State for Filing."

SECTION 3.(a) G.S. 55-1-20(a) through (e) and (g) through (i) are recodified as G.S. 55D-10 in Article 2 of Chapter 55D of the General Statutes, as enacted by this act. The section title of G.S. 55D-10, as enacted by this section, is "Filing requirements."

SECTION 3.(b) G.S. 55-1-22.1, 55-1-22.2, 55-1-23, 55-1-24, 55-1-25, 55-1-26, 55-1-27, and 55-1-29 are recodified as G.S. 55D-11, 55D-12, 55D-13, 55D-14, 55D-15, 55D-16, 55D-17, and 55D-18, respectively, in Article 2 of Chapter 55D of the General Statutes.

SECTION 4. Article 2 of Chapter 55D of the General Statutes, as enacted by Section 2 and amended by Section 3 of this act, reads as rewritten:

"Article 2.

"Submission of Documents to the Secretary of State for Filing.

"**§ 55D-10. Filing requirements.**

(a) To be entitled to filing by the Secretary of State under ~~this Chapter,~~ Chapter 55, 55A, 55B, 57C, or 59 of the General Statutes, a document must satisfy the requirements of this section, and of any other section of the General Statutes that adds to or varies these requirements.

(b) The document must meet all of the following requirements:

(1) The document must be one that is required or permitted by ~~this Chapter~~ Chapter 55, 55A, 55B, 57C, or 59 of the General Statutes to be filed in the office of the Secretary of State.

~~(c)~~ (2) The document must contain the information required by ~~this Chapter.~~Chapter 55, 55A, 55B, 57C, or 59 of the General Statutes for that document. It may contain other information as well.

~~(d)~~ (3) The document must be ~~typewritten or printed.~~ typewritten, printed, or in an electronic form acceptable to the Secretary of State.

~~(e)~~ (4) The document must be in the English language. A ~~corporate~~ name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign ~~corporations~~ corporations, foreign nonprofit corporations, foreign limited liability companies, and foreign limited liability partnerships need not be in English if accompanied by a reasonably authenticated English translation.

(5) A document submitted by an entity must be executed by a person authorized to execute documents (i) under G.S. 55-1-20 if the entity is a domestic or foreign corporation, (ii) under G.S. 55A-1-20 if the entity is a domestic or foreign nonprofit corporation, (iii) under G.S. 57C-1-20 if the entity is a domestic or foreign limited liability company, (iv) under G.S. 59-204 if the entity is a domestic or foreign limited partnership, or (v) under G.S. 59-35.1 if the entity is any other partnership as defined in G.S. 59-36 whether or not formed under the laws of the State.

~~(g)~~ (6) The person executing the document ~~shall~~ must sign it and state beneath or opposite ~~his signature his name~~ the person's signature, the person's name, and the capacity in which ~~he~~ the person signs. Any signature on the document may be a facsimile or an electronic signature in a form acceptable to the Secretary of State. The document may but need not ~~contain:~~

~~(1) The corporate seal;~~

~~(2) An attestation by the secretary or an assistant secretary; and~~

~~(3) An acknowledgement, verification, or proof.~~ contain a seal, attestation, acknowledgment, verification, or proof.

~~(h)~~ (7) If the Secretary of State has prescribed a mandatory form for the ~~document under G.S. 55-1-21,~~ document, the document must be in or on the prescribed form.

~~(i)~~ (8) The document must be delivered to the office of the Secretary of State for filing and must be accompanied by ~~one exact or conformed copy (except as provided in G.S. 55-5-03 and G.S. 55-15-09), and all fees required by this Chapter.~~the applicable fees.

"§ 55D-11. Expedited filings.

A person submitting a document for filing may request an expedited filing only at the time the document is submitted. The Secretary of State shall guarantee the expedited filing of ~~a document upon receipt of the document in proper form and the payment of the required filing fee. The Secretary of State may collect the following additional fees for the expedited filing of a document received in good form:~~ the document if the document is in proper form and accompanied by all applicable fees, including the following fee:

(1) Two hundred dollars ($200.00) for the filing by the end of the same business day of a document received by 12:00 ~~noon Eastern Standard Time; and~~noon; or

(2) One hundred dollars ($100.00) for the filing of a document within 24 hours after receipt, excluding weekends and holidays.

The Secretary of State shall not collect the fees allowed in this section unless the person submitting the document for filing ~~requests an expedited filing and~~ is informed by the Secretary of State of the fees prior to the filing of the document.

"**§ 55D-12. Advisory review of documents.**

Upon request, the Secretary of State shall ~~provide for the~~ review ~~of~~ a document prior to its submission for filing to determine whether it satisfies ~~the requirements of this Chapter.~~ applicable filing requirements. Submission of a document for review shall be accompanied by ~~the proper fee~~ a fee of two hundred dollars ($200.00) and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and filings under ~~G.S. 55-1-22.1.~~ G.S. 55D-11. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing.

"**§ 55D-13. Effective time and date of document.**

(a) Except as provided in subsection (b) of this section and ~~G.S. 55-1-24(c),~~in G.S. 55D-14, a document accepted for filing is effective:

(1) At the time of filing on the date it is filed, as evidenced by the Secretary of State's date and time endorsement on the ~~original~~ filed document; or

(2) At the time specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at 11:59:59 p.m. on that date. A delayed effective date for a document may not be later than the 90th day after the date it is filed.

(c) Except as provided in G.S. 55-2-03(b), 55A-2-03(b), and 57C-2-20(b), the fact that a document has become effective under this section does not determine its validity or invalidity or the correctness or incorrectness of the information contained in the document.

"**§ 55D-14. Correcting filed document.**

(a) A ~~domestic or foreign corporation~~ person on whose behalf a document was filed in the Office of the Secretary of State may correct ~~a document filed by the Secretary of State if the document (1)~~ that document if it (i) contains a statement that is

incorrect and was incorrect when ~~the document was~~ filed or ~~(2)~~(ii) was defectively executed, attested, sealed, verified, or acknowledged.

(b) A document is ~~corrected:~~ corrected by delivering to the Secretary of State for filing articles of correction that do all of the following:

(1) ~~By preparing articles of correction that (i) describe~~ Describe the document (including its filing date) or ~~attach a copy of it to the articles,~~ have attached to them a copy of the document.

(2) ~~(ii) specify~~ Specify the incorrect statement and the reason it is incorrect or the ~~manner in which the execution was defective, and~~ nature of the defect.

(3) ~~(iii) correct~~ Correct the incorrect statement or ~~defective execution; and~~ defect.

~~(2) By delivering the articles to the Secretary of State for filing.~~

(c) Articles of correction are effective ~~on the effective~~ as of the effective time and date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

"**§ 55D-15. Filing duty of Secretary of State.**

(a) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of this ~~Chapter,~~ Chapter and of Chapter 55, 55A, 55B, 57C, or 59 of the General Statutes, the Secretary of State shall file it. Documents filed with the Secretary of State ~~pursuant to~~ under this Chapter may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this Chapter, or under any predecessor ~~act,~~ law, by photographic, microfilm, optical disk media, or other means of reproduction, and may destroy the originals of those documents reproduced.

(b) The Secretary of State files a document by ~~stamping or otherwise~~ endorsing "Filed", together with the Secretary's name and official title and the date and time of filing, on ~~both the original and the document copy.~~ the document. After filing a document, ~~except as provided in G.S. 55-5-03 and G.S. 55-15-09,~~ the Secretary of State shall deliver ~~the~~ a document copy to the ~~domestic or foreign corporation or its representative.~~ person submitting the document for filing and as provided in G.S. 55-5-03, 55-15-09, 55A-5-03, 55A-15-09, 57C-2-42, and 57C-7-09.

(c) If the Secretary of State refuses to file a document, the Secretary shall return ~~it, by personal delivery or by first-class mail postage prepaid, to the domestic or foreign corporation or its representative~~ it to the person submitting the document for filing within five days after the document was received, together with a ~~brief,~~ written statement of the date of the refusal and a brief explanation of the reason for refusal. The Secretary of State may correct apparent errors and omissions on a document submitted for filing if authorized to make the corrections by the person submitting the document for filing. ~~The authorization to make the corrections shall be confirmed, according to procedures adopted by rule, by the Secretary prior to making the correction.~~

(d) The Secretary of State's duty is to review and file documents that satisfy the requirements of this ~~Chapter.~~ Chapter and of Chapter 55, 55A, 55B, 57C, or 59 of the General Statutes. The Secretary of State's filing or refusing to file a document does ~~not:~~ not do any of the following:

(1) Except as provided in G.S. 55-2-03(b), 55A-2-03(b), or 57C-2-20(b), affect the validity or invalidity of the document in whole or ~~part;~~part.

(2) Relate to the correctness or incorrectness of information contained in the ~~document;~~ document.

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

"§ 55D-16. Appeal from Secretary of State's refusal to file document.

(a) If the Secretary of State refuses to file a document delivered to ~~his~~ the Secretary of State's office for filing, the person ~~tendering the document~~ on whose behalf the document was submitted for filing may, within 30 days after ~~such~~ the date of the refusal, appeal the refusal to the Superior Court of Wake County. The appeal is commenced by filing a petition with the court and with the Secretary of State requesting the court to compel the Secretary of State to file the document. The petition ~~shall~~must have attached to it the document to be filed and the Secretary of State's explanation for ~~his~~ the refusal to file. No service of process on the Secretary of State is required except for the filing of the petition as set forth in this subsection. The appeal to the superior court is not governed by ~~the Administrative Procedure Act~~ Chapter 150B of the General Statutes, the Administrative Procedure Act, and shall be determined by a judge of the superior court upon such further notice and opportunity to be heard, if any, as the court may deem appropriate under the circumstances.

(b) Upon consideration of the petition and any response made by the Secretary of State, the court may, prior to entering final judgment, order the Secretary of State to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

"§ 55D-17. Evidentiary effect of copy of filed document.

A certificate attached to a copy of a document filed by the Secretary of State, bearing the Secretary of State's signature ~~(which may be in facsimile)~~ and the seal of office (both of which may be in facsimile or in any electronic form approved by the Secretary of State) and certifying that the copy is a true copy of the document, is conclusive evidence that the original document is on file with the Secretary of State. A photographic, microfilm, optical disk media, or other reproduced copy of a document filed ~~pursuant to this Chapter~~ under this Chapter, Chapter 55, 55A, 55B, 57C, or 59 of the General Statutes, or any predecessor ~~act,~~ law, when certified by the Secretary, shall be considered an original for all purposes and is admissible in evidence in like manner as an original.

"§ 55D-18. Penalty for signing false document.

(a) A person commits an offense if ~~he~~ the person signs a document ~~he~~ the person knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing.

(b) An offense under this section is a Class 1 misdemeanor."

PART II. MISCELLANEOUS AND CONFORMING AMENDMENTS.

SECTION 5.(a) G.S. 55-1-40(9) reads as rewritten:

"(9) "Entity" includes (without limiting the meaning of such term in Article ~~9)~~ 9 of this Chapter):

a. Any domestic or foreign:

1. Corporation; ~~corporation and foreign corporation;~~ nonprofit corporation; professional corporation;
2. Limited ~~limited~~ liability company;
3. Profit ~~profit~~ and nonprofit unincorporated association; and
4. Business ~~business~~ trust, estate, partnership, ~~trust, and~~ trust;

b. Two ~~two~~ or more persons having a joint or common economic interest; and

c. ~~state,~~ The United States, and any state and foreign government."

SECTION 5.(b) G.S. 55A-1-40(10) reads as rewritten:

"(10) "Entity" ~~includes~~ includes:

a. Any domestic or foreign:

1. Corporation; ~~corporation and foreign corporation; domestic or foreign~~ business corporation; professional corporation;
2. Limited ~~limited~~ liability company;
3. Profit ~~profit~~ and nonprofit unincorporated association, chapter or other organizational unit; and
4. Business ~~business~~ trust, estate, partnership, ~~trust, and~~ trust;

b. Two ~~two~~ or more persons having a joint or common economic interest; and

c. ~~state,~~ The United States, and any state and foreign government."

SECTION 5A.(a) G.S. 55-14-23(b) reads as rewritten:

"(b) The corporation may appeal the denial of reinstatement to the Superior Court of Wake County within 30 days after service of the notice of denial is perfected. The appeal is commenced by filing a petition with the court and with the Secretary of State requesting the court to set aside the dissolution. The petition shall have attached to it copies of the Secretary of State's certificate of dissolution, the corporation's application for reinstatement, and the Secretary of State's notice of denial. No service of process on the Secretary of State is required except for the filing of the petition as set forth in this subsection. The appeal to the superior court shall be determined by a judge of the

superior court upon such further evidence, notice and opportunity to be heard, if any, as the court may deem appropriate under the circumstances. The corporation shall have the burden of establishing that it is entitled to reinstatement."

SECTION 5A.(b) G.S. 55-15-32(a) reads as rewritten:

"(a) A foreign corporation may appeal the Secretary of State's revocation of its certificate of authority to the Superior Court of Wake County within 30 days after the certificate of revocation is mailed to the foreign corporation by the Secretary of State. The appeal is commenced by filing a petition with the court and with the Secretary of State requesting the court to set aside the revocation. The petition shall have attached to it copies of the corporation's certificate of authority and the Secretary of State's certificate of revocation. No service of process on the Secretary of State is required except for the filing of the petition as set forth in this subsection. The appeal to the superior court shall be determined by a judge of the superior court upon such further evidence, notice and opportunity to be heard, if any, as the court may deem appropriate under the circumstances. The foreign corporation shall have the burden of establishing that it is entitled to have the revocation set aside."

SECTION 5A.(c) G.S. 55A-14-23(b) reads as rewritten:

"(b) The corporation may appeal the denial of reinstatement to the Superior Court of Wake County within 30 days after service of the notice of denial is perfected. The appeal is commenced by filing a petition with the court and with the Secretary of State requesting the court to set aside the dissolution. The petition shall have attached to it copies of the Secretary of State's certificate of dissolution, the corporation's application for reinstatement, and the Secretary of State's notice of denial. No service of process on the Secretary of State is required except for the filing of the petition as set forth in this subsection. The appeal to the superior court shall be determined by a judge of the superior court upon such further evidence, notice, and opportunity to be heard, if any, as the court may deem appropriate under the circumstances. The corporation shall have the burden of establishing that it is entitled to reinstatement."

SECTION 5A.(d) G.S. 55A-15-32(a) reads as rewritten:

"(a) A foreign corporation may appeal the Secretary of State's revocation of its certificate of authority to the Superior Court of Wake County within 30 days after service of the certificate of revocation is mailed. The appeal is commenced by filing a petition with the court and with the Secretary of State requesting the court to set aside the revocation. The petition shall have attached to it copies of the corporation's certificate of authority and the Secretary of State's certificate of revocation. No service of process on the Secretary of State is required except for the filing of the petition as set forth in this subsection. The appeal to the superior court shall be determined by a judge of the superior court upon such further evidence, notice, and opportunity to be heard, if any, as the court may deem appropriate under the circumstances. The foreign corporation shall have the burden of establishing that it is entitled to have the revocation set aside."

SECTION 6.(a) G.S. 55-1-20, as amended by Section 3 of this act, reads as rewritten:

"**§ 55-1-20. Filing requirements.**

~~(a) through (e). Recodified.~~

~~(f) A document submitted by a domestic or foreign corporation or nonprofit corporation must be executed:~~

~~(1) By the chairman of the board of directors, by its president, or by another of its officers;~~

~~(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or~~

~~(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.~~

~~A document submitted by an unincorporated entity must be executed by a person authorized to execute documents (i) pursuant to G.S. 57C-1-20(f) if the unincorporated entity is a domestic or foreign limited liability company, (ii) pursuant to G.S. 59-204 if the unincorporated entity is a domestic or foreign limited partnership, or (iii) pursuant to G.S. 59-73.7(a)(4) if the unincorporated entity is any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State.~~

~~(g) through (j). Recodified.~~

(a) A document required or permitted by this Chapter to be filed by the Secretary of State must be filed under Chapter 55D of the General Statutes.

(b) A document submitted on behalf of a domestic or foreign corporation must be executed:

(1) By the chair of its board of directors, by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary."

SECTION 6.(b) G.S. 55-1-22(a)(27) is repealed.

SECTION 6.(c) G.S. 55-8-7(a) reads as rewritten:

"(a) A director may resign at any time by communicating his resignation to the board of directors, its ~~chairman,~~ chair, or the corporation."

SECTION 7.(a) G.S. 55A-1-20 reads as rewritten:

"**§ 55A-1-20. Filing requirements.**

~~(a) To be entitled to filing by the Secretary of State under this Chapter, a document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements.~~

~~(b) The document must be one that is required or permitted by this Chapter to be filed in the office of the Secretary of State.~~

~~(c) The document shall contain the information required by this Chapter. It may contain other information as well.~~

~~(d) The document shall be typewritten or printed.~~

~~(e) The document shall be in the English language.~~

~~A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.~~

~~(f) A document submitted by a domestic or foreign corporation or business corporation shall be executed:~~

~~(1) By the presiding officer of the board of directors by its president, or by another of its officers;~~

~~(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or~~

~~(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.~~

~~A document submitted by an unincorporated entity must be executed by a person authorized to execute documents (i) pursuant to G.S. 57C-1-20(f) if the unincorporated entity is a domestic or foreign limited liability company, (ii) pursuant to G.S. 59-204 if the unincorporated entity is a domestic or foreign limited partnership, or (iii) pursuant to G.S. 59-73.7(a)(4) if the unincorporated entity is any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State.~~

~~(g) The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. The document may but need not contain:~~

~~(1) The corporate seal;~~

~~(2) An attestation by the secretary or an assistant secretary; and~~

~~(3) An acknowledgment, verification, or proof.~~

~~(h) If the Secretary of State has prescribed a mandatory form for the document under G.S. 55A-1-21, the document shall be in or on the prescribed form.~~

~~(i) The document shall be delivered to the office of the Secretary of State for filing and shall be accompanied by one exact or conformed copy (except as provided in G.S. 55A-5-03 and G.S. 55A-15-09), and all fees required by this Chapter.~~

~~(j) Any signature on any document authorized to be filed with the Secretary of State under any provision of this Chapter may be a facsimile.~~

(a) A document required or permitted by this Chapter to be filed by the Secretary of State must be filed under Chapter 55D of the General Statutes.

(b) A document submitted on behalf of a domestic or foreign corporation must be executed:

(1) By the presiding officer of its board of directors, by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary."

SECTION 7.(b) G.S. 55A-1-22.1, 55A-1-22.2, 55A-1-23, 55A-1-24, 55A-1-25, 55A-1-26, 55A-1-27, and 55A-1-29 are repealed.

SECTION 7.(c) G.S. 55A-1-22(a)(28) is repealed.

SECTION 8.(a) G.S. 57C-1-20 reads as rewritten:

"**§ 57C-1-20. Filing requirements.**

~~(a) To be entitled to filing by the Secretary of State under this Chapter, a document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements.~~

~~(b) The document must be one that is required or permitted by this Chapter to be filed in the Office of the Secretary of State.~~

~~(c) The document must contain the information required by this Chapter. It may contain other information as well.~~

~~(d) The document must be typewritten or printed.~~

~~(e) The document must be in the English language. The name of a limited liability company need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign limited liability companies need not be in English if accompanied by a reasonably authenticated English translation.~~

~~(f) A document submitted by a domestic or foreign limited liability company must be executed:~~

~~(1) By a manager of the limited liability company;~~

~~(2) If managers have not been selected, or if the limited liability company does not have a manager other than a member, by any member;~~

~~(3) If the limited liability company has not been formed or if no initial members of the limited liability company have been identified in the manner provided in this Chapter, by an organizer; or~~

~~(4) If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.~~

~~A document submitted by a business entity other than a domestic or foreign limited liability company must be executed by a person authorized to execute documents (i) pursuant to G.S. 55-1-20(f) if the business entity is a corporation or foreign corporation, (ii) pursuant to G.S. 55A-1-20(f) if the business entity is a domestic or foreign nonprofit corporation, (iii) pursuant to G.S. 59-204 if the business entity is a domestic or foreign limited partnership, or (iv) pursuant to G.S. 59-73.7(a)(4) if the business entity is any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State.~~

~~(g) The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. The document may, but need not, contain an acknowledgement, verification, or proof.~~

~~(h) If the Secretary of State has prescribed a mandatory form for the document under G.S. 57C-1-21, the document must be in or on the prescribed form unless the Secretary of State otherwise permits an alternative form.~~

~~(i) The document must be delivered to the Office of the Secretary of State for filing and must be accompanied by one exact or conformed copy and all fees required by this Chapter.~~

~~(j) Any signature on any document authorized to be filed with the Secretary of State under any provision of this Chapter may be a facsimile.~~

(a) A document required or permitted by this Chapter to be filed by the Secretary of State must be filed under Chapter 55D of the General Statutes.

(b) A document submitted on behalf of a domestic or foreign limited liability company must be executed:

(1) By a manager of the limited liability company;

(2) If the limited liability company has not been formed or if no initial members of the limited liability company have been identified in the manner provided in this Chapter, by an organizer; or

(3) If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary."

SECTION 8.(b) G.S. 57C-1-22.1, 57C-1-22.2, 57C-1-23, 57C-1-24, 57C-1-25, 57C-1-26, 57C-1-27, and 57C-1-29 are repealed.

SECTION 8.(c) G.S. 57C-1-22(a)(27) is repealed.

SECTION 9. G.S. 59-73.7 is recodified as G.S. 59-35.1 and reads as rewritten:

"§ ~~59-73.7.~~ 59-35.1. **Filing of documents.**

(a) ~~To be entitled to filing by the Secretary of State, a document submitted pursuant to this Part must meet all of the following requirements:~~

~~(1) The document must contain the information required by this Part. It may contain other information as well.~~

~~(2) The document must be typewritten or printed.~~

~~(3) The document must be in the English language.~~

~~(4) A document submitted by a partnership must be executed by a general partner of the partnership. A document submitted by a business entity other than a partnership must be executed by a person authorized to execute documents (i) pursuant to G.S. 55-1-20(f) if the business entity is a domestic or foreign corporation, (ii) pursuant to G.S. 55A-1-20(f) if the business entity is a domestic or foreign nonprofit corporation, (iii) pursuant to G.S. 57C-1-20(f) if the business entity is a domestic or foreign limited liability company, or (iv) pursuant to G.S. 59-204 if the business entity is a domestic or foreign limited partnership.~~

~~(5) The person executing the document must sign it and state beneath or opposite the person's signature, the person's name and the capacity in which the person signs. Any signature on the document may be a facsimile. The document may, but need not, contain an acknowledgment, verification, or proof.~~

~~(6) The document must be delivered to the Office of the Secretary of State for filing and must be accompanied by one exact or conformed copy and by the required filing fee.~~

A document required or permitted by this act to be filed by the Secretary of State must be filed under Chapter 55D of the General Statutes.

~~(b) A partnership may correct a document filed by the Secretary of State pursuant to this Part if the document (i) contains a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively executed, attested, sealed, verified, or acknowledged.~~

~~A document is corrected by:~~

~~(1) Preparing articles of correction that (i) describe the document (including its filing date) or have attached to them a copy of the document, (ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective, and (iii) correct the incorrect statement or defective execution; and~~

~~(2) Delivering the articles of correction to the Secretary of State for filing, accompanied by one exact or conformed copy and the required filing fee.~~

~~Articles of correction are effective on the effective date of the document that is corrected except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.~~

(b) A document submitted under this act for filing by the Secretary of State must be executed by a general partner of the partnership.

(c) The Secretary of State shall collect the following fees when the documents described in this subsection are submitted by a partnership to the Secretary of State for filing:

Document	Fee
Articles of Merger	$50.00
Articles of Correction	$10.00

~~The~~ Whenever the Secretary of State is deemed appointed as registered agent under this act or under Chapter 55D of the General Statutes, the Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary of ~~State under this Part.~~ State. The party to the proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of a document filed by a partnership pursuant to this Part:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) Five dollars ($5.00) for the certificate.

~~(d) The Secretary of State shall guarantee the expedited filing of a document upon receipt of the document in proper form and the payment of the required filing fee. The Secretary of State may collect the following additional fees for the expedited filing of a document received in good form:~~

~~(1) Two hundred dollars ($200.00) for the filing by the end of the same business day of a document received by 12:00 noon Eastern Standard Time; and~~

~~(2) One hundred dollars ($100.00) for the filing of a document within 24 hours after receipt, excluding weekends and holidays.~~

~~The Secretary of State shall not collect the fees allowed in this subsection unless the person submitting the document for filing requests an expedited filing and is informed by the Secretary of State of the fees prior to the filing of the document.~~

~~(e) Upon request, the Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Part. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this subsection and filings under subsection (d) of this section. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing.~~

~~(f) Except as provided in this subsection and in subsection (b) of this section, a document accepted for filing is effective:~~

~~(1) At the time of filing on the date it is filed, as evidenced by the Secretary of State's date and time endorsement on the original document; or~~

~~(2) At the time specified in the document as its effective time on the date it is filed.~~

~~A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at 11:59:59 p.m. on that date. A delayed effective date for a document may not be later than the 90th day after the date it is filed.~~

~~The fact that a document has become effective under this subsection does not determine its validity or invalidity or the correctness or incorrectness of the information contained in the document.~~

~~(g) If a document delivered to the Office of the Secretary of State for filing satisfies the requirements of this Part, the Secretary of State shall file it. Documents filed with the Secretary of State pursuant to this Part may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this Part, or under any predecessor act, by photographic, microfilm, optical disk media, or other means of reproduction, and may destroy the originals of those documents reproduced.~~

~~The Secretary of State files a document by stamping or otherwise endorsing "Filed", together with the Secretary of State's name and official title and the date and time of filing, on both the original and the document copy. After filing a document, the~~

~~Secretary of State shall deliver the document copy to the partnership or its representative.~~

~~If the Secretary of State refuses to file a document, the Secretary of State shall return it to the partnership or its representative within five days after the document was received, together with a brief, written explanation of the reason for refusal. The Secretary of State may correct apparent errors and omissions on a document submitted for filing if authorized to make the corrections by the person submitting the document for filing. Prior to making the correction, the Secretary shall confirm the authorization to make the corrections according to procedures adopted by rule.~~

~~The Secretary of State's duty is to review and file documents that satisfy the requirements of this Part. The Secretary of State's filing or refusing to file a document does not:~~

~~(1) Affect the validity or invalidity of the document in whole or part;~~

~~(2) Relate to the correctness or incorrectness of information contained in the document; or~~

~~(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.~~

~~(h) If the Secretary of State refuses to file a document delivered to the Secretary of State's office for filing, the person tendering the document for filing may, within 30 days after the refusal, appeal the refusal to the Superior Court of Wake County. The appeal is commenced by filing a petition with the court and with the Secretary of State requesting the court to compel the Secretary of State to file the document. The petition shall have attached to it the document to be filed and the Secretary of State's explanation for the refusal to file. The appeal to the Superior Court is not governed by Chapter 150B of the General Statutes, the Administrative Procedure Act, and the court shall determine, based upon what is appropriate under the circumstances, any further notice and opportunity to be heard.~~

~~Upon consideration of the petition and any response made by the Secretary of State, the court may, prior to entering final judgment, order the Secretary of State to file the document or take other action the court considers appropriate.~~

~~The court's final decision may be appealed as in other civil proceedings.~~

~~(i) A certificate attached to a copy of a document filed by the Secretary of State, bearing the Secretary of State's signature (which may be in facsimile) and the seal of office and certifying that the copy is a true copy of the document, is conclusive evidence that the original document is on file with the Secretary of State. A photographic, microfilm, optical disk media, or other reproduced copy of a document filed pursuant to this Part or any predecessor act, when certified by the Secretary, shall be considered an original for all purposes and is admissible in evidence in like manner as an original.~~

~~(j) A person commits an offense if the person signs a document the person knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing. An offense under this subsection is a Class 1 misdemeanor.~~

~~(k)~~(d) Whenever title to real property in this State held by a partnership is vested by operation of law in another entity upon merger, consolidation, or conversion of the

partnership, a certificate reciting the merger, consolidation, or conversion shall be recorded in the office of the register of deeds of the county where the property is located, or if the property is located in more than one county, then in each county where any portion of the property is located.

The Secretary of State shall adopt uniform certificates to be furnished for registration in accordance with this subsection. In the case of a partnership formed under a law other than the laws of this State, a similar certificate by any competent authority of the jurisdiction of organization may be registered in accordance with this subsection.

The certificate required by this subsection ~~shall~~ must be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgment, probate, or approval by any other officer shall be required. The former name of the partnership holding title to the real property before the merger, consolidation, or conversion shall appear in the "Grantor" index and the name of the other entity holding title to the real property by virtue of the merger, consolidation, or conversion shall appear in the "Grantee" index."

SECTION 10.(a) 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) To have appointed the Secretary of State as its registered agent for service of process in any such proceeding. 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 and the fees required by ~~G.S. 59-73.7(c).~~ G.S. 59-35.1(c). Upon receipt of service of process on behalf of a surviving business 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. If the surviving business entity is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no

principal office on file, its registered office. If the surviving business is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to subdivision (3) of subsection (d) of this section."

SECTION 10.(b) G.S. 59-204(a) reads as rewritten:

"(a) Each certificate required by this Article to be filed in the office of the Secretary of State shall be executed in the following manner:

(1) An original certificate of limited partnership must be signed by all general partners;

(2) A certificate of amendment must be signed by at least one general partner and by each other partner designated in the certificate as a new general partner; and

(3) A certificate of cancellation must be signed by all general partners.

Any other document submitted by a domestic or foreign limited partnership for filing pursuant to this or any other Chapter must be signed by at least one general partner. ~~Any document submitted by a business entity other than a domestic or foreign limited partnership must be executed by a person authorized to execute documents (i) pursuant to G.S. 55-1-20(f) if the business entity is a domestic or foreign corporation, (ii) pursuant to G.S. 55A-1-20(f) if the business entity is a domestic or foreign nonprofit corporation, (iii) pursuant to G.S. 57C-1-20(f) if the business entity is a domestic or foreign limited liability company, or (iv) pursuant to G.S. 59-73.7(a)(4) if the business entity is a partnership as defined in G.S. 59-36, whether or not formed under the laws of this State, other than a domestic or foreign limited partnership.~~"

SECTION 10.(c) G.S. 59-204(b1) is repealed.

SECTION 10.(d) G.S. 59-206 reads as rewritten:

"**§ 59-206. Filing requirements.**

(a) A document required or permitted by this Article to be filed by the Secretary of State must be filed under Chapter 55D of the General Statutes. Whenever the provisions of this Article require any document relating to a limited partnership to be executed and filed in accordance with this Article, unless otherwise specifically stated in this Article:

~~(1) There shall be an original executed document and also one conformed copy.~~

~~(2) The original document so signed, together with the conformed copy, shall be delivered to the Secretary of State. If the Secretary finds that it satisfies the requirements of this Article, the Secretary shall, when the proper fees have been tendered, endorse upon the original the word "filed" and the hour, day, month and year of the filing thereof and shall file the same in the Secretary's office. The Secretary of State shall thereupon immediately compare the copy with the original and if the Secretary finds that they are identical the Secretary shall make upon the conformed copy the same endorsement which appears on the original and shall attach to the copy a certificate stating that attached~~

~~thereto is a true copy of the document, designated by an appropriate title, filed in the Secretary's office and showing the date of the filing. The Secretary shall thereupon return the copy so certified to the limited partnership or its representatives. Any documents filed with the Secretary of State pursuant to this Chapter may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this Chapter, or under any predecessor act, by photographic, microfilm, optical disk media, or other means of reproduction, and may destroy the originals of the documents reproduced. The Secretary of State may correct apparent errors and omissions on a document submitted for filing if authorized to make the corrections by the person submitting the document for filing. The authorization to make the corrections shall be confirmed, according to procedures adopted by rule, by the Secretary prior to making the correction.~~

~~(2b) A domestic or foreign limited partnership may correct a document filed by the Secretary of State if the document (i) contains a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively executed, attested, sealed, verified, or acknowledged.~~

~~(3) Repealed by Session Laws 1991, c. 153, s. 2.~~

(3a) Whenever the name of any domestic or foreign limited partnership holding title to real property in this State is changed upon amendment to the certificate of limited partnership, or whenever title to its real property is vested by operation of law in another entity upon merger, consolidation, or conversion of the domestic or foreign limited partnership, a certificate reciting the name change, merger, consolidation, or conversion shall be recorded in the office of the register of deeds of the county where the property lies, or if the property is located in more than one county, then in each county where any portion of the property lies.

(4) The Secretary of State shall adopt uniform certificates to be furnished for registration in accordance with this section. In the case of a foreign limited partnership, a similar certificate by any competent authority of the jurisdiction under which the limited partnership is organized may be registered in accordance with this section.

(5) The certificate required by subdivision (3a) of this subsection shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the domestic or foreign limited partnership holding title to the real property before the name change, merger, consolidation, or conversion shall appear in the "Grantor" index, and the new name of the domestic

or foreign limited partnership or the name of the other entity holding title to the real property by virtue of the merger, consolidation, or conversion, as applicable, shall appear in the "Grantee" index.

~~(b) Repealed by Session Laws 1991, c. 153, s. 2.~~

~~(b1) Except as provided in subsection (b2), a document accepted for filing is effective:~~

~~(1) At the time of filing on the date it is filed, as evidenced by the Secretary of State's date and time endorsement on the original document; or~~

~~(2) At the time specified in the document as its effective time on the date it is filed.~~

~~(b2) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but not time is specified, the document is effective at 11:59:59 p.m. on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed.~~

~~(b3) The fact that a document has become effective under this section does not determine its validity or invalidity or the correctness or incorrectness of the information contained in the document.~~

~~(c) It shall be the duty of the Secretary of State, whenever so requested and upon tender of the proper fees, to certify as aforesaid any true copy of any document on file in the office, or if requested, to make or cause to be made typewritten or photostatic copies of the documents and to certify the same as aforesaid.~~"

SECTION 10.(e) G.S. 59-206.1 and G.S. 59-206.2 are repealed.

SECTION 10.(f) G.S. 59-1106 reads as rewritten:

"**§ 59-1106. ~~Fees; expedited filing.~~ Fees.**

The Secretary of State shall collect the following fees and remit them to the State Treasurer for the use of the State:

(1)	For filing a certificate of limited partnership (G.S. 59-201)	$50.00
(2)	For filing a certificate of amendment (G.S. 59-202; 59-905)	25.00
(3)	For filing a certificate of cancellation (G.S. 59-203; 59-906)	25.00
(4)	For filing an application for reservation of name (G.S. 59-104(a))	10.00
(5)	For filing a transfer of name (G.S. 59-104(d))	10.00
(6)	For filing an application for registration as foreign limited partnership (G.S. 59-502)	50.00
(7)	For preparing and furnishing a copy of any document, instrument or paper filed or recorded	

relating to a limited partnership (G.S. 59-206(c))
For each page 1.00
For affixing the certificate and official seal thereto 5.00

(8) For comparing a copy furnished to him of any document, instrument or paper filed or recorded relating to a limited partnership
For each page 1.00

(9) For filing any other document not ~~herein~~ specifically provided for 10.00

~~(10) For the expedited filing by the end of the same business day of a document received in good order by 12:00 noon Eastern Standard Time ..... 200.00 additional fee~~

~~(11) For the expedited filing of a document received in good order within 24 hours after receipt, excluding weekends and holidays ..... 100.00 additional fee~~

~~(12) Advisory review of a document ..... 200.00.~~

~~The Secretary of State shall not collect the fees allowed in subdivisions (10) and (11) of this section unless the person submitting the document for filing requests an expedited filing and is informed by the Secretary of State of the fees prior to the filing of the document. Upon receipt of a document in proper form and payment of the required filing fee, the Secretary of State shall guarantee the expedited filing of the document.~~"

SECTION 11. G.S. 55B-3 reads as rewritten:

"**§ 55B-3. North Carolina Business Corporation Act ~~applicable.~~applicable; other applicable law.**

(a) Chapter 55 of the General Statutes, the ~~The~~ North Carolina Business Corporation ~~Act shall be applicable to such~~ Act, applies to professional corporations, including their organization, and professional corporations shall enjoy the powers and privileges and shall be subject to the duties, restrictions and liabilities of other corporations, except insofar as the same may be limited or enlarged by this Chapter. If any provision of this Chapter conflicts with the provisions of Chapter 55 of the General Statutes, the North Carolina Business Corporation Act, the provisions of this Chapter shall prevail.

(b) A document required or permitted by this Chapter to be filed by the Secretary of State shall be filed under Chapter 55D of the General Statutes, Filings, Names, and Registered Agents for Corporations, Nonprofit Corporations, Limited Liability Companies, Limited Partnerships, and Limited Liability Partnerships."

PART III. CONSOLIDATION OF PROVISIONS RELATING TO NAMES.

SECTION 12. The title of Chapter 55D of the General Statutes, as enacted in Section 1 of this act, reads as rewritten:

"Chapter 55D.

Filings and Names for

Corporations, Nonprofit Corporations, Limited Liability Companies,

Limited Partnerships, and Limited Liability Partnerships."

SECTION 13. Chapter 55D of the General Statutes, as enacted by Section 1 and amended by Sections 2 through 4 and Section 12 of this act, is amended by adding a new Article to read:

"Article 3.

"Names."

SECTION 14.(a) G.S. 55-4-01(a), (e), and (f) are recodified as G.S. 55D-20(a), (c), and (d), respectively, in Article 3 of Chapter 55D of the General Statutes. The catch line of G.S. 55D-20, as enacted by this section, is "Name requirements." G.S. 55-4-01(b), (c), and (g) are recodified as G.S. 55D-21(b), (c), and (d), respectively, in Article 3 of Chapter 55D of the General Statutes. The catch line of G.S. 55D-21, as enacted by this section, is "Entity names on the records of the Secretary of State; availability."

SECTION 14.(b) G.S. 55-4-02, 55-4-03, 55-4-04, and 55-4-05 are recodified as G.S. 55D-23, 55D-24, 55D-25, 55D-26, and 55D-27, respectively, in Article 3 of Chapter 55D of the General Statutes.

SECTION 15. Article 3 of Chapter 55D of the General Statutes, as enacted by Section 13 and amended by Section 14 of this act, reads as rewritten:

"Article 3.

"Names.

"**§ 55D-20. Name requirements.**

(a) In addition to the requirements of any other applicable section of the General Statutes:

(1) The name of the corporation must ~~A corporate name:~~

~~(1)~~ ~~Must~~ contain the word 'corporation', 'incorporated', 'company', or 'limited', or the abbreviation 'corp.', 'inc.', 'co.', or ~~'ltd.'; and~~ 'ltd.'.

~~(2) May not contain language stating or implying that the corporation is organized for a purpose other than that permitted by G.S. 55-3-01 and its articles of incorporation~~

(2) The name of a limited liability company must contain the words 'limited liability company' or the abbreviation 'L.L.C.' or 'LLC', or the combination 'ltd. liability co.', 'limited liability co.', or 'ltd. liability company'.

(3) The name of a limited partnership:

a. Must contain the words 'limited partnership', the abbreviation 'L.P.' or 'LP', or the combination 'ltd. partnership'; and

b. Shall not contain the name of a limited partner unless (i) it is also the name of a general partner or the corporate name of a

corporate general partner, or (ii) the business of the limited partnership has been carried on under that name before the admission of that limited partner.

(4) A registered limited liability partnership's name must contain the words 'registered limited liability partnership' or 'limited liability partnership' or the abbreviation 'L.L.P.', 'R.L.L.P.', 'LLP' or 'RLLP' as the last words or letters of its name.

(b) The name of a corporation, nonprofit corporation, or limited liability company shall not contain language stating or implying that the entity is organized for a purpose other than that permitted by G.S. 55-3-01, 55A-3-01, or 57C-2-01 and by its articles of incorporation or organization.

(c) The use of assumed names or fictitious names, as provided for in Chapter 66, is not affected by this ~~Chapter.~~Chapter or by Chapter 55, 55A, 57C, or 59 of the General Statutes.

(d) ~~Neither the reservation or registration of a corporate name nor the incorporation of any domestic corporation shall~~ The filing of any document, the reservation or registration of any name under this Chapter or under Chapter 55, 55A, 55B, 57C, or 59 of the General Statutes, or the issuance of a certificate of authority to transact business or conduct affairs or a statement or foreign registration does not authorize the use in this State of a ~~corporate~~ name in violation of the rights of any third party under the federal trademark act, the trademark act of this State, or other statutory or common law, ~~or be~~ and is not a defense to an action for violation of any ~~such~~ those rights.

"**§ 55D-21. Entity names on the records of the Secretary of State; availability.**

(a) The following entities are subject to this section:

(1) Domestic corporations, nonprofit corporations, limited liability companies, limited partnerships, and registered limited liability partnerships.

(2) Foreign corporations, foreign nonprofit corporations, foreign limited liability companies, and foreign limited partnerships applying for or maintaining a certificate of authority to transact business or conduct affairs in this State.

(3) Foreign limited liability partnerships applying for or maintaining a statement of foreign registration.

(b) Except as authorized by subsection (c) of this section, ~~a corporate name~~ the name of an entity subject to this section, including a fictitious name for a foreign entity, must be distinguishable upon the records of the Secretary of State from:

(1) The ~~corporate~~ name of a ~~corporation incorporated or authorized to transact business~~ domestic corporation, nonprofit corporation, limited liability company, limited partnership, or registered limited liability partnership, or of a foreign corporation, foreign nonprofit corporation, foreign limited liability company, or foreign limited partnership authorized to transact business or conduct affairs in this State, or a

foreign limited liability partnership maintaining a statement of foreign registration in this State;

(2) A ~~corporate~~ name reserved or registered under ~~G.S. 55-4-02 or G.S. 55-4-03;~~G.S. 55D-23 or registered under G.S. 55D-24; and

(3) The fictitious name adopted by a ~~foreign corporation authorized to transact business~~ foreign corporation, foreign nonprofit corporation, foreign limited liability company, or foreign limited partnership authorized to transact business or conduct affairs, or a foreign limited liability partnership maintaining a statement of foreign registration in this State because its real name is ~~unavailable;~~unavailable.

~~(4) The corporate name of a nonprofit corporation incorporated or authorized to transact business in this State; and~~

~~(5) The name used, reserved, or registered by a limited liability company pursuant to Chapter 57C of the General Statutes or by a limited partnership pursuant to Chapter 59 of the General Statutes.~~

(c) A person may apply to the Secretary of State for authorization to use a name that is not distinguishable upon ~~his~~ the Secretary of State's records from one or more of the names described in ~~subsection (b).~~ subsection (b) of this section. The Secretary of State shall authorize use of the name applied for if:

(1) The other ~~corporation~~ person who has or uses the name or who has reserved or registered the name consents in writing to the use ~~in writing~~ and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applicant; or

(2) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this State.

(d) Except as otherwise provided in this subsection, the ~~The~~ name of a corporation dissolved under Article 14 of Chapter 55 of the General Statutes, of a nonprofit corporation dissolved under Article 14 of Chapter 55A of the General Statutes, of a limited liability company dissolved under Article 6 of Chapter 57C of the General Statutes, or a limited partnership dissolved under Part 8 of Article 5 of Chapter 59 of the General Statutes, or of a limited liability partnership whose registration as a limited liability partnership has been revoked under G.S. 59-84.4, may not be used by another ~~corporation~~ entity until:

(1) In the case of a ~~voluntary dissolution,~~ nonjudicial dissolution other than an administrative dissolution, ~~the expiration of~~ 120 days after the effective date of the ~~dissolution, or~~dissolution.

(2) In the case of an administrative dissolution, the expiration of the period within which the ~~corporation~~ entity may be ~~reinstated pursuant to G.S. 55-14-21,~~reinstated.

(3) In the case of a judicial dissolution, 120 days after the later of the date the judgment has become final or the effective date of the dissolution. The person applying for the name must certify to the Secretary of State that no appeal or other judicial review of the judgment directing dissolution is pending.

The name of a dissolved entity may be used at any time if the entity ~~unless the dissolved corporation~~ changes its name to a name that is distinguishable upon the records of the Secretary of State from the names of other ~~business~~ domestic corporations, nonprofit corporations, limited ~~partnerships, or limited~~ liability ~~companies organized or transacting business~~ companies, limited partnerships, or registered limited liability partnerships or foreign corporations, foreign nonprofit corporations, foreign limited liability companies, or foreign limited partnerships authorized to transact business or conduct affairs in this State, or foreign limited liability partnerships maintaining a statement of foreign registration, in this State.

"**§ 55D-22. Names of foreign entities.**

(a) If the name of a foreign corporation, foreign nonprofit corporation, foreign limited liability company, foreign limited partnership, or foreign limited liability partnership does not satisfy the requirements of G.S. 55D-20 and G.S. 55D-21, then to obtain or maintain a certificate of authority to transact business or conduct affairs in this State or a statement of foreign registration in this State, the entity may:

(1) If a foreign corporation or foreign nonprofit corporation, add the word 'corporation', 'incorporated', 'company', or 'limited', or the abbreviation 'corp.', 'inc.', 'co.', or 'ltd.' to its corporate name for use in this State;

(2) If a foreign limited liability company, add the words 'limited liability company', or the abbreviation 'L.L.C.', or 'LLC', or the combination 'ltd. liability co.', 'limited liability co.', or 'ltd. liability company' to its name for use in this State if the addition will cause the name to satisfy the requirements of G.S. 55D-20 and G.S. 55D-21;

(3) If a foreign limited partnership, add the words 'limited partnership' or the abbreviation 'L.P.' or 'LP', or the combination 'ltd. partnership';

(4) If a foreign limited liability partnership, add the words 'registered limited liability partnership', or 'limited liability partnership' or the abbreviation 'L.L.P.', 'R.L.L.P.', 'LLP', or 'RLLP' as the last words or letters of its name; or

(5) Use a fictitious name, which includes one or more of the words, abbreviations, or combinations in subdivisions (1) through (4) of this subsection if applicable, to transact business or conduct affairs in this State if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution adopting the fictitious name.

(b) If a foreign corporation, foreign nonprofit corporation, foreign limited liability company, or foreign limited partnership authorized to transact business or conduct affairs in this State, or a foreign limited liability partnership maintaining a statement of foreign registration, changes its name to one that does not satisfy the

requirements of this Article, it may not transact business or conduct affairs in this State under the changed name until it adopts a name satisfying the requirements of this Article and obtains an amended certificate of authority or statement of foreign registration under G.S. 55-15-04, 55A-15-04, 57C-7-05, 59-91, or 59-905, as applicable.

"**§ 55D-23. Reserved name.**

(a) A person may reserve the exclusive use of a ~~corporate name,~~ name for an entity, including a fictitious name for a foreign ~~corporation~~ corporation, foreign nonprofit corporation, foreign limited liability company, foreign limited partnership, or foreign limited liability partnership whose ~~corporate~~ name is not available, by filing an application with the Secretary of State. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the ~~corporate~~ name applied for is available, ~~he~~ the Secretary of State shall reserve the name for the applicant's exclusive use for a nonrenewable 120-day period.

(b) The owner of a reserved ~~corporate~~ name may transfer the reservation to another person by filing with the Secretary of State a signed notice of the transfer that states the name and address of the transferee.

(c) Any person acquiring the goodwill of a domestic ~~corporation~~ corporation, nonprofit corporation, limited liability company, limited partnership, or registered limited liability partnership, or of a foreign ~~corporation~~ corporation, foreign nonprofit corporation, foreign limited liability company, or foreign limited partnership authorized to transact business or conduct affairs in this State, or of a foreign limited liability partnership maintaining a statement of foreign registration in this State may, on furnishing the Secretary of State satisfactory evidence of such acquisition, reserve for 10 years the exclusive right to ~~the corporate name of the said corporation for a period of 10 years.~~any name that became available as a result of the acquisition.

"**§ 55D-24. Registered name.**

(a) A foreign ~~corporation~~ corporation, foreign nonprofit corporation, foreign limited liability company, foreign limited partnership, or foreign limited liability partnership may register its ~~corporate~~ name, or its ~~corporate~~ name with any addition required by ~~G.S. 55-15-06,~~ G.S. 55D-22, if the name to be registered is distinguishable upon the records of the Secretary of State from the ~~corporate~~ names that are not available under ~~G.S. 55-4-01(b)(3).~~G.S. 55D-21(b).

(b) ~~A foreign corporation~~ An entity registers its ~~corporate~~ name, or its ~~corporate~~ name with any addition required by ~~G.S. 55-15-06,~~ G.S. 55D-22, by filing with the Secretary of State an application:

(1) Setting forth its ~~corporate~~ name, or its ~~corporate~~ name with any addition required by ~~G.S. 55-15-06,~~ G.S. 55D-22, the state or country and date of its incorporation, organization, or formation, and a brief description of the nature of the business or activities in which it is engaged; and

(2) Accompanied by a certificate of existence (or a document of a similar import) from the state or country of ~~incorporation.~~incorporation, organization, or formation.

(c) The name is registered for the applicant's exclusive use upon the effective date of the application and until the end of the calendar year in which it became effective.

(d) ~~A foreign corporation~~ An entity whose registration is effective may renew it for successive years by filing with the Secretary of State a renewal application, which complies with the requirements of ~~subsection (b),~~ subsection (b) of this section, between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year. Any renewal application filed after the expiration of the registration shall be treated as a new application for registration.

(e) ~~A foreign corporation~~ An entity whose registration is effective may thereafter ~~qualify~~ become authorized to transact business or conduct affairs ~~as a foreign corporation~~ under that name or consent in writing to the use of that name by: ~~by a corporation thereafter incorporated under this Chapter or by another foreign corporation thereafter authorized to transact business in this State.~~

(1) A domestic corporation, nonprofit corporation, limited liability company, limited partnership, or registered limited liability partnership thereafter incorporated, organized, or formed in this State under that name;

(2) A domestic corporation, nonprofit corporation, limited liability company, limited partnership, or registered limited liability partnership that changes its name to that name; or

(3) Another foreign corporation, foreign nonprofit corporation, foreign limited liability company, foreign limited partnership, or foreign limited liability partnership that becomes authorized to transact business or conduct affairs in this State under that name.

The registration terminates when the domestic ~~corporation~~ corporation, nonprofit corporation, limited liability company, limited partnership, or registered limited liability partnership is ~~incorporated~~ incorporated, organized, formed, or changes its name or the foreign ~~corporation~~ corporation, foreign nonprofit corporation, foreign limited liability company, foreign limited partnership, or foreign limited liability partnership qualifies or consents to the qualification of another ~~foreign corporation~~ entity under the registered name.

"§ 55D-25. Reserved and registered names, powers of the Secretary of State.

The Secretary of State may revoke any reservation or registration of a ~~corporate~~ name if ~~he~~ the Secretary of State:

(1) Gives written notice ~~finds, upon a hearing not less than 15 days after the effective date of written notice given~~ by registered or certified mail, return receipt requested, to the person ~~or corporation~~ who made the reservation or ~~registration,~~ registration of the date and time of a hearing;

(2) Conducts a hearing not less that 15 days after receipt of the notice as shown by the return receipt; and

(3) Finds that the application therefor or any transfer thereof was not made in good faith or that any statement contained in the application for reservation or registration was false when such application was filed or has thereafter become false.

"**§ 55D-26. Real property records.**

(a) ~~Whenever the name of any domestic or foreign corporation holding title to real property in this State is changed upon amendment to the articles of incorporation~~ A certificate issued by the Secretary of State as described in subsection (b) of this section must be recorded when:

(1) The name of any domestic corporation, nonprofit corporation, limited liability company, or registered limited liability partnership or foreign corporation, foreign nonprofit corporation, foreign limited liability company, foreign limited partnership, or foreign limited liability partnership that holds title to real property in this State is changed upon amendment to its articles of incorporation or organization, its certificate of limited partnership, or its application for registration as a limited liability partnership; or ~~whenever title to its real property in this State~~

(2) Title to real property in this State held by any entity listed in subdivision (1) of this subsection is vested by operation of law in another entity upon merger, consolidation, or conversion of the ~~corporation,~~ entity.

The ~~a~~ certificate ~~reciting~~ must recite the name change, merger, consolidation, or conversion and ~~shall~~ must be recorded in the office of the register of deeds of the county where the property ~~lies, or~~ lies or, if the property is located in more than one county, ~~then~~ in each county where any portion of the property lies.

(b) The Secretary of State shall ~~adopt~~ issue uniform certificates ~~to be furnished~~ for ~~registration~~ recordation in accordance with this section. In the case of a ~~foreign corporation,~~ foreign corporation, foreign nonprofit corporation, foreign limited liability company, foreign limited partnership, or foreign limited liability partnership, a similar certificate by any competent authority of the jurisdiction of incorporation may be ~~registered~~ recorded in accordance with this section.

(c) The certificate required by this section ~~shall~~ must be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the ~~corporation~~ entity holding title to the real property before the name change, merger, consolidation, or conversion shall appear in the "Grantor" index, and the new name of the corporation or the name of the other entity holding title to the real property by virtue of the merger, consolidation, or conversion shall appear in the "Grantee" index."

PART IV. CONFORMING AMENDMENTS TO PART III.

SECTION 16. G.S. 55-2-02(a)(1) reads as rewritten:

"(1) A corporate name for the corporation that satisfies the requirements of ~~G.S. 55-4-01;~~G.S. 55D-20 and G.S. 55D-21;".

SECTION 17. G.S. 55-15-03(a)(1) reads as rewritten:

"(1) The name of the foreign corporation or, if its name is unavailable for use in this State, a corporate name that satisfies the requirements of ~~G.S. 55-15-06;~~G.S. 55D-22;".

SECTION 18. G.S. 55-15-06 is repealed.

SECTION 19. G.S. 55-14-33(b) reads as rewritten:

"(b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with G.S. 55-14-05 and the notification of claimants in accordance with G.S. 55-14-06 and G.S. 55-14-07. The corporation's name becomes available for use by another entity as provided in G.S. 55D-21."

SECTION 20. G.S. 55A-2-02(a)(1) reads as rewritten:

"(1) A corporate name for the corporation that satisfies the requirements of ~~G.S. 55A-4-01;~~G.S. 55D-20 and G.S. 55D-21;".

SECTION 21. G.S. 55A-15-03(a)(1) reads as rewritten:

"(1) The name of the foreign corporation or, if its name is unavailable for use in this State, a corporate name that satisfies the requirements of ~~G.S. 55A-15-06;~~G.S. 55D-22;".

SECTION 22. G.S. 55A-15-06 is repealed.

SECTION 23. Article 4 of Chapter 55A of the General Statutes is repealed.

SECTION 24. G.S. 55A-14-33(b) reads as rewritten:

"(b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's affairs in accordance with G.S. 55A-14-06 and the notification of its claimants in accordance with G.S. 55A-14-07 and G.S. 55A-14-08. The corporation's name becomes available for use by another entity as provided in G.S. 55D-21."

SECTION 25. G.S. 55B-5 reads as rewritten:

"**§ 55B-5. Corporate name.**

The corporate name used by professional corporations under this Chapter, except as limited by the licensing acts of the respective professions, shall be governed by the provisions of ~~Chapter 55, the North Carolina Business Corporation Act;~~ Chapter 55D, provided that professional corporations may use the words "Professional Association," "P.A.," "Professional Corporation," or "P.C." in lieu of the corporate designations specified in ~~Chapter 55;~~ Chapter 55D, and provided further that licensing boards by regulations may make further corporate name requirements or limitations for the respective professions, but such regulations may not prohibit the continued use of any corporate name duly adopted in conformity with the General Statutes and with the pertinent licensing board regulations in effect at the date of such adoption."

SECTION 26. G.S. 57C-2-01(c) reads as rewritten:

"(c) Subsections (a) and (b) of this section to the contrary notwithstanding and except as set forth in this subsection, a domestic or foreign limited liability company shall engage in rendering professional services only to the extent that a professional corporation acting pursuant to Chapter 55B of the General Statutes or a corporation acting pursuant to Chapter 55 of the General Statutes may engage in rendering professional services under the conditions and limitations imposed by an applicable licensing statute. Chapter 55B of the General Statutes and each applicable licensing statute are deemed amended to provide that professionals licensed under the applicable licensing statute may render professional services through a domestic or foreign limited liability company. For purposes of applying the provisions, conditions, and limitations of Chapter 55B of the General Statutes and the applicable licensing statute to domestic and foreign limited liability companies that engage in rendering professional services, (i) unless the context clearly requires otherwise, references to Chapter 55 of the General Statutes (the North Carolina Business Corporation Act) shall be treated as references to this Chapter, and references to a "corporation" or "foreign corporation" shall be treated as references to a limited liability company or foreign limited liability company, respectively, (ii) members shall be treated in the same manner as shareholders of a professional corporation, (iii) managers shall be treated in the same manner as directors of a professional corporation, (iv) the persons signing the articles of organization of a limited liability company shall be treated in the same manner as the incorporators of a professional corporation, and (v) the name of a domestic or foreign limited liability company so engaged shall comply with ~~G.S. 57C-2-30 or G.S. 57C-7-06~~Article 3 of Chapter 55D of the General Statutes and, in addition, shall contain the word "Professional" or the abbreviation "P.L.L.C." or "PLLC". For purposes of this subsection, "applicable licensing statute" shall mean those provisions of the General Statutes referred to in G.S. 55B-2(6).

Nothing in this Chapter shall be interpreted to abolish, modify, restrict, limit, or alter the law in this State applicable to the professional relationship and liabilities between the individual furnishing the professional services and the person receiving the professional services, the standards of professional conduct applicable to the rendering of the services, or any responsibilities, obligations, or sanctions imposed under applicable licensing statutes. A member or manager of a professional limited liability company is not individually liable, directly or indirectly, including by indemnification, contribution, assessment, or otherwise, for debts, obligations, and liabilities of, or chargeable to, the professional limited liability company that arise from errors, omissions, negligence, malpractice, incompetence, or malfeasance committed by another member, manager, employee, agent, or other representative of the professional limited liability company; provided, however, nothing in this Chapter shall affect the liability of a member or manager of a professional limited liability company for his or her own errors, omissions, negligence, malpractice, incompetence, or malfeasance committed in the rendering of professional services."

SECTION 27. G.S. 57C-2-21(a)(1) reads as rewritten:

"(1) A name for the limited liability company that satisfies the provisions of ~~G.S. 57C-2-30;~~G.S. 55D-20 and G.S. 55D-21;".

SECTION 28. G.S. 57C-7-04(a)(1) reads as rewritten:

"(1) The name of the foreign limited liability company or ~~or, if its name is unavailable for use in this State,~~ a name that satisfies the requirements of ~~G.S. 57C-7-06;~~ Article 3 of Chapter 55D of the General Statutes:".

SECTION 29. G.S. 57C-7-06 is repealed.

SECTION 30. Part 3 of Article 2 of Chapter 57C of the General Statutes is repealed.

SECTION 31. G.S. 57C-6-02.3(b) reads as rewritten:

"(b) After entering the decree of dissolution, the court shall direct the winding up of the limited liability company's business and affairs in accordance with G.S. 57C-6-04 and G.S. 57C-6-05 and the notification of claimants in accordance with G.S. 57C-6-07 and G.S. 57C-6-08. The limited liability company's name becomes available for use by another entity as provided in G.S. 55D-21."

SECTION 32. G.S. 59-103 reads as rewritten:

"**§ 59-103. Name.**

~~(a) The name of the limited partnership shall contain without abbreviation the words "limited partnership";~~

~~(b) The limited partnership name shall not contain the name of a limited partner unless (i) it is also the name of a general partner or the corporate name of a corporate general partner, or (ii) the business of the limited partnership has been carried on under that name before the admission of that limited partner;~~

~~(c) The limited partnership name shall not contain any word or phrase which is likely to mislead the public or which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its certificate of limited partnership;~~

~~(d) The limited partnership name shall be distinguishable upon the records of the Secretary of State from:~~

~~(1) The name of a corporation, nonprofit corporation, limited partnership, or limited liability company organized in this State, or a foreign corporation or nonprofit corporation, foreign limited partnership, or foreign limited liability company authorized to transact business in this State;~~

~~(2) A name reserved under G.S. 55-4-02, 55-4-03, 55A-4-02, 55A-4-03, 57C-2-31, 57C-2-32, 59-104, or 59-904; and~~

~~(3) The fictitious name adopted by a foreign corporation or nonprofit corporation, foreign limited partnership, or foreign limited liability company authorized to transact business in this State because its real name is unavailable.~~

The name of the limited partnership must meet any requirements of Chapter 55D of the General Statutes."

SECTION 33. G.S. 59-104 is repealed.

SECTION 34. G.S. 59-206, as amended in Part II of this act, reads as rewritten:

"**§ 59-206. Filing requirements.**

~~(a) A document required or permitted by this Article to be filed by the Secretary of State must be filed under Chapter 55D of the General Statutes. Whenever the provisions of this Article require any document relating to a limited partnership to be executed and filed in accordance with this Article, unless otherwise specifically stated in this Article:~~

~~(1)-(3) Repealed.~~

~~(3a) Whenever the name of any domestic or foreign limited partnership holding title to real property in this State is changed upon amendment to the certificate of limited partnership, or whenever title to its real property is vested by operation of law in another entity upon merger, consolidation, or conversion of the domestic or foreign limited partnership, a certificate reciting the name change, merger, consolidation, or conversion shall be recorded in the office of the register of deeds of the county where the property lies, or if the property is located in more than one county, then in each county where any portion of the property lies.~~

~~(4) The Secretary of State shall adopt uniform certificates to be furnished for registration in accordance with this section. In the case of a foreign limited partnership, a similar certificate by any competent authority of the jurisdiction under which the limited partnership is organized may be registered in accordance with this section.~~

~~(5) The certificate required by subdivision (3a) of this subsection shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the domestic or foreign limited partnership holding title to the real property before the name change, merger, consolidation, or conversion shall appear in the "Grantor" index, and the new name of the domestic or foreign limited partnership or the name of the other entity holding title to the real property by virtue of the merger, consolidation, or conversion, as applicable, shall appear in the "Grantee" index.~~

~~(b)-(c) Repealed.~~

A document required or permitted by this Article to be filed by the Secretary of State must be filed under Chapter 55D of the General Statutes."

SECTION 35. G.S. 59-904 reads as rewritten:

"**§ 59-904. Name.**

A foreign limited partnership may register with the Secretary of State under any name ~~(whether or not it is the name under which it is registered in its state of organization) that includes without abbreviation the words "limited partnership" and~~

~~that could be registered by a domestic limited partnership.~~ that meets the requirements of Article 3 of Chapter 55D of the General Statutes."

SECTION 36. G.S. 59-802 reads as rewritten:

"**§ 59-802. Judicial dissolution.**

On application by or for a partner the court may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement. The limited partnership's name becomes available for use by another entity as provided in G.S. 55D-21."

SECTION 37. G.S. 59-1106, as amended in Part II of this act, reads as rewritten:

"**§ 59-1106. Fees.**

The Secretary of State shall collect the following fees and remit them to the State Treasurer for the use of the State:

(1)	For filing a certificate of limited partnership (G.S. 59-201)	$50.00
(2)	For filing a certificate of amendment (G.S. 59-202; 59-905)	25.00
(3)	For filing a certificate of cancellation (G.S. 59-203; 59-906)	25.00
(4)	For filing an application for reservation of name ~~(G.S. 59-104(a))~~ (G.S. 55D-23)	10.00
(5)	For filing a transfer of name ~~(G.S. 59-104(d))~~ (G.S. 55D-23)	10.00
(5a)	For filing an application for registration of name (G.S. 55D-24)	10.00
(5b)	For filing an application for renewal of a registered name (G.S. 55D-24)	10.00
(6)	For filing an application for registration as foreign limited partnership (G.S. 59-502)	50.00
(7)	For preparing and furnishing a copy of any document, instrument or paper filed or recorded relating to a limited partnership (G.S. 59-206(c))	
	For each page	1.00
	For affixing the certificate and official seal thereto	5.00
(8)	For comparing a copy furnished to him of any document, instrument or paper filed or recorded relating to a limited partnership	
	For each page	1.00
(9)	For filing any other document not herein specifically provided for	10.00".

SECTION 38. G.S. 59-35.1, as amended by Part II of this act, reads as rewritten:

"**§ 59-35.1. Filing of documents.**

(a) A document required or permitted by this Act to be filed by the Secretary of State must be filed under Chapter 55D of the General Statutes.

(b) A document submitted under this Act for filing by the Secretary of State must be executed by a general partner of the partnership.

(c) The Secretary of State shall collect the following fees when the documents described in this subsection are submitted by a partnership to the Secretary of State for filing:

Document	Fee
Application for reserved name	$10.00
Notice of transfer of reserved name	10.00
Application for registered name	10.00
Application for renewal of registered name	10.00
Articles of ~~Merger~~ merger	~~$50.00~~ 50.00
Articles of ~~Correction~~ correction	~~$10.00~~ 10.00

Whenever the Secretary of State is deemed appointed as a registered agent under this Act or under Chapter 55D of the General Statutes, the Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary of State under this Act. The party to the proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of a document filed by a partnership pursuant to this Part:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) Five dollars ($5.00) for the certificate.

~~(d) Whenever title to real property in this State held by a partnership is vested by operation of law in another entity upon merger, consolidation, or conversion of the partnership, a certificate reciting the merger, consolidation, or conversion shall be recorded in the office of the register of deeds of the county where the property is located, or if the property is located in more than one county, then in each county where any portion of the property is located.~~

~~The Secretary of State shall adopt uniform certificates to be furnished for registration in accordance with this subsection. In the case of a partnership formed under a law other than the laws of this State, a similar certificate by any competent authority of the jurisdiction of organization may be registered in accordance with this subsection.~~

~~The certificate required by this subsection shall~~ must ~~be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgment, probate, or approval by any other officer shall be required. The former name of the partnership holding title to the real property before the merger, consolidation, or conversion shall appear in the "Grantor" index and the name of the other entity holding title to the real property by virtue of the merger, consolidation, or conversion shall appear in the "Grantee" index.~~"

SECTION 39. G.S. 59-84.3 reads as rewritten:

"**§ 59-84.3. Name of registered limited liability partnerships.**

A registered limited liability partnership's name must meet the requirements of G.S. 55D-20 and G.S. 55D-21.~~contain the words "registered limited liability partnership" or "limited liability partnership" or the abbreviation "L.L.P.", "R.L.L.P.", "LLP" or "RLLP" as the last words or letters of its name.~~"

SECTION 40. G.S. 59-91(a)(1) reads as rewritten:

"(1) The name of the foreign limited liability partnership that satisfies the requirements of the ~~State~~ state or other jurisdiction under whose law it is formed and ~~ends with the words "registered limited liability partnership" or "limited liability partnership" or the abbreviation "R.L.L.P.", "L.L.P.", "RLLP", or "LLP".~~meets the requirements of Article 3 of Chapter 55D of the General Statutes."

SECTION 41. G.S. 59-62 is amended by adding a new subsection to read:

"(c) The name of a registered limited liability company becomes available for use by another entity as provided in G.S. 55D-21."

PART V. CONSOLIDATION OF REGISTERED OFFICE AND REGISTERED AGENT PROVISIONS

SECTION 42. The title of Chapter 55D of the General Statutes, as enacted by Section 1 of this act and amended by Section 12 of this act, reads as rewritten:

"Chapter 55D.

~~Filings and Names~~ Filings, Names, and Registered Agents for Corporations, Nonprofit Corporations, Limited Liability Companies, Limited Partnerships, and Limited Liability Partnerships."

SECTION 43. Chapter 55D of the General Statutes, as enacted by Section 1 of this act and amended by Sections 2 through 4, 12 through 15, and Section 42 of this act, is amended by adding a new Article to read:

"Article 4.

"Registered Office and Registered Agent."

SECTION 44. G.S. 55-5-01(b) is recodified as G.S. 55D-30(b) in Article 4 of Chapter 55D of the General Statutes. G.S. 55-5-02, 55-5-03, and 55-5-04 are recodified as G.S. 55D-31, 55D-32, and 55D-33, respectively, in Article 4 of Chapter 55D of the General Statutes.

SECTION 45. Article 4 of Chapter 55D of the General Statutes, as enacted by Section 43 and amended by Section 44 of this act, reads as rewritten:

"Article 4.

"Registered Office and Registered Agent.

"**§ 55D-30. Registered office and registered agent required.**

(a) Each domestic corporation, nonprofit corporation, limited liability company, limited partnership, and limited liability partnership, each foreign limited liability partnership maintaining a statement of foreign registration, and each foreign

corporation, nonprofit corporation, limited liability company, and limited partnership authorized to transact business or conduct affairs in this State must continuously maintain in this State:

(1) A registered office that may be the same as any of its places of business or any place where it conducts affairs; and

(2) A registered agent, who must be:

a. An individual who resides in this State and whose business office is identical with the registered office;

b. A domestic corporation, nonprofit corporation, or limited liability company whose business office is identical with the registered office; or

c. A foreign corporation, foreign nonprofit corporation, or foreign limited liability company authorized to transact business or conduct affairs in this State whose business office is identical with the registered office.

(b) The sole duty of the registered agent to ~~the corporation~~ the entity is to forward to the ~~corporation~~ entity at its last known address any notice, process, or demand that is served on the registered agent.

"§ 55D-31. Change of registered office or registered agent.

(a) ~~A corporation~~ An entity required to maintain a registered office and registered agent under G.S. 55D-30 may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets ~~forth:~~ forth all of the following:

(1) The name of the entity.~~corporation;~~

(2) The street address, and the mailing address if different from the street address, of ~~the corporation's~~ its current registered office, and the county in which it is ~~located;~~located.

(3) If the address of the ~~corporation's~~ entity's registered office is to be changed, the street address, and the mailing address if different from the street address, of the new registered office, and the county in which it is ~~located;~~located.

(4) The name of its current registered ~~agent;~~agent.

(5) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent (either on the statement or attached to it) to the ~~appointment; and~~appointment.

(6) That after the change or changes are made, the addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the address of ~~his~~ the agent's business office, ~~he~~ the agent may change the address of the registered office of any ~~corporation~~ entity for which ~~he~~ the agent is the registered agent in this State by notifying the ~~corporation~~ entity in writing of the change and signing ~~(either manually or in facsimile)~~ and delivering to the Secretary of State for filing a statement that complies with the

requirements of subsection (a) of this section and recites that the ~~corporation~~ entity has been notified of the change.

(c) A ~~corporation~~ domestic corporation, limited liability company, registered limited liability partnership, foreign corporation, foreign limited liability company, or foreign limited liability partnership may change its registered office or registered agent by including in its annual report required by ~~G.S. 55-16-22~~ G.S. 55-16-22, 57C-2-23, or 59-84.4 the information and any written consent required by ~~subsection (a).~~subsection (a) of this section.

"§ 55D-32. Resignation of registered agent.

(a) ~~A~~The registered agent of an entity may resign ~~his agency appointment~~ by signing and filing with the Secretary of State ~~the signed original and two exact or conformed copies of~~ a statement of resignation which may include a statement that the registered office is also discontinued. The statement must include or be accompanied by a certification from the registered agent that ~~he~~ the agent has mailed or delivered to the ~~corporation~~ entity at its last known address written notice of this resignation. ~~Such~~ This certification shall include the name and title of the ~~officer~~ individual notified, if any, and the address to which the notice was mailed or delivered.

(b) After filing the statement the Secretary of State shall mail ~~one~~ a copy to the registered office (if not discontinued) and ~~the other~~ a copy to the ~~corporation~~ entity at ~~its principal office shown in its most recent annual report.~~the address contained in the certification included in or accompanying the statement of resignation or, if different, at the address indicated in the latest document filed by the Secretary of State stating the entity's current mailing address.

(c) The agency appointment is terminated,~~and~~ and, if applicable, the registered office ~~discontinued if so provided,~~discontinued on the 31st day after the date on which the statement was filed.

"§ 55D-33. Service ~~on corporation.~~on entities.

(a) ~~A corporation's registered agent is an agent of the corporation for service~~ Service of process, notice or demand required or permitted by law to be served on ~~the corporation.~~an entity may be served on the registered agent required by G.S. 55D-30.

(b) ~~Whenever~~ When ~~a corporation shall fail~~ an entity required to maintain a registered office and registered agent under G.S. 55D-30 fails to appoint or maintain a registered agent in this State, or ~~whenever~~when its registered agent cannot with due diligence be found at the registered office, ~~then~~ or when the Secretary of State revokes a certificate of authority or a statement of foreign registration of a foreign entity authorized to transact business or conduct affairs in this State, the Secretary of State ~~shall be~~becomes an agent of ~~such corporation~~the entity 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~~is 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~~the process, notice or demand and the ~~fee required by G.S. 55-1-22(b).~~applicable fee. In the event any such process, notice or demand is served on the Secretary of State in the manner provided by this subsection, the Secretary of State shall

immediately mail one of the copies thereof, by registered or certified mail, return receipt requested, to the ~~corporation~~entity at its principal office or, if there is no mailing address for the principal office on file, to the ~~corporation~~entity at its registered office. Service on ~~a corporation~~an entity under this subsection ~~shall be~~is effective for all purposes from and after the date of the service on the Secretary of State.

(c) The Secretary of State shall keep a record of all processes, notices and demands served upon ~~him~~the Secretary of State under this section and shall record therein the ~~time~~ date of ~~such~~ service and ~~his~~the Secretary of State's action with reference thereto.

(d) Nothing ~~herein contained shall limit or affect~~in this section affects the right to serve any process, notice or demand required or permitted by law to be served upon ~~a corporation~~an entity in any other manner now or hereafter permitted by law."

PART VI. CONFORMING AMENDMENTS TO REGISTERED OFFICE AND REGISTERED AGENT PROVISIONS.

SECTION 46. G.S. 55D-15(b), as enacted in Part I of this act, reads as rewritten:

"(b) The Secretary of State files a document by endorsing 'Filed', together with the Secretary's name and official title and the date and time of filing, on the document. After filing a document, the Secretary of State shall deliver a document copy to the person submitting the document for filing and as provided in ~~G.S. 55-5-03, 55-15-09, 55A-5-03, 55A-15-09, 57C-2-42, and 57C-7-09.~~ G.S. 55D-32."

SECTION 47.(a) G.S. 55-5-01, as amended by Section 44 of this act, reads as rewritten:

"**§ 55-5-01. Registered office and registered agent.**

~~(a) Each corporation must continuously maintain in this State:~~

~~(1) A registered office that may be the same as any of its places of business; and~~

~~(2) A registered agent, who shall be (i) an individual who resides in this State and whose business office is identical with the registered office; (ii) a domestic corporation, nonprofit corporation, or limited liability company whose business office is identical with the registered office; or (iii) a foreign corporation, nonprofit corporation, or limited liability company authorized to transact business or conduct affairs in this State whose business office is identical with the registered office.~~

~~(b) Recodified.~~

Each corporation must maintain a registered office and registered agent as required by Article 4 of Chapter 55D of the General Statutes and is subject to service on the Secretary of State under that Article."

SECTION 47.(b) G.S. 55-15-07 reads as rewritten:

"**§ 55-15-07. Registered office and registered agent of foreign corporation.**

~~(a) Each foreign corporation authorized to transact business in this State must continuously maintain in this State:~~

~~(1) A registered office that may be the same as any of its places of business; and~~

~~(2) A registered agent, who shall be (i) an individual who resides in this State and whose business office is identical with the registered office; (ii) a domestic corporation, nonprofit corporation, or limited liability company whose business office is identical with the registered office; or (iii) a foreign corporation, nonprofit corporation, or limited liability company authorized to transact business or conduct affairs in this State whose business office is identical with the registered office.~~

~~(b) The sole duty of the registered agent to the foreign corporation is to forward to the corporation at its last known address any notice, process, or demand that is served on the registered agent.~~

Each foreign corporation authorized to transact business in this State must maintain a registered office and registered agent as required by Article 4 of Chapter 55D of the General Statutes and is subject to service on the Secretary of State under that Article."

SECTION 47.(c) G.S. 55-15-08, 55-15-09, and 55-15-10 are repealed.

SECTION 47.(d) G.S. 55-14-23(a) reads as rewritten:

"(a) If the Secretary of State denies a corporation's application for reinstatement following administrative dissolution, he shall serve the corporation under ~~G.S. 55-5-04~~ G.S. 55D-33 with a written notice that explains the reason or reasons for denial."

SECTION 47.(e) G.S. 55-15-30(a) reads as rewritten:

"(a) The Secretary of State may commence a proceeding under G.S. 55-15-31 to revoke the certificate of authority of a foreign corporation authorized to transact business in this State if:

(1) The foreign corporation is delinquent in delivering its annual report;

(2) The foreign corporation does not pay within 60 days after they are due any penalties, fees, or other payments due under this Chapter;

(3) The foreign corporation is without a registered agent or registered office in this State for 60 days or more;

(4) The foreign corporation does not inform the Secretary of State under ~~G.S. 55-15-08 or G.S. 55-15-09~~G.S. 55D-31 or G.S. 55D-32 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within 60 days of the change, resignation, or discontinuance;

(5) An incorporator, director, officer, or agent of the foreign corporation signed a document he knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing;

(6) The Secretary of State receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation

is incorporated stating that it has been dissolved or disappeared as the result of a merger;

(7) The corporation is exceeding the authority conferred upon it by this Chapter; or

(8) The corporation knowingly fails or refuses to answer truthfully and fully within the time prescribed in this Chapter interrogatories propounded by the Secretary of State in accordance with the provisions of this Chapter."

SECTION 47.(f) G.S. 55-15-31(d) reads as rewritten:

"(d) The Secretary of State's revocation of a foreign corporation's certificate of authority appoints the Secretary of State the foreign corporation's agent for service of process in any proceeding based on a cause of action arising in this State or arising out of business transacted in this State during the time the foreign corporation was authorized to transact business in this State. The Secretary of State shall then proceed in accordance with ~~G.S. 55-15-10.~~ G.S. 55D-33."

SECTION 47.(g) G.S. 54B-20(b) reads as rewritten:

"(b) Notwithstanding the provisions of subsection (a) of this section, any State association may change its registered office or its registered agent or both in accordance with the provisions of ~~G.S. 55-5-02.~~ G.S. 55D-31. A copy of the statement or certificate certified by the Secretary of State shall be filed in the office of the Administrator."

SECTION 47.(h) G.S. 54C-21(b) reads as rewritten:

"(b) Notwithstanding subsection (a) of this section, a State savings bank may change its registered office or its registered agent, or both, in accordance with ~~G.S. 55-5-02.~~G.S. 55D-31. The savings bank shall file a copy of the statement or certificate certified by the Secretary of State in the office of the Administrator."

SECTION 48.(a) G.S. 55A-5-01 reads as rewritten:

"**§ 55A-5-01. Registered office and registered agent.**

~~(a) Each corporation shall continuously maintain in this State:~~

~~(1) A registered office that may be the same as any place where it conducts affairs; and~~

~~(2) A registered agent, who shall be:~~

~~a. An individual who resides in this State and whose office is identical with the registered office;~~

~~b. A domestic business corporation, nonprofit corporation, or limited liability company whose office is identical with the registered office; or~~

~~c. A foreign business corporation, nonprofit corporation, or limited liability company authorized to transact business or conduct affairs in this State whose office is identical with the registered office.~~

~~(b) The sole duty of the registered agent to the corporation is to forward to the corporation at its last known address any notice, process, or demand that is served on the registered agent.~~

Each corporation must maintain a registered office and registered agent as required by Article 4 of Chapter 55D of the General Statutes and is subject to service on the Secretary of State under that Article."

SECTION 48.(b) G.S. 55A-15-07 reads as rewritten:

"**§ 55A-15-07. Registered office and registered agent of foreign corporation.**

~~(a) Each foreign corporation authorized to conduct affairs in this State shall continuously maintain in this State:~~

~~(1) A registered office that may be the same as any place where it conducts affairs; and~~

~~(2) A registered agent, who shall be: (i) an individual who resides in this State and whose office is identical with the registered office; (ii) a domestic business corporation, nonprofit corporation, or limited liability company whose office is identical with the registered office; or (iii) a foreign business corporation, nonprofit corporation, or limited liability company authorized to transact business or conduct affairs in this State whose office is identical with the registered office.~~

~~(b) The sole duty of the registered agent to the foreign corporation is to forward to the corporation at its last known address any notice, process, or demand that is served on the registered agent.~~

Each foreign corporation authorized to conduct affairs in this State must maintain a registered office and registered agent as required by Article 4 of Chapter 55D of the General Statutes and is subject to service on the Secretary of State under that Article."

SECTION 48.(c) G.S. 55A-5-02, 55A-5-03, 55A-5-04, 55A-15-08, 55A-15-09, and 55A-15-10 are repealed.

SECTION 48.(d) G.S. 55A-5-02.1 is recodified as G.S. 55A-16-23.

SECTION 48.(e) G.S. 55A-14-23(a) reads as rewritten:

"(a) If the Secretary of State denies a corporation's application for reinstatement following administrative dissolution, the Secretary of State shall serve the corporation under ~~G.S. 55A-5-04~~ G.S. 55D-33 with a written notice that explains the reason or reasons for denial."

SECTION 48.(f) G.S. 55A-15-30(a)(4) reads as rewritten:

"(4) The foreign corporation does not inform the Secretary of State under ~~G.S. 55A-15-08 or G.S. 55A-15-09~~ G.S. 55D-31 or G.S. 55D-32 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within 60 days of the change, resignation, or discontinuance;".

SECTION 48.(g) G.S. 55A-15-31(d) reads as rewritten:

"(d) The Secretary of State's revocation of a foreign corporation's certificate of authority appoints the Secretary of State the foreign corporation's agent for service of process in any proceeding based on a cause of action arising in this State or arising out of affairs conducted in this State during the time the foreign corporation was authorized to conduct affairs in this State. The Secretary of State shall then proceed in accordance with ~~G.S. 55A-15-10.~~ G.S. 55D-33."

SECTION 49.(a) G.S. 57C-2-40 reads as rewritten:

"**§ 57C-2-40. Registered office and registered agent.**

~~(a) Each limited liability company must continuously maintain in this State:~~

~~(1) A registered office that may be the same as any of its places of business; and~~

~~(2) A registered agent, who shall be (i) an individual who resides in this State and whose business office is identical with the registered office; (ii) a domestic corporation, nonprofit corporation, or limited liability company whose business office is identical with the registered office; or (iii) a foreign corporation, nonprofit corporation, or limited liability company authorized to transact business or conduct affairs in this State whose business office is identical with the registered office.~~

~~(b) The sole duty of the registered agent to the limited liability company is to forward to the limited liability company at its last known address any notice, process, or demand that is served on the registered agent.~~

Each limited liability company must maintain a registered office and registered agent as required by Article 4 of Chapter 55D of the General Statutes and is subject to service on the Secretary of State under that Article."

SECTION 49.(b) G.S. 57C-7-07 reads as rewritten:

"**§ 57C-7-07. Registered office and registered agent of foreign limited liability company.**

~~(a) Each foreign limited liability company authorized to transact business in this State must continuously maintain in this State:~~

~~(1) A registered office that may be the same as any of its places of business; and~~

~~(2) A registered agent, who shall be (i) an individual who resides in this State and whose business office is identical with the registered office; (ii) a domestic corporation, nonprofit corporation, or limited liability company whose business office is identical with the registered office; or (iii) a foreign corporation, nonprofit corporation, or limited liability company authorized to transact business or conduct affairs in this State whose business office is identical with the registered office.~~

~~(b) The sole duty of the registered agent to the foreign limited liability company is to forward to the limited liability company at its last known address any notice, process, or demand that is served on the registered agent.~~

Each foreign limited liability company authorized to transact business or conduct affairs in this State must maintain a registered office and registered agent as required by Article 4 of Chapter 55D of the General Statutes and is subject to service on the Secretary of State under that Article."

SECTION 49.(c) G.S. 57C-2-41, 57C-2-42, 57C-7-08, 57C-7-09, and 57C-7-10 are repealed.

SECTION 49.(d) G.S. 57C-7-14(c) reads as rewritten:

"(c) Upon the revocation of a foreign limited liability company's certificate of authority, the Secretary of State shall become the foreign limited liability company's agent for service of process in any proceeding based on a cause of action arising in this State or arising out of business transacted in this State during the time the foreign limited liability company was authorized to transact business in this State. The Secretary of State shall then proceed in accordance with ~~G.S. 57C-7-10.~~ G.S. 55D-33."

SECTION 50.(a) G.S. 59-105 reads as rewritten:

"**§ 59-105. Registered office and registered agent.**

(a) ~~Each limited partnership shall have and continuously maintain in this State:~~

~~(1) A registered office that may be the same as any of its places of business;~~

~~(2) A registered agent, who shall be (i) an individual resident of this State whose business office is identical with such registered office; (ii) a domestic corporation, nonprofit corporation, or limited liability company whose business office is identical with such registered office; or (iii) a foreign corporation, nonprofit corporation, or limited liability company authorized to transact business or conduct affairs in this State, whose business office is identical with such registered office.~~

~~The sole duty of the registered agent to the limited partnership is to forward to the limited partnership at its last known address any notice, process, or demand that is served on the registered agent.~~

Each limited partnership must maintain a registered office and registered agent as required by Article 4 of Chapter 55D of the General Statutes and is subject to service on the Secretary of State under that Article.

(b) Limited partnerships formed prior to October 1, 1986, shall file a certificate of limited partnership with the Office of the Secretary of State pursuant to G.S. 59-201(a) designating the address of the registered office of the limited partnership and the identity of the registered agent at such address.

~~(b1) Any process, notice or demand, which is required or permitted by law to be served upon a limited partnership, may be served upon the duly appointed registered agent of the limited partnership. Such service upon the registered agent is deemed to have been made on the limited partnership itself.~~

~~(c) Whenever a limited partnership 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 limited partnership 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, or with any clerk having charge of the limited partnership department of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the Secretary of State, he shall immediately cause one of the copies thereof to be forwarded by registered or certified mail, addressed to the limited partnership at its registered office. Any such~~

~~limited partnership so served shall be in court for all purposes from and after the date of such service on the Secretary of State.~~

~~(d) The Secretary of State shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.~~

~~(e) Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a limited partnership in any other manner now or hereafter permitted by law.~~"

SECTION 50.(b) G.S. 59-201(a)(2) reads as rewritten:

"(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. 55D-30."

SECTION 50.(c) G.S. 59-902 reads as rewritten:

"**§ 59-902. Registration.**

(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;

...

(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;~~

...

(b) Without excluding other activities which may not constitute transacting business in this State, a foreign limited partnership shall not be considered to be transacting business in this State, for the purpose of this Article, by reason of carrying on in this State any one or more of the following activities:

...

(c) Each foreign limited partnership authorized to transact business in this State must maintain a registered agent as required by Article 4 of Chapter 55D of the General Statutes and is subject to service on the Secretary of State under that Article. ~~Whenever a foreign limited partnership 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 foreign limited~~

~~partnership 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, or with any clerk having charge of the limited partnership department of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the Secretary of State, he shall immediately cause one of the copies thereof to be forwarded by registered or certified mail, addressed to the foreign limited partnership at its registered office. Any such foreign limited partnership so served shall be in court for all purposes from and after the date of such service on the Secretary of State.~~

~~(d) The Secretary of State shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.~~

~~(e) Nothing herein contained shall limit or affect the right to serve any process notice or demand required or permitted by law to be served upon a foreign limited partnership in any other manner now or hereafter permitted by law.~~"

SECTION 51.(a) G.S. 59-84.2(i) reads as rewritten:

"(i) Each registered limited liability partnership must maintain a registered office and registered agent as required by Article 4 of Chapter 55D of the General Statutes and is subject to service on the Secretary of State under that Article.~~The registered agent of a registered limited liability partnership for service of process must be (i) an individual who is a resident of this State and whose business office is identical with the registered office; (ii) a domestic corporation, nonprofit corporation, or limited liability company whose business office is identical with the registered office; or (iii) a foreign corporation, nonprofit corporation, or limited liability company authorized to transact business or conduct affairs in this State whose business office is identical with the registered office. The sole duty of the registered agent to the registered limited liability partnership is to forward to the registered limited liability partnership at its last known address any notice, process, or demand that is served on the registered agent.~~"

SECTION 51.(b) G.S. 59-91(b) reads as rewritten:

"(b) ~~The registered agent of a foreign limited liability partnership for service of process must be (i) an individual who is a resident of this State and whose business office is identical with the registered office; (ii) a domestic corporation, nonprofit corporation, or limited liability company whose business office is identical with the registered office; or (iii) a foreign corporation, nonprofit corporation, or limited liability company authorized to transact business in this State whose business office is identical with the registered office. The sole duty of the registered agent to the foreign limited liability partnership is to forward to the foreign limited liability partnership at its last known address any notice, process, or demand that is served on the registered agent.~~Each foreign limited liability partnership maintaining a statement of foreign registration in this State must maintain a registered office and registered agent as required by Article 4 of Chapter 55D of the General Statutes and is subject to service on the Secretary of State under that Article."

SECTION 51.(c) G.S. 59-35.1(c), as amended in Parts II and IV of this act, reads as rewritten:

"(c) The Secretary of State shall collect the following fees when the documents described in this subsection are submitted by a partnership to the Secretary of State for filing:

Document	Fee
Application for reserved name	$10.00
Notice of transfer of reserved name	10.00
Application for registered name	10.00
Statement of change of registered office or registered agent or both	5.00
Agent's statement of change of registered office for each affected partnership	5.00
Agent's statement of resignation	No fee
Designation of registered agent or registered office or both	5.00
Articles of merger	50.00
Articles of correction	10.00

Whenever the Secretary of State is deemed appointed as a registered agent under this Act or under Chapter 55D of The General Statutes, the Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary of State. The party to the proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of a document filed by a partnership pursuant to this Part:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) Five dollars ($5.00) for the certificate."

PART VII. EFFECTIVE DATE, APPLICABILITY, AND OTHER PROVISIONS.

SECTION 52. The Revisor of Statutes is authorized to transfer, as historical annotations, the Official Comments and the North Carolina Comments to those portions of Chapter 55 of the General Statutes that are recodified by this act to the corresponding locations in Chapter 55D of the General Statutes, as the Revisor deems appropriate.

SECTION 53. This act becomes effective October 1, 2001, and applies to documents submitted for filing on or after that date.

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

MEMORANDUM

To: House Judiciary II Committee

From: General Statutes Commission

Date: July 18, 2001

Re: Committee Substitute for House Bill 385 (Consolidate Business Provisions)

General Comments

The Senate committee substitute for House Bill 385 amends the General Statutes to consolidate in one place various provisions that either duplicate or closely track each other in Chapters 55, 55A, 57C, and 59, relating to corporations, nonprofit corporations, limited liability companies, limited partnerships, and registered limited liability partnerships. The provisions covered in this bill fall into three different groups:

(1) Requirements for filing documents with the Secretary of State under Chapters 55, 55A, 57C, and 59;

(2) Formal requirements for entity names in these chapters; and

(3) Requirements for maintaining a registered office and registered agent and substitute service of process on the Secretary of State in the event that there is no registered agent.

At present, when an amendment is made in one chapter to any of these provisions, the amendment must also be made in at least four other places in the General Statutes to keep them standardized. This bill is intended to eliminate some of the future need for such duplicative amendments.

The bill creates a new Chapter 55D of the General Statutes and recodifies the filing, name, and registered office and registered agent provisions of Chapter 55 of the General Statutes into the new chapter. The bill has seven parts. Part I (Consolidation of Filing Requirements) creates the new chapter, recodifies the filing provisions of Chapter 55 (most of Part 2 of Article 1 of Chapter 55) into the new chapter, and makes the changes necessary to accommodate nonprofit

corporations, limited liability companies, limited partnerships, and limited liability partnerships. Part II makes conforming amendments needed as a result of Part I. Parts I and II also make a few miscellaneous amendments. Part III (Consolidation of Provisions Relating to Names) similarly recodifies most of Article 4 of Chapter 55 (on corporate names) into the new chapter, incorporates the gist of G.S. 55-15-06 (on names of foreign corporations authorized to transact business in this State), and makes changes to accommodate the other types of business entities, and Part IV contains conforming amendments required as a result of Part III. Part V (Consolidation of Registered Office and Registered Agent Provisions) provides similar treatment for Article 5 of Chapter 55 (registered office and registered agent), and Part VI similarly contains conforming amendments. Part VII contains applicability and effective date provisions and authorization to transfer drafters' comments from the recodified sections of Chapter 55 to the equivalent sections in the new Chapter 55D.

Specific Comments

Part I (Consolidation of Filing Requirements).

Section 1. This section creates a new Chapter 55D of the General Statutes with one article, Article 1. Article 1 contains a definitions section and rulemaking authority for the Secretary of State. The terms in the definitions section are defined with reference to the definitions in Chapters 55, 55A, 57C, and 59.

Sections 2 and 3. Section 2 adds a second article to Chapter 55D, and Section 3 recodifies G.S. 55-1-22.1, 55-1-22.2, 55-1-23, 55-1-24, 55-1-25, 55-1-26, 55-1-27, 55-1-29, and most of G.S. 55-1-20 into this new article.

Section 4. This section amends the text of the recodified sections to include references to nonprofit corporations, limited liability companies, limited partnerships, and registered limited liability partnerships and conforming amendments and to make stylistic changes. Please note that the text being amended is the current text of Chapter 55 of the General Statutes. Other amendments include:

55D-10. The format of this section has been updated. No reference was added in new subdivision (b)(4) to certificates of existence for foreign limited partnerships because foreign limited partnerships are not required to submit these documents to be authorized to transact business in this State (instead, they include a different certification in their application for authorization). New subdivision (b)(3) is amended to include a specific reference to electronic filing. New subdivision (b)(8) removes the current requirement for submitting at least one copy along with the document to be filed, because the Department of the Secretary of State itself automatically generates a copy and no longer needs to have copies submitted.

55D-11. This section was rewritten at the request of the Department of the Secretary of State to clarify that a request for an expedited filing must be made when the document is filed.

55D-12. To parallel the statutory treatment for expedited filings, the fee for advisory reviews is being moved from the substantive fee sections in Chapters 55, 55A, 57C, and 59 and inserted into this section. This amendment is a recodification of an existing fee, not a new fee, and the fee amount is unchanged.

55D-16. The Senate Judiciary I Committee amended this section (on appeals from the Secretary of State's refusal to file a document) to clarify that no service of process is needed other than that described in this section, and that the appeal is before a judge of the superior court and not the clerk of court.

55D-17. A specific reference to certifications in electronic form is included.

Part II (Miscellaneous and Conforming Amendments).

Section 5. This section amends the definition of "entity" in Chapters 55 and 55A of the General Statutes to make it clear that "entity" includes foreign business entities.

Section 5A. This section makes conforming amendments to the appeal procedures set out in G.S. 55-14-23, 55-15-32, 55A-14-23, and 55A-15-32, incorporating the amendments to G.S. 55D-16 made by the Senate Judiciary I Committee.

Section 6. This section rewrites G.S. 55-1-20, as amended in Part I, to contain a cross reference to the new Chapter 55D and to restate the requirements for execution of corporate documents. The term "chairman" is made gender neutral. The section also repeals the advisory review fee in G.S. 55-1-22, which in Part I was inserted into new G.S. 55D-12, and makes a conforming amendment to G.S. 55-8-07.

Sections 7, 8, 9, and 10. These sections make essentially the same amendments to G.S. 55A-1-20, 55A-1-22, 57C-1-20, 57C-1-22, 59-73.7, 59-204, 59-206, and 59-1106 that subsections (a) and (b) of Section 6 make to the equivalent sections of Chapter 55. In addition, these sections repeal the sections of Chapter 55A and 57C, Article 5 of Chapter 59, and those subsections of G.S. 59-73.7 that are essentially duplicates of the sections in new Chapter 55D.

The amendment to G.S. 57C-1-20 in Section 8(a) eliminates current G.S. 57C-1-20(f)(2) as unnecessary.

Section 9 recodifies G.S. 59-73.7 as G.S. 59-35.1, which is a more logical location. The Senate Judiciary I Committee amended subsection (c) to clarify that the Secretary of State collects the fee for service of process only when the Secretary is served as a partnership's registered agent.

Section 10(a) makes a conforming amendment to G.S. 59-73.6.

Section 11. This section makes a conforming change to G.S. 55B-3.

Part III (Consolidation of Provisions Relating to Names).

Sections 12, 13, and 14. Section 12 amends the title of Chapter 55D to include a reference to names. Section 13 adds a new Article 3 to Chapter 55D. Section 14 recodifies Article 4 of Chapter 55 of the General Statutes into this new article.

Section 15. This section amends the text of the recodified name provisions to include references to nonprofit corporations, limited liability companies, limited partnerships, and registered limited liability partnerships, as appropriate, and to make conforming amendments and stylistic changes. Please note that, as in Part I, the text being amended is the current text of Chapter 55 of the General Statutes. Please note also:

55D-20. This section is derived from G.S. 55-4-01 (a), (e), and (f); G.S. 57C-2-30(a); G.S. 59-103 (a) and (b); and G.S. 59-84.3. The section changes the law to permit a limited partnership to use abbreviations in its name instead of requiring that "limited partnership" be spelled out in full.

55D-21. This section contains the remainder of G.S. 55-4-01, with conforming amendments. These provisions currently apply to domestic corporations, nonprofit corporations, limited liability companies, and limited partnerships, and to those foreign corporations, nonprofit corporations, limited liability companies, and limited partnerships that are authorized to transact business or conduct affairs in this State. This section changes current law in two respects. First, it extends the application of the provisions in this section to registered limited liability partnerships on the grounds that the same policy considerations for unique names should also apply to them. Second, it standardizes the time periods after which a previously used entity name becomes available after an entity is dissolved nonjudicially; the time period in the case of judicial dissolutions is completely new.

55D-22. This section is derived from G.S. 55-15-06 (a) and (e); G.S. 55A-15-06 (a) and (d); and G.S. 57C-7-06 (a) and (d). As is the case of the preceding section, these provisions are made applicable to foreign registered limited liability partnerships; they also explicitly reference foreign limited partnerships.

55D-23. This section extends the ability to reserve a name to registered limited liability partnerships. There appears to be no policy reason why such entities should not be able to reserve a name on the same conditions applicable to corporations, limited liability companies, and limited partnerships.

55D-24. This section extends to foreign limited partnerships and foreign limited liability partnerships the ability to register their names in this State. The section changes current law in one additional respect: it allows an entity that has registered a name to transfer that name to an

already-existing domestic entity or to a foreign entity that is already authorized to transact business or conduct affairs in this State.

Part IV (Conforming Amendments to Part III).

Sections 16 and 17. These sections make conforming citation changes, replacing citations to Chapter 55 with citations to Chapter 55D.

Section 18. Because the content of G.S. 55-15-06 is included in the new Chapter, it is repealed as no longer needed.

Section 19. This section amends G.S. 55-14-33(b) to add a cross reference to the new provision for name availability after judicial dissolution.

Sections 20, 21, 22, 23, and 24. Sections 20, 21, 22, and 24 make essentially the same amendments to Chapter 55A of the General Statutes as Sections 16 through 19 make to Chapter 55. Section 23 repeals Article 4 of Chapter 55A as no longer necessary (its provisions essentially duplicate new Article 3 of Chapter 55D).

Section 25. This section makes a conforming amendment to G.S. 55B-5, replacing citations to Chapter 55 with citations to Chapter 55D.

Section 26. This section makes a conforming amendment to G.S. 57C-2-01(c), dealing with names of professional limited liability companies.

Sections 27 through 31. These sections make essentially the same amendments to Chapter 57C of the General Statutes as Sections 20 through 24 make to Chapter 55A.

Section 32. This section rewrites G.S. 59-103 to replace material that is no longer necessary with a cross reference to Chapter 55D.

Section 33. This section repeals G.S. 59-104 as no longer necessary.

Section 34. This section rewrites G.S. 59-206 to delete material that is no longer necessary.

Section 35. This section amends G.S. 59-904 to replace the substantive requirements with a cross reference to Chapter 55D.

Section 36. This section amends G.S. 59-802 to add a cross reference to the new provision for name availability after judicial dissolution.

Section 37. This section amends G.S. 59-1106 to make conforming amendments and to

add new fees for registering the name of a foreign limited partnership and for renewing that registration. The fees are the same amounts as in Chapter 55, 55A, and 57C.

Section 38. This section amends G.S. 59-35.1 (as recodified from G.S. 59-73.7 and amended in Part II) to add new fees for limited liability partnerships to reserve names and to register names. The fees are the same amounts as in Chapters 55, 55A, and 57C.

Sections 39 and 40. These sections amends G.S. 59-84.3 and G.S. 59-91 to replace material that is no longer needed with a cross reference to Chapter 55D.

Section 41. This section amends G.S. 59-62 to include a cross reference to the provisions for name availability after dissolution.

Part V (Consolidation of Registered Office and Registered Agent Provisions).

Sections 42, 43, and 44. Section 42 amends the title of Chapter 55D to include a reference to registered agents. Section 43 adds a new Article 4 to Chapter 55D. Section 44 recodifies Article 5 of Chapter 55 of the General Statutes into this new article.

Section 45. This section amends the text of the recodified registered office and registered agent provisions to include references to nonprofit corporations, limited liability companies, limited partnerships, and registered limited liability partnerships, as appropriate, and to make conforming amendments and stylistic changes. Please note that, as in Parts I and III, the text being amended is the current text of Chapter 55 of the General Statutes.

All the provisions in current Article 5 of Chapter 55 do not currently apply to limited liability partnerships and limited partnerships; this section standardized these provisions and makes them applicable for each type of entity. Specifically, please note:

55D-31. There is no special provision on changing a registered office or agent available for either type of partnership. Currently, the change appears to be made by filing amendments to other documents (e.g. an annual report).

55D-32. There is no equivalent for this provision (which allows a registered agent to file a statement of resignation) that currently applies to either type of partnership. In subsection (b), the address to which the Secretary of State must mail a copy of the filed statement of resignation is changed. Current G.S. 55-5-03 requires mailing to a corporation's principal office, but, at present, all entities covered by this section are not required to have a principal office.

55D-04. There appears to be no equivalent provision for this section applicable to limited liability partnerships that improperly fail to maintain a registered agent.

Part VI (Conforming Amendments to Registered Office and Registered Agent Provisions).

Section 46. This section makes a conforming amendment to § 55D-15, as enacted in Part I.

Section 47. This section replaces the current text of G.S. 55-5-01 and G.S. 55-15-07 with a cross reference to Chapter 55D. It repeals G.S. 55-15-08, 55-15-09, and 55-15-10 as no longer necessary. It also makes other citation updates to various sections in Chapter 55 and in G.S. 54B-20 and 54C-20.

Section 48. This section makes essentially the same amendments to Chapter 55A that the preceding section made to Chapter 55. It also repeals G.S. 55A-5-02, 55A-5-03, 55A-5-04, and 55A-5-05 as no longer necessary, and it recodifies G.S. 55A-5-02.1 (change of principal office form).

Section 49. This section makes essentially the same amendments to Chapter 57C that the preceding section made to Chapter 55A, except that there is no counterpart in Chapter 57C to G.S. 55A-5-02.1.

Section 50. This section makes conforming amendments to G.S. 59-105, 59-201, and 59-902.

Section 51. This section generally makes conforming amendments to G.S. 59-84.2 and G.S. 59-91 and amends G.S. 59-35.1 (as recodified from G.S. 59-73.7 and amended in Parts II and IV) to add fees for filings related to registered offices and agents. The fees are the same as those paid by corporations, nonprofit corporations, and limited liability companies.

Part VII (Effective Date, Applicability, and Other Provisions).

Section 52. This section authorizes the Revisor of Statutes to transfer the Official Comments and the North Carolina Comments to recodified portions of Chapter 55 as historical annotations.

Section 53. This section makes the bill effective October 1, 2001, and effective for documents submitted for filing on or after that date.

SENATE BILL 842:
Business Entity Changes.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Clodfelter
Date:	July 24, 2001	**Summary by:**	Esther Manheimer*
Version:	S842-CSSK-47[v.7]		Committee Co-Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 842 would make similar changes to the NC Business Corporation Act, the NC Nonprofit Corporation Act, the NC Limited Liability Corporation Act, and the laws governing the various forms of partnerships. These changes include conforming changes for corporations to operate under the Uniform Electronic Transaction Act, amendments to the law to allow majority shareholder action without meeting for closely held corporations, amendments involving the formation and organization of limited liability companies, creation of a limited liability limited partnership, amendments allowing corporations to convert to non-corporation business entities, amendments permitting NC business entities to convert to foreign entities, standardizing business entity definitions, standardizing service of process on the Secretary of State, and changes to the tax law to conform tax treatment for various business entities.***

CURRENT LAW: Corporations are now only allowed to transact corporate business requiring shareholder approval without a meeting when all shareholders agree. Corporate law does not recognize electronic transmissions for meeting notices and consents to action as permitted under the Uniform Electronic Transactions Act. General partners of limited partnerships are liable for actions against the partnership. Business corporations are not permitted to convert to non-corporate business entities, although all non-corporate business entities may convert to any non-corporate form. Foreign corporations and other business entities are allowed to merge and convert to NC business entities, but NC business entities are not permitted to merge or convert to foreign business entities.

BILL ANALYSIS:

Corporation Changes – The bill would amend the law to permit nonpublic business corporations by their articles of incorporation or bylaws to allow shareholders to act without a meeting by majority written vote. Current law would require unanimous agreement. This process would not be permitted for the election of the board of directors at the annual meeting or other actions to protect cumulative voting rights. The bill also authorizes corporations to give meeting notice and take consents to actions electronically in accordance with the Uniform Electronic Transactions Act.

Limit Liability Company Changes – The bill clarifies the distinction between forming an LLC and organizing an LLC. Organization requires at least one member. The bill also permits an LLC member to have no ownership rights in the company. It also sets out the rights and obligations of other persons managing the LLC other than a manager. The bill provides that an LLC will be treated for State tax purposes as it is treated under federal tax law.

Partnership Changes – The bill makes changes to general partnership and limited partnership laws. It permits the creation of a limited liability limited partnership that limits the liability of the general partners of the limited partnership. The bill modernizes the partnership withdrawal provisions to include situations where an LLC and other business entities are general partners and allows an estate to distribute a general partner's share without triggering withdrawal as permitted in the partnership agreement. The bill also provides that partnerships will be treated for State tax purposes as it is treated under federal law.

Conversions and Mergers – The bill will permit corporations to convert to non-corporate business entities. It will also permit NC business entities, including corporations, LLC's, and partnerships to convert to foreign (out-of-state) business entities. It also requires that a person who has liability protection under one business form to have to consent to liability arising from the conversion to another business form.

Office Address – The bill requires the various business entities to list the address of it principal office when the formative documents are filed with the Secretary of State.

Miscellaneous Provision - The bill conforms the definition of business entities to be the same for the various business entities permitted under law. The bill also standardized the provisions for service of process on the business entity through service on the Secretary of State. Also the bill provides that where the business entity authority to do business has been suspended by the Secretary of State for failing to report or pay taxes, when the right to operate is reinstated, the reinstatement is retroactive to the date of suspension.

Contingent Conforming Changes – In order to reconcile the differences between this bill and HB 385, this bill makes several technical amendments to HB 385 (Consolidate Business Provisions). HB 385 is before this committee for concurrence only, and, therefore, cannot be amended directly. This Part becomes effective only if House Bill 385 becomes law.

EFFECTIVE DATE: Most of the provisions of the bill become effective January 1, 2002.

*O. Walker Reagan, Counsel to Senate Judiciary I, substantially contributd to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 842

Judiciary I Committee Substitute Adopted 5/24/01
Third Edition Engrossed 6/27/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S842-PCS9316-SK-47

Short Title: Business Entity Changes. (Public)

Sponsors:

Referred to:

April 4, 2001

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE NORTH CAROLINA BUSINESS CORPORATION ACT, THE NORTH CAROLINA NONPROFIT CORPORATION ACT, THE NORTH CAROLINA LIMITED LIABILITY COMPANY ACT, AND THE LAWS GOVERNING PARTNERSHIPS.

The General Assembly of North Carolina enacts:

PART I. AMENDMENTS TO THE NORTH CAROLINA BUSINESS CORPORATION ACT.

SECTION 1. G.S. 55-1-20(f) reads as rewritten:

"(f) A document submitted by a domestic or foreign corporation or nonprofit corporation must be executed:

(1) By the chairman of the board of directors, by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

A document submitted by an unincorporated entity must be executed by a person authorized to execute documents (i) pursuant to G.S. 57C-1-20(f) if the unincorporated entity is a domestic or foreign limited liability company, (ii) pursuant to G.S. 59-204 if the unincorporated entity is a domestic or foreign limited partnership, or (iii) pursuant to G.S. ~~59-73.7(a)(4)~~ 59-35.1(a)(4) if the unincorporated entity is any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State."

SECTION 2. G.S. 55-1-22(a) is amended by adding the following new subdivision to read:

"(12a) Articles of conversion (other than articles of conversion included as part of another document) 50.00."

SECTION 3. G.S. 55-1-40 is amended by adding the following new subdivisions, to be placed by the Revisor of Statutes in the appropriate order, to read:

"**§ 55-1-40. Chapter definitions.**

In this Chapter unless otherwise specifically provided:

...

(2a) 'Business entity,' as used in G.S. 55-11-10 and Article 11A of this Chapter, means a domestic corporation (including a professional corporation as defined in G.S. 55B-2), a foreign corporation, a domestic or foreign nonprofit corporation, a domestic or foreign limited liability company, a domestic or foreign limited partnership as defined in G.S. 59-102, a registered limited liability partnership or foreign limited liability partnership as defined in G.S. 59-32, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State.

...

(6b) 'Domestic limited liability company' has the same meaning as in G.S. 57C-1-03.

(6c) 'Domestic limited partnership' has the same meaning as in G.S. 59-102.

(6d) 'Domestic nonprofit corporation' means a corporation as defined in G.S. 55A-1-40.

(8) 'Electronic' has the same meaning as in G.S. 66-312.

(8a) 'Electronic record' has the same meaning as in G.S. 66-312.

(8b) 'Electronic signature' has the same meaning as in G.S. 66-312.

...

(10a) 'Foreign limited liability company' has the same meaning as in G.S. 57C-1-03.

(10b) 'Foreign limited partnership' has the same meaning as in G.S. 59-102.

(10c) 'Foreign nonprofit corporation' means a foreign corporation as defined in G.S. 55A-1-40.

...."

SECTION 4. G.S. 55-1-40(17) reads as rewritten:

"(17) 'Principal office' means the office (in or out of this State) ~~so designated in the annual report~~ where the principal executive offices of a domestic or foreign corporation are ~~located.~~located, as designated in its most recent annual report filed with the Secretary of State or, in the case of a domestic or foreign corporation that has not yet filed an annual report, in its articles of incorporation or application for a certificate of authority, respectively."

SECTION 5. G.S. 55-1-40(24a) reads as rewritten:

"(24a) 'Unincorporated entity' means a domestic or foreign limited liability ~~company~~ company, ~~as defined in G.S. 57C-1-03,~~ a domestic or foreign

limited ~~partnership~~ partnership, ~~as defined in G.S. 59-102,~~ a registered limited liability partnership or foreign limited liability partnership as defined in G.S. 59-32, or any other partnership as defined in G.S. 59-36, whether or not formed under the laws of this ~~State, including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this~~ State."

SECTION 6. G.S. 55-1-41 reads as rewritten:

"**§ 55-1-41. Notice.**

(a) Notice under this Chapter shall be in writing unless oral notice is authorized in the corporation's articles of incorporation or bylaws and written notice is not specifically required by this Chapter.

(b) Notice may be communicated in person; by ~~telephone, telegraph, teletype, or other form of wire or wireless communication, or by facsimile transmission;~~ electronic means; or by mail or private carrier. If these forms of personal notice are impracticable as to one or more persons, notice may be communicated to such persons by publishing notice in a newspaper in the county wherein the corporation has its principal place of business in the State, or if it has no principal place of business in the State, the county wherein it has its registered office; or by radio, television, or other form of public broadcast communication.

(c) Written notice by a domestic or foreign corporation to its shareholder is effective when deposited in the United States mail with postage thereon prepaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders. To the extent the corporation pursuant to G.S. 55-1-50 and the shareholder have agreed, notice by a domestic corporation to its shareholder in the form of an electronic record sent by electronic means is effective when it is sent as provided in G.S. 66-325. A shareholder may terminate any such agreement at any time on a prospective basis effective upon written notice of termination to the corporation or upon such later date as may be specified in the notice.

(d) Written notice to a domestic or foreign corporation (authorized to transact business in this State) may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report on file in the office of the Secretary of State or, in the case of a domestic or foreign corporation that has not yet ~~delivered~~ filed an annual report, in its articles of incorporation or application for a certificate of ~~authority.~~authority, respectively.

(e) Except as provided in subsection (c), written notice is effective at the earliest of the following:

(1) When received;

(2) Five days after its deposit in the United States mail, as evidenced by the postmark or otherwise, if mailed with at least first-class postage thereon prepaid and correctly addressed;

(3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

In the case of notice in the form of an electronic record sent by electronic means, the time of receipt shall be determined as provided in G.S. 66-325.

(f) Oral notice is effective when actually communicated to the person entitled thereto.

(g) If this Chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this Chapter, those requirements govern."

SECTION 7. Article 1 of Chapter 55 of the General Statutes is amended by adding a new Part to read:

"Part 5. Miscellaneous.

"**§ 55-1-50. Electronic transactions.**

For purposes of applying Article 40 of Chapter 66 of the General Statutes to transactions under this Chapter, a corporation may agree to conduct a transaction by electronic means through provision in its articles of incorporation or bylaws or by action of its board of directors."

SECTION 8. G.S. 55-2-02(a) reads as rewritten:

"(a) The articles of incorporation must set forth:

(1) A corporate name for the corporation that satisfies the requirements of G.S. 55-4-01;

(2) The number of shares the corporation is authorized to issue and any other information required by G.S. 55-6-01;

(3) The street address, and the mailing address if different from the street address, of the corporation's initial registered office, the county in which the initial registered office is located, and the name of the corporation's initial registered agent at that address; ~~and~~

(3a) The street address, and the mailing address if different from the street address, of the corporation's principal office, if any, and the county in which the principal office, if any, is located; and

(4) The name and address of each incorporator."

SECTION 9. G.S. 55-2-02 is amended by adding the following new subsection to read:

"(d) Articles of incorporation filed to effect the conversion of another business entity pursuant to Article 11A of this Chapter shall also include the statements required by G.S. 55-11A-03(a)."

SECTION 10. G.S. 55-2-03(a) reads as rewritten:

"(a) ~~Unless a delayed effective date is specified, the corporate~~ Corporate existence begins when the articles of incorporation ~~are filed.~~ become effective."

SECTION 11. G.S. 55-7-04 reads as rewritten:

"**§ 55-7-04. Action without meeting.**

(a) Action required or permitted by this Chapter to be taken at a shareholders' meeting may be taken without a ~~meeting~~ meeting and without prior notice except as required by subsection (d) of this section, if the action is taken by all the shareholders entitled to vote on the ~~action.~~action or, subject to subsection (a1) of this section, if so provided in the articles of incorporation of a corporation that is not a public corporation at the time the action is taken, by shareholders having not less than the minimum number of votes that would be necessary to take the action at a meeting at which all shareholders entitled to vote were present and voted. The action must be evidenced by one or more written consents bearing the date of signature and signed by ~~all~~ the number of shareholders sufficient to take the action without a meeting, before or after such action, describing the action taken and delivered to the corporation for inclusion in the minutes or ~~filling~~ filing with the corporate records. To the extent the corporation has agreed pursuant to G.S. 55-1-50, a shareholder's consent to action taken without meeting may be in electronic form and delivered by electronic means.

(a1) Notwithstanding subsection (a) of this section, the following actions may be taken without a meeting only by all the shareholders entitled to vote on the action:

(1) If cumulative voting is not authorized, the election of directors at the annual meeting; or

(2) If cumulative voting is authorized, the election of directors and the removal of a director unless the entire board of directors is to be removed, and if G.S. 55-7-28(e) applies to the corporation, an amendment to deny or limit the right of shareholders to vote cumulatively and an amendment to the articles of incorporation or bylaws to decrease the number of directors.

(b) If not otherwise fixed under G.S. 55-7-03 or G.S. 55-7-07, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (a). No written consent shall be effective to evidence the action referred to therein unless, within 60 days after the earliest date appearing on a written consent delivered to the corporation in the manner required by this section, the corporation receives written consents signed by shareholders sufficient to take the action without a meeting.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

(d) ~~If this Chapter requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by unanimous consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the proposed action at least 10 days before the action is taken.~~ Unless the articles of incorporation otherwise provide, if shareholder approval is required by this Chapter for (i) an amendment to the articles of incorporation pursuant to Article 10 of this Chapter, (ii) a plan of merger or share exchange pursuant to Article 11 of this Chapter, (iii) a plan of conversion pursuant to Part 2 of Article 11A of this Chapter, (iv) the sale, lease,

exchange, or other disposition of all, or substantially all, of the corporation's property pursuant to Article 12 of this Chapter, or (v) a proposal for dissolution pursuant to Article 14 of this Chapter, and the approval is to be obtained through action without meeting, the corporation must give its shareholders, other than shareholders who consent to the action, written notice of the proposed action at least 10 days before the action is taken. The notice ~~must~~ shall contain or be accompanied by the same material that, under this Chapter, would have been required to be sent to ~~nonvoting~~ shareholders not entitled to vote on the action in a notice of meeting at which the proposed action would have been submitted to ~~the~~ shareholders for action.

(e) If action is taken without a meeting by fewer than all shareholders entitled to vote on the action, the corporation shall give written notice to all shareholders who have not consented to the action and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting with the same record date as the action taken without a meeting, within 10 days after the action is taken. The notice shall describe the action and indicate that the action has been taken without a meeting of shareholders. Failure to comply with the requirements of this subsection shall not invalidate any action taken that otherwise complies with this section."

SECTION 12. Article 7 of Chapter 55 of the General Statutes is amended by adding a new section to read:

"**§ 55-7-08. Attendance.**

To the extent authorized by a corporation's board of directors, a shareholder or the shareholder's proxy not physically present at a meeting of shareholders may attend the meeting by electronic or other means of remote communication that allow the shareholder or proxy (i) to read or to hear the meeting proceedings substantially concurrently as the proceedings occur, (ii) to be read or to be heard substantially concurrently as the shareholder or proxy communicates, and (iii) to vote on matters to which the shareholder or proxy is entitled to vote."

SECTION 13. G.S. 55-7-20(c) reads as rewritten:

"(c) The corporation shall make the shareholders' list available at the meeting, and any shareholder, personally or by or with his representative, is entitled to inspect the list at any time during the meeting or any adjournment. The corporation is not required to make the list available through electronic or other means of remote communication to a shareholder or proxy attending the meeting by remote communication pursuant to G.S. 55-7-08."

SECTION 14. G.S. 55-7-22(b) reads as rewritten:

"(b) A shareholder may appoint one or more proxies to vote or otherwise act for ~~him~~ the shareholder by signing an appointment form, either personally or by ~~his~~ the shareholder's attorney-in-fact. ~~A photocopy, telegram, cablegram, facsimile transmission, or equivalent reproduction of a writing appointing one or more proxies,~~ Without limiting G.S. 55-1-50, an appointment in the form of an electronic record that bears the shareholder's electronic signature and that may be directly reproduced in paper form by an automated process shall be deemed a valid appointment

form within the meaning of this section. In addition, ~~if and to the extent permitted by the corporation,~~ a public corporation may permit a shareholder ~~may~~ to appoint one or more proxies ~~(i) by an electronic mail message or other form of electronic, wire, or wireless communication that provides a written statement appearing to have been sent by the shareholder, or (ii) in the case of a public corporation,~~ by any kind of ~~electronic or~~ telephonic transmission, even if not accompanied by written communication, under circumstances or together with information from which the corporation can reasonably assume that the appointment was made or authorized by the shareholder."

SECTION 15. G.S. 55-8-21(a) reads as rewritten:

"(a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this Chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents signed by each director before or after such action, describing the action taken, and included in the minutes or filed with the corporate records. To the extent the corporation has agreed pursuant to G.S. 55-1-50, a director's consent to action taken without meeting may be in electronic form and delivered by electronic means."

SECTION 16. G.S. 55-9-01(b)(1) reads as rewritten:

"(1) 'Business combination' includes any ~~merger or consolidation~~ merger, consolidation, or conversion of a corporation with or into any other corporation or any unincorporated entity, or the sale or lease of all or any substantial part of the corporation's assets to, or any payment, sale or lease to the corporation or any subsidiary thereof in exchange for securities of the corporation of any assets (except assets having an aggregate fair market value of less than five million dollars ($5,000,000)) of any other entity."

SECTION 17. Chapter 55 of the General Statutes is amended by adding a new Article to read:

"Article 11A.

"Conversions.

"Part 1. Conversion to Corporation.

"§ 55-11A-01. Conversion.

A business entity, other than a domestic corporation, may convert to a domestic corporation if:

(1) The conversion is permitted by the laws of the state or country governing the organization and internal affairs of the converting business entity; and

(2) The converting business entity complies with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section.

"§ 55-11A-02. Plan of conversion.

(a) The converting business entity shall approve a written plan of conversion containing:

(1) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the resulting domestic corporation into which the converting business entity shall convert;

(3) The terms and conditions of the conversion; and

(4) The manner and basis for converting the interests in the converting business entity into shares, obligations, or other securities of the resulting domestic corporation or into cash or other property in whole or in part.

The plan of conversion may contain other provisions relating to the conversion.

(b) The plan of conversion shall be approved in accordance with the laws of the state or country governing the organization and internal affairs of the converting business entity.

(c) After a plan of conversion has been approved as provided in subsection (b) of this section, but before articles of incorporation for the resulting domestic corporation become effective, the plan of conversion may be amended or abandoned to the extent permitted by the laws that govern the organization and internal affairs of the converting business entity.

"**§ 55-11A-03. Filing of articles of incorporation by converting entity.**

(a) After a plan of conversion has been approved by the converting business entity as provided in G.S. 55-11A-02, the converting business entity shall deliver articles of incorporation to the Secretary of State for filing. In addition to the matters required or permitted by G.S. 55-2-02, the articles of incorporation shall contain articles of conversion stating:

(1) That the corporation is being formed pursuant to a conversion of a business entity;

(2) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs; and

(3) That a plan of conversion has been approved by the converting business entity as required by law.

(b) If the plan of conversion is abandoned after the articles of incorporation have been filed with the Secretary of State but before the articles of incorporation become effective, the converting business entity shall deliver to the Secretary of State for filing prior to the time the articles of incorporation become effective an amendment to the articles of incorporation withdrawing the articles of incorporation.

(c) The conversion takes effect when the articles of incorporation become effective.

(d) Certificates of conversion shall also be registered as provided in G.S. 47-18.1.

"**§ 55-11A-04. Effects of conversion.**

When the conversion takes effect:

(1) The converting business entity ceases its prior form of organization and continues in existence as the resulting domestic corporation;

(2) The title to all real estate and other property owned by the converting business entity continues vested in the resulting domestic corporation without reversion or impairment;

(3) All liabilities of the converting business entity continue as liabilities of the resulting domestic corporation;

(4) A proceeding pending by or against the converting business entity may be continued as if the conversion did not occur; and

(5) The interests in the converting business entity that are to be converted into shares, obligations, or other securities of the resulting domestic corporation or into the right to receive cash or other property are thereupon so converted, and the former holders of interests in the converting business entity are entitled only to the rights provided in the plan of conversion.

The conversion shall not affect the liability or absence of liability of any holder of an interest in the converting business entity for any acts, omissions, or obligations of the converting business entity made or incurred prior to the effectiveness of the conversion. The cessation of the existence of the converting business entity in its prior form of organization in the conversion shall not constitute a dissolution or termination of the converting business entity.

"Part 2. Conversion of Corporation.

"**§ 55-11A-10. Conversion.**

A domestic corporation may convert to a different business entity if:

(1) The conversion is permitted by the laws of the state or country governing the organization and internal affairs of such other business entity; and

(2) The converting domestic corporation complies with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section.

"**§ 55-11A-11. Plan of conversion.**

(a) The converting domestic corporation shall approve a written plan of conversion containing:

(1) The name of the converting domestic corporation;

(2) The name of the resulting business entity into which the domestic corporation shall convert, its type of business entity, and the state or country whose laws govern its organization and internal affairs;

(3) The terms and conditions of the conversion; and

(4) The manner and basis for converting the shares of the domestic corporation into interests, obligations, or securities of the resulting business entity or into cash or other property in whole or in part.

The plan of conversion may contain other provisions relating to the conversion.

(b) For a plan of conversion to be approved:

(1) The board of directors shall recommend the plan of conversion to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation, in which event the board of directors shall communicate the basis for its lack of a recommendation to the shareholders with the plan; and

(2) The shareholders entitled to vote shall approve the plan.

(c) The board of directors may condition its submission of the proposed conversion on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with G.S. 55-7-05. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the plan of conversion and contain or be accompanied by a copy of the plan.

(e) Unless this Chapter, the articles of incorporation, a bylaw adopted by the shareholders or the board of directors, acting pursuant to subsection (c) of this section, require a greater vote or a vote by voting groups, the plan of conversion to be authorized shall be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group and, for the purpose of Article 9 of this Chapter or any provision in the articles of incorporation or bylaws adopted prior to January 1, 2002, a conversion shall be deemed to be included within the term 'merger'. If any shareholder of the converting domestic corporation has or will have personal liability for any existing or future obligation of the resulting business entity solely as a result of holding an interest in the resulting business entity, then in addition to the requirements of the preceding sentence, approval of the plan of conversion by the domestic corporation shall require the affirmative vote or written consent of that shareholder.

(f) Separate voting by voting groups is required on a plan of conversion if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would require action by one or more separate voting groups on the proposed amendment under G.S. 55-10-04, except where the consideration to be received in exchange for the shares of that group consists solely of cash.

(g) After a plan of conversion has been approved by a domestic corporation but before the articles of conversion become effective, the plan of conversion (i) may be amended as provided in the plan of conversion, or (ii) may be abandoned, subject to any contractual rights, as provided in the plan of conversion or, if there is no such provision, as determined by the board of directors without further shareholder action.

"**§ 55-11A-12. Articles of conversion.**

(a) After a plan of conversion has been approved by the converting domestic corporation as provided in G.S. 55-11A-11, the converting domestic corporation shall deliver articles of conversion to the Secretary of State for filing. The articles of conversion shall state:

(1) The name of the converting domestic corporation;

(2) The name of the resulting business entity, its type of business entity, the state or country whose laws govern its organization and internal affairs, and, if the resulting business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address; and

(3) That a plan of conversion has been approved by the domestic corporation as required by law.

If the domestic corporation is converting to a business entity whose formation or whose status as a registered limited liability partnership, as defined in G.S. 59-32, or limited liability limited partnership, as defined in G.S. 59-102, requires the filing of a document with the Secretary of State, then the articles of conversion shall be included as part of that document instead of separately filing the articles of conversion.

If the plan of conversion is abandoned after the articles of conversion have been filed with the Secretary of State but before the articles of conversion become effective, the converting domestic corporation shall deliver to the Secretary of State for filing prior to the time the articles of conversion become effective an amendment to the articles of conversion withdrawing the articles of conversion.

(b) The conversion takes effect when the articles of conversion become effective.

(c) Certificates of conversion shall also be registered as provided in G.S. 47-18.1.

"**§ 55-11A-13. Effects of conversion.**

(a) When the conversion takes effect:

(1) The converting domestic corporation ceases its prior form of organization and continues in existence as the resulting business entity;

(2) The title to all real estate and other property owned by the converting domestic corporation continues vested in the resulting business entity without reversion or impairment;

(3) All liabilities of the converting domestic corporation continue as liabilities of the resulting business entity;

(4) A proceeding pending by or against the converting domestic corporation may be continued as if the conversion did not occur;

(5) The shares in the converting domestic corporation that are to be converted into interests, obligations, or securities of the resulting business entity or into the right to receive cash or other property are thereupon so converted, and the former shareholders of the converting domestic corporation are entitled only to the rights provided in the plan

of conversion or any rights they may have under Article 13 of this Chapter; and

(6) The resulting business entity is deemed to agree that it will promptly pay to the dissenting former shareholders of the converting domestic corporation the amount, if any, to which they are entitled under Article 13 of this Chapter and otherwise to comply with the requirements of Article 13 as if it were a domestic corporation.

The conversion shall not affect the liability or absence of liability of any shareholder of the converting domestic corporation for any acts, omissions, or obligations of the converting domestic corporation made or incurred prior to the effectiveness of the conversion. The cessation of the existence of the converting domestic corporation in its form of organization as a domestic corporation in the conversion shall not constitute a dissolution or termination of the converting domestic corporation.

(b) If the resulting business entity is not a domestic limited liability company or a domestic limited partnership, when the conversion takes effect the resulting business entity is deemed:

(1) To agree that it may be served with process in this State for enforcement of (i) any obligation of the converting domestic corporation, (ii) the rights of dissenting shareholders of the converting domestic corporation under Article 13 of this Chapter, and (iii) any obligation of the resulting business entity arising from the conversion; and

(2) To have appointed the Secretary of State as its agent for service of process in any proceeding described in subdivision (1) of this subsection. 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 the process and the fee required by G.S. 55-1-22(b). Upon receipt of service of process on behalf of a resulting business 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 resulting business entity. If the resulting business entity is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the resulting business entity is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 55-11A-12(a)(2)."

SECTION 18. G.S. 55-11-07(a) reads as rewritten:

"(a) One or more foreign corporations may merge or enter into a share exchange with one or more domestic corporations if:

(1) In a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(2) In a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;

(3) The foreign corporation complies with G.S. 55-11-05 if it is the surviving corporation of the merger or acquiring corporation of the share ~~exchange;~~ exchange and, if the foreign corporation is not authorized to transact business in this State, includes in the articles of merger or articles of share exchange filed pursuant to G.S. 55-11-05 a designation of the foreign corporation's mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address; and

(4) Each domestic corporation complies with the applicable provisions of G.S. 55-11-01 through G.S. 55-11-04 and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with G.S. 55-11-05."

SECTION 19. G.S. 55-11-07(b) reads as rewritten:

"(b) Upon the merger or share exchange taking effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange is deemed:

(1) To appoint the Secretary of State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange; and

(2) To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under Article 13.

Service on the Secretary of State of any process authorized by this subsection 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 the process and the fee required by G.S. 55-1-22(b). Upon receipt of service of process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the foreign corporation. If the foreign corporation is authorized to transact business in this State, the address for mailing shall be its principal office or, if there is no mailing address for the principal office on file, its registered office. If the foreign corporation is

not authorized to transact business in this State, the address for mailing shall be the mailing address designated pursuant to subdivision (3) of subsection (a) of this section."

SECTION 20. G.S. 55-11-09(a) reads as rewritten:

"(a) One or more domestic or foreign nonprofit corporations may merge with one or more domestic corporations if:

(1) Each domestic nonprofit corporation complies with the applicable provisions of G.S. 55A-11-01 through G.S. 55A-11-03;

(2) In a merger involving one or more foreign nonprofit corporations, the merger is permitted by law of the state or country under whose law each foreign nonprofit corporation is incorporated and each foreign nonprofit corporation complies with that law in effecting the merger;

(3) The domestic or foreign nonprofit corporation complies with G.S. 55-11-05 if it is the surviving ~~corporation;~~ corporation and, in the case of a foreign nonprofit corporation not authorized to conduct affairs in this State, includes in the articles of merger filed pursuant to G.S. 55-11-05 a designation of the foreign nonprofit corporation's mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address; and

(4) Each domestic corporation complies with the applicable provisions of G.S. 55-11-01, 55-11-03, and 55-11-04 and, if it is the surviving corporation, with G.S. 55-11-05."

SECTION 21. G.S. 55-11-09(b) reads as rewritten:

"(b) Upon the merger taking effect, if ~~the domestic or~~ a foreign nonprofit corporation is the surviving corporation, then it is deemed:

(1) To appoint the Secretary of State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger; and

(2) To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under Article 13 of this Chapter.

Service on the Secretary of State of any process authorized by this subsection 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 the process and the fee required by G.S. 55-1-22(b). Upon receipt of service of process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the foreign nonprofit corporation. If the foreign nonprofit corporation is authorized to conduct affairs in this State, the address for mailing shall be its principal office as defined in G.S. 55A-1-40(20), or, if there is no mailing address for the principal office on file, its registered office. If the foreign nonprofit corporation is not authorized to

conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to subdivision (3) of subsection (a) of this section."

SECTION 22. G.S. 55-11-10(a) is repealed.

SECTION 23. G.S. 55-11-10(c) reads as rewritten:

"(c) Each merging domestic corporation and each other merging business entity shall approve a written plan of merger containing:

(1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the merging business entity that shall survive the merger;

(3) The terms and conditions of the merger;

(4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part; and

(5) If the surviving business entity is a domestic corporation, any amendments to its articles of incorporation that are to be made in connection with the merger.

The plan of merger may contain other provisions relating to the merger.

In the case of a domestic corporation, approval of the plan of merger requires that the plan of merger be adopted by its board of directors as provided in G.S. 55-11-03 and, unless shareholder approval is not required under subsection (g) of G.S. 55-11-03, be approved by its shareholders as provided in G.S. 55-11-03. If any shareholder of a merging domestic corporation has or will have personal liability for any existing or future obligation of the surviving business entity solely as a result of holding an interest in the surviving business entity, then in addition to the requirements of the preceding sentence, approval of the plan of merger by the domestic corporation shall require the affirmative vote or written consent of that shareholder. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of that merging business entity.

After a plan of merger has been approved by a domestic corporation but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger or, if there is no such provision, as determined by the board of directors without further shareholder action."

SECTION 24. G.S. 55-11-10(e1)(2) reads as rewritten:

"(2) To have appointed the Secretary of State as its agent for service of process in any such proceeding. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of ~~State~~ State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of such 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 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. If the surviving business entity is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the surviving business entity is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to subdivision (3) of subsection (d) of this section."

SECTION 25. G.S. 55-11-10(d) reads as rewritten:

"(d) After a plan of merger has been approved by each merging domestic corporation and each other merging business entity as provided in subsection (c) of this section, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

(1) The plan of merger;

(2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

(3) The name ~~and address~~ of the surviving business ~~entity;~~ entity and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address;

(4) A statement that the plan of merger has been approved by each merging business entity in the manner required by law; and

(5) The effective date and time of merger if it is not to be effective at the time of filing of the articles of merger.

If the plan of merger is amended or abandoned after the articles of merger have been filed but before the articles of merger become effective, the surviving business entity ~~promptly~~ shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger.

Certificates of merger shall also be registered as provided in G.S. 47-18.1."

SECTION 26. G.S. 55-13-02(a) is amended by adding the following new subdivision to read:

"(2a) Consummation of a plan of conversion pursuant to Part 2 of Article 11A of this Chapter;".

SECTION 27. G.S. 55-13-22(a) reads as rewritten:

"(a) If proposed corporate action creating dissenters' rights under G.S. 55-13-02 is ~~authorized~~ approved at a shareholders' meeting, the corporation shall mail by registered or certified mail, return receipt requested, a written dissenters' notice to all shareholders who satisfied the requirements of G.S. 55-13-21. If proposed corporate action creating dissenters' rights under G.S. 55-13-02 is approved by shareholder action without meeting pursuant to G.S. 55-7-04, the corporation shall mail by registered or certified mail, return receipt requested, a written dissenters' notice to each shareholder entitled to assert dissenters' rights. A shareholder who consents to such action taken without meeting pursuant to G.S. 55-7-04 approving a proposed corporate action is not entitled to payment for the shareholder's shares under this Article with respect to that corporate action."

SECTION 27A. G.S. 55-15-03(a) reads as rewritten:

"(a) A foreign corporation 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 corporation or, if its name is unavailable for use in this State, a corporate name that satisfies the requirements of G.S. 55-15-06;

(2) The name of the state or country under whose law it is incorporated;

(3) Its date of incorporation and period of duration;

(4) The street address, and the mailing address if different from the street address, of its principal ~~office;~~ office, if any, and the county in which the principal office, if any, is located;

(5) The street address, and the mailing address if different from the street address, of its registered office in this State, the county in which the registered office is located, and the name of its registered agent at that office; and

(6) The names and usual business addresses of its current officers."

SECTION 28. G.S. 55-15-10(b) reads as rewritten:

"(b) Whenever a foreign corporation authorized to transact business in this State 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, or whenever its certificate of authority shall have been revoked under G.S. 55-15-31, 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 office,~~ authorized by the Secretary of State to accept service of process, 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 in this subsection, 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 foreign corporation under this subsection shall be effective for all purposes from and after the date of ~~such~~ the service on the Secretary of State."

SECTION 29. G.S. 55-15-20(b) reads as rewritten:

"(b) A foreign corporation authorized to transact business in this State may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application must set forth:

(1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(2) That it is not transacting business in this State and that it surrenders its authority to transact business in this State;

(3) That the corporation revokes the authority of its registered agent to accept service of process and consents that service of process in any action or proceeding based upon any cause of action arising in this State, or arising out of business transacted in this State, during the time the corporation was authorized to transact business in this State may thereafter be made on such corporation by service thereof on the Secretary of State;

(4) A mailing address to which the Secretary of State may mail a copy of any process served on ~~him~~ the Secretary of State under subdivision (3); and

(5) A commitment to ~~notify~~ file with the Secretary of State ~~in the future~~ a statement of any subsequent change in its mailing address."

SECTION 30. G.S. 55-15-20(c) reads as rewritten:

"(c) After the withdrawal of the foreign corporation is effective, service of process on the Secretary of State in accordance with subsection ~~(b)(3)~~(b) of this section ~~is service on the foreign corporation.~~ 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 the process and the fee required by G.S. 55-1-22(b). Upon receipt of ~~process,~~ process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the foreign corporation at the mailing address ~~set forth under~~ designated pursuant to subsection ~~(b).~~(b) of this section."

SECTION 31. G.S. 55-15-21 reads as rewritten:

"**§ 55-15-21. Withdrawal of foreign corporation by reason of a merger, consolidation, or conversion.**

(a) Whenever a foreign corporation authorized to transact business in this State ceases its separate existence as a result of a statutory merger or consolidation permitted by the laws of the state or country under which it was incorporated, or converts into

another entity as permitted by those laws, the surviving or resulting entity shall apply for a certificate of withdrawal for the foreign corporation by delivering to the Secretary of State for filing a copy of the articles of merger, consolidation, or conversion or a certificate reciting the facts of the merger, consolidation, or conversion, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under the laws of which such foreign corporation was incorporated. If the surviving or resulting entity is not authorized to transact business or conduct affairs in this State the articles or certificate must be accompanied by an application ~~which must set~~ that sets forth:

(1) The name of the foreign corporation authorized to transact business in this State, the type of entity and name of the surviving or resulting entity, and a statement that the surviving or resulting entity is not authorized to transact business or conduct affairs in this State;

(2) A statement that the surviving or resulting entity consents that service of process based upon any cause of action arising in this State, or arising out of business transacted in this State, during the time the foreign corporation was authorized to transact business in this State may thereafter be made by service thereof on the Secretary of State;

(3) A mailing address to which the Secretary of State may mail a copy of any process served on ~~him~~ the Secretary of State under subdivision (a)(2) of this section; and

(4) A commitment to ~~notify~~ file with the Secretary of State ~~in the future~~ a statement of any subsequent change in its mailing address.

(b) If the Secretary of State finds that the articles or certificate and the application for withdrawal, if required, conform to law the Secretary of State shall:

(1) Endorse on the articles or certificate and the application for withdrawal, if required, the word "filed" and the hour, day, month and year of the filing thereof;

(2) File the articles or certificate and the application, if required;

(3) Issue a certificate of withdrawal; and

(4) Send to the surviving or resulting entity or its representative the certificate of withdrawal, together with the exact or conformed copy of the application, if required, affixed thereto.

(c) After the withdrawal of the foreign corporation is effective, service of process on the Secretary of State in accordance with subsection (a) of this section 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 the process and the fee required by G.S. 55-1-22(b). Upon receipt of process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving or resulting entity at the mailing address designated pursuant to subsection (a) of this section."

PART II. AMENDMENTS TO THE NORTH CAROLINA NONPROFIT CORPORATION ACT.

SECTION 32. G.S. 55A-1-20(f) reads as rewritten:

"(f) A document submitted by a domestic or foreign corporation or business corporation shall be executed:

(1) By the presiding officer of the board of directors by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

A document submitted by an unincorporated entity must be executed by a person authorized to execute documents (i) pursuant to G.S. 57C-1-20(f) if the unincorporated entity is a domestic or foreign limited liability company, (ii) pursuant to G.S. 59-204 if the unincorporated entity is a domestic or foreign limited partnership, or (iii) pursuant to ~~G.S. 59-73.7(a)(4)~~ G.S. 59-35.1(a)(4) if the unincorporated entity is any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State."

SECTION 33. G.S. 55A-1-40(20) reads as rewritten:

"(20) 'Principal office' means the office (in or out of this State) so designated in the articles of incorporation, the Designation of Principal Office Address form, or in any subsequent Corporation's Statement of Change of Principal Office Address form filed with the Secretary of State where the principal offices of a domestic or foreign corporation are ~~located.~~ located, as most recently designated by the domestic or foreign corporation in its articles of incorporation, a Designation of Principal Office Address form, a Corporation's Statement of Change of Principal Office Address form, or in the case of a foreign corporation, its application for a certificate of authority."

SECTION 34. G.S. 55A-1-40 is amended by adding the following new subdivisions, to be placed by the Revisor of Statutes in the appropriate order, to read:

"**§ 55A-1-40. Chapter definitions.**

In this Chapter unless otherwise specifically provided:

...

(2a) 'Business corporation' or 'domestic business corporation' means a corporation as defined in G.S. 55-1-40.

...

(8a) 'Domestic limited liability company' has the same meaning as in G.S. 57C-1-03.

(8b) 'Domestic limited partnership' has the same meaning as in G.S. 59-102.

...

(10a) 'Foreign business corporation' means a foreign corporation as defined in G.S. 55-1-40.

...

(11a) 'Foreign limited liability company' has the same meaning as in G.S. 57C-1-03.

(11b) 'Foreign limited partnership' has the same meaning as in G.S. 59-102.

...."

SECTION 35. G.S. 55A-1-40(24a) reads as rewritten:

"(24a) 'Unincorporated entity' means a domestic or foreign limited liability ~~company as defined in G.S. 57C-1-03,~~ company, a domestic or foreign limited ~~partnership as defined in G.S. 59-102,~~ partnership, a registered limited liability partnership or foreign limited liability partnership as defined in G.S. 59-32, or any other partnership as defined in G.S. 59-36, whether or not formed under the laws of this ~~State, including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this State.~~State."

SECTION 36. G.S. 55A-11-06(a) reads as rewritten:

"(a) Except as provided in G.S. 55A-11-02, one or more foreign nonprofit corporations may merge with one or more domestic nonprofit corporations if:

(1) The merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(2) The foreign corporation complies with G.S. 55A-11-04 if it is the surviving corporation of the ~~merger;~~ merger and, if the foreign corporation is not authorized to conduct affairs in this State, includes in the articles of merger filed with the Secretary of State pursuant to G.S. 55A-11-04 a designation of the foreign corporation's mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address; and

(3) Each domestic nonprofit corporation complies with the applicable provisions of G.S. 55A-11-01 through G.S. 55A-11-03 and, if it is the surviving corporation of the merger, with G.S. 55A-11-04."

SECTION 37. G.S. 55A-11-06(b) reads as rewritten:

"(b) Upon the merger taking effect, if the surviving ~~corporation, if it does not have a registered agent in this State,~~ corporation is a foreign corporation, it shall be deemed to have appointed the Secretary of State as its ~~registered~~ agent for service of process in a proceeding to enforce any obligation of a domestic corporation party to the ~~merger, until such time as it appoints a registered agent in this State.~~merger. 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 the process and the fee required by G.S. 55A-1-

22(b). Upon receipt of service of process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the foreign corporation. If the foreign corporation is authorized to conduct affairs in this State, the address for mailing shall be its principal office or, if there is no mailing address for the principal office on file, its registered office. If the foreign corporation is not authorized to conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to subdivision (2) of subsection (a) of this section."

SECTION 38. G.S. 55A-11-08(a) reads as rewritten:

"(a) One or more domestic or foreign business corporations may merge with one or more domestic nonprofit corporations if:

(1) Each domestic business corporation complies with the applicable provisions of G.S. 55-11-01, 55-11-03, and 55-11-04;

(2) In a merger involving one or more foreign business corporations, the merger is permitted by the law of the state or country under whose law each foreign business corporation is incorporated and each foreign business corporation complies with that law in effecting the merger;

(3) The domestic or foreign business corporation complies with G.S. 55A-11-04 if it is the surviving ~~corporation;~~ corporation and, in the case of a foreign business corporation not authorized to transact business in this State, includes in the articles of merger filed pursuant to G.S. 55A-11-04 a designation of the foreign business corporation's mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address; and

(4) Each domestic nonprofit corporation complies with the applicable provisions of G.S. 55A-11-01 through G.S. 55A-11-03 and, if it is the surviving corporation, with G.S. 55A-11-04."

SECTION 39. G.S. 55A-11-08(b) reads as rewritten:

"(b) Upon the merger taking effect, if the surviving corporation ~~does not have a registered agent in this State,~~ is a foreign business corporation, it shall be deemed to have appointed the Secretary of State as its ~~registered~~ agent for service of process in a proceeding to enforce any obligation of a domestic nonprofit corporation party to the ~~merger, until such time as it appoints a registered agent in this State.~~merger. 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 the process and the fee required by G.S. 55A-1-22(b). Upon receipt of service of process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the foreign business corporation. If the foreign business corporation is authorized to transact business in this State, the address for mailing shall be its principal office as defined in G.S. 55-1-40(17) or, if there is no mailing address for the principal office on file, its registered office. If the

foreign business corporation is not authorized to transact business in this State, the address for mailing shall be the mailing address designated pursuant to subdivision (3) of subsection (a) of this section."

SECTION 40. G.S. 55A-11-09(a) reads as rewritten:

"(a) As used in this section, 'business entity' means a domestic business corporation ~~as defined in G.S. 55-1-40~~ (including a professional corporation as defined in G.S. 55B-2), a foreign business corporation ~~as defined in G.S. 55-1-40~~ (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit ~~corporation as defined in G.S. 55A-1-40,~~ corporation, a domestic or foreign limited liability ~~company~~ company, ~~as defined in G.S. 57C-1-03,~~ a domestic or foreign limited ~~partnership~~ partnership, ~~as defined in G.S. 59-102,~~ a registered limited liability partnership or foreign limited liability partnership as defined in G.S. 59-32, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State."

SECTION 41. G.S. 55A-11-09(d) reads as rewritten:

"(d) After a plan of merger has been approved by each merging domestic nonprofit corporation and each other merging business entity as provided in subsection (c) of this section, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

(1) The plan of merger;

(2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

(3) The name of the surviving business entity and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address;

(4) A statement that the plan of merger has been approved by each merging business entity in the manner required by law; and

(5) The effective date and time of merger if it is not to be effective at the time of filing of the articles of merger.

If the plan of merger is amended or abandoned after the articles of merger have been filed but before the articles of merger become effective, the surviving business entity ~~promptly~~ shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger.

Certificates of merger shall also be registered as provided in G.S. 47-18.1."

SECTION 42. G.S. 55A-11-09(e1)(2) reads as rewritten:

"(2) To have appointed the Secretary of State as its agent for service of process in any such proceeding. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the

Secretary of ~~State~~ State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of such 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 in the manner provided ~~by~~ 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. If the surviving business entity is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the surviving business entity is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to subdivision (3) of subsection (d) of this section."

SECTION 43. G.S. 55A-15-10(b) reads as rewritten:

"(b) When a foreign corporation authorized to conduct affairs in this State 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, or when its certificate of authority shall have been revoked under G.S. 55A-15-31, the Secretary of State shall be an agent of such 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~~ State, or with any clerk ~~having charge of the corporation department of the Secretary of State's office,~~ authorized by the Secretary of State to accept service of process, 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,~~ State in the manner provided for in this subsection, ~~he~~ 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 foreign corporation under this subsection shall be effective for all purposes from and after the date of ~~such~~ the service on the Secretary of State."

SECTION 44. G.S. 55A-15-20(b)(5) reads as rewritten:

"(5) A commitment to ~~notify~~ file with the Secretary of State ~~in the future~~ a statement of any subsequent change in its mailing address."

SECTION 45. G.S. 55A-15-20(d) reads as rewritten:

"(d) After the withdrawal of the foreign corporation is effective, service of process on the Secretary of State in accordance with ~~subdivision (b)(3)~~ subsection (b) of this section ~~is service on the foreign corporation.~~ shall be made by delivering to and leaving with the Secretary of State, or any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55A-1-22(b). Upon receipt of ~~process,~~ process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the foreign corporation at the mailing address ~~set forth under~~ designated pursuant to subsection (b) of this section."

SECTION 46. G.S. 55A-15-21(a) reads as rewritten:

"(a) Whenever a foreign corporation authorized to conduct affairs in this State ceases its separate existence as a result of a statutory merger or consolidation permitted by the laws of the state or country under which it was incorporated, or converts into another entity as permitted by those laws, the surviving or resulting entity shall apply for a certificate of withdrawal for the foreign corporation by delivering to the Secretary of State for filing a copy of the articles of merger, consolidation, or conversion or a certificate reciting the facts of the merger, consolidation, or conversion duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under the laws of which the foreign corporation was incorporated. If the surviving or resulting entity is not authorized to conduct affairs in this State, the articles or certificate shall be accompanied by an application which must set forth:

(1) The name of the foreign corporation authorized to conduct affairs in this State, the type of entity and the name of the surviving or resulting entity, and a statement that the surviving or resulting entity is not authorized to conduct affairs in this State;

(2) A statement that the surviving or resulting entity consents that service of process based upon any cause of action arising in this State, or arising out of affairs conducted in this State, during the time the foreign corporation was authorized to conduct affairs in this State may thereafter be made by service thereof on the Secretary of State;

(3) A mailing address to which the Secretary of State may mail a copy of any process served on ~~him~~ the Secretary of State under subdivision (a)(2) of this section; and

(4) A commitment to ~~notify~~ file with the Secretary of State ~~in the future~~ a statement of any subsequent change in its mailing address."

SECTION 47. G.S. 55A-15-21 is amended by adding a new subsection to read:

"(c) After the withdrawal of the foreign corporation is effective, service of process on the Secretary of State in accordance with subsection (a) of this section shall be made by delivering to and leaving with the Secretary of State, or any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the

fee required by G.S. 55A-1-22(b). Upon receipt of process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the foreign corporation at the mailing address designated pursuant to subsection (a) of this section."

PART III. AMENDMENTS TO THE NORTH CAROLINA LIMITED LIABILITY COMPANY ACT.

SECTION 48. G.S. 57C-1-03 is amended by adding the following new subdivisions, to be placed by the Revisor of Statutes in the appropriate order, to read:

"**§ 57C-1-03. Definitions.**

The following definitions apply in this Chapter, unless otherwise specifically provided:

...

(5a) Director. – For any limited liability company the management of whose affairs is vested in whole or in part in persons other than its managers pursuant to G.S. 57C-3-20(b), any person who is so vested with, or is one of a group of persons so vested with, the authority to direct the management of the limited liability company's affairs.

...

(6a) Domestic nonprofit corporation. – A corporation as defined in G.S. 55A-1-40(5).

(6b) Executive. – For any limited liability company the management of whose affairs is vested in whole or in part in persons other than its managers pursuant to G.S. 57C-3-20(b), any person who is so vested with authority to participate in the management of the limited liability company's affairs under the direction of the limited liability company's managers or directors.

...

(9a) Foreign nonprofit corporation. – A foreign corporation as defined in G.S. 55A-1-40(11).

...

(12a) Management of the affairs. – In respect of an entity, unless the context indicates otherwise, the authority to direct and participate in the management of the entity.

...

(17a) Principal office. – The office, in or out of this State, where the principal executive offices of a domestic or foreign limited liability company are located, as designated in its most recent annual report filed with the Secretary of State or, in the case of a domestic or foreign limited liability company that has not yet filed an annual report, in its articles of organization or application for a certificate of authority, respectively.

...."

SECTION 49. G.S. 57C-1-03(3a) reads as rewritten:

"(3a) Business entity. – A corporation (including a professional corporation as defined in G.S. 55B-2), a foreign corporation (including a foreign professional corporation defined in G.S. 55B-16), a domestic or foreign nonprofit ~~corporation~~ corporation, ~~as defined in G.S. 55A-1-40,~~ a domestic or foreign limited liability company, a domestic or foreign limited ~~partnership~~ partnership, ~~as defined in G.S. 59-102,~~ a registered limited liability partnership or foreign limited liability partnership as defined in G.S. 59-32, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this ~~State (including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this State).~~State."

SECTION 50. G.S. 57C-1-03(4) reads as rewritten:

"(4) ~~Corporation.~~ Corporation or domestic corporation. – Has the same meaning as in G.S. 55-1-40(4)."

SECTION 51. G.S. 57C-1-03(13) reads as rewritten:

"(13) Manager. – Has the following meanings: (i) with respect to a domestic limited liability ~~company that has set forth in its articles of organization that it is to be or may be managed by persons other than members,~~ company, any person designated in, or in accordance ~~with~~ with, G.S. 57C-3-20(a), ~~(ii) with respect to any other limited liability company, its members,~~ and ~~(iii)~~ (ii) with respect to a foreign limited liability company, any person authorized to act for and bind the foreign limited liability company."

SECTION 52. G.S. 57C-1-03(15) reads as rewritten:

"(15) Membership interest or interest. – In the context of a member of a limited liability company, the terms mean all of a member's rights in the limited liability company, including ~~without limitation the member's~~ any share of the profits and losses of the limited liability company, ~~the~~ any right to receive distributions of the limited liability company assets, any right to ~~vote,~~ vote on matters relating to the limited liability company, and any right to participate in ~~the management.~~ management of the limited liability company's affairs."

SECTION 53. G.S. 57C-1-20(f) reads as rewritten:

"(f) A document submitted by a domestic or foreign limited liability company must be executed:

(1) By a manager of the limited liability company;

~~(2) If managers have not been selected, or if the limited liability company does not have a manager other than a member, by any member;~~

(3) If the limited liability company has not been formed or if no initial members of the limited liability company have been identified in the manner provided in this Chapter, by an organizer; or

(4) If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

A document submitted by a business entity other than a domestic or foreign limited liability company must be executed by a person authorized to execute documents (i) pursuant to G.S. 55-1-20(f) if the business entity is a corporation or foreign corporation, (ii) pursuant to G.S. 55A-1-20(f) if the business entity is a domestic or foreign nonprofit corporation, (iii) pursuant to G.S. 59-204 if the business entity is a domestic or foreign limited partnership, or (iv) pursuant to ~~G.S. 59-73.7(a)(4)~~ G.S. 59-35.1(a)(4) if the business entity is any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State."

SECTION 54. G.S. 57C-1-22(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

	Document	Fee
(1)	Articles of organization	$125.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Limited liability company's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected limited liability company	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of organization	50.00
(11)	Restated articles of organization without amendment of articles	10.00
(12)	Restated articles of organization with amendment of articles	50.00
(12a)	Articles of conversion (other than articles of conversion included as part of another document)	50.00
(13)	Articles of merger	50.00
(14)	Articles of dissolution	30.00
(15)	Cancellation of articles of dissolution	10.00
(16)	Certificate of administrative dissolution	No fee
(16a)	Application for reinstatement following administrative dissolution	100.00

(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	250.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00
(22)	Certificate of revocation of authority to transact business	No fee
(23)	Articles of correction	10.00
(24)	Application for certificate of existence or authorization	5.00
(25)	Annual report	200.00
(26)	Any other document required or permitted to be filed by this Chapter	10.00
(27)	Advisory review of a document	200.00."

SECTION 55. G.S. 57C-2-01 reads as rewritten:

"**§ 57C-2-01. Purposes.**

(a) Every limited liability company ~~organized~~ formed under this Chapter has the purpose of engaging in any lawful business unless a more limited lawful purpose is set forth in its articles of organization.

(b) A domestic or foreign limited liability company engaging in a business that is subject to regulation under another statute of this State may be formed or authorized to transact business under this Chapter only if permitted by and subject to all limitations of the other statute giving effect to subsection (c) of this section.

(c) Subsections (a) and (b) of this section to the contrary notwithstanding and except as set forth in this subsection, a domestic or foreign limited liability company shall engage in rendering professional services only to the extent that a professional corporation acting pursuant to Chapter 55B of the General Statutes or a corporation acting pursuant to Chapter 55 of the General Statutes may engage in rendering professional services under the conditions and limitations imposed by an applicable licensing statute. Chapter 55B of the General Statutes and each applicable licensing statute are deemed amended to provide that professionals licensed under the applicable licensing statute may render professional services through a domestic or foreign limited liability company. For purposes of applying the provisions, conditions, and limitations of Chapter 55B of the General Statutes and the applicable licensing statute to domestic and foreign limited liability companies that engage in rendering professional services, (i) unless the context clearly requires otherwise, references to Chapter 55 of the General Statutes (the North Carolina Business Corporation Act) shall be treated as references to this Chapter, and references to a "corporation" or "foreign corporation" shall be treated as references to a limited liability company or foreign limited liability company, respectively, (ii) members shall be treated in the same manner as shareholders of a professional corporation, (iii) managers and directors shall be treated in the same manner as directors of a professional corporation, (iv) the persons signing the articles of

organization of a limited liability company shall be treated in the same manner as the incorporators of a professional corporation, and (v) the name of a domestic or foreign limited liability company so engaged shall comply with G.S. 57C-2-30 or G.S. 57C-7-06 and, in addition, shall contain the word "Professional" or the abbreviation "P.L.L.C." or "PLLC". For purposes of this subsection, "applicable licensing statute" shall mean those provisions of the General Statutes referred to in G.S. 55B-2(6).

Nothing in this Chapter shall be interpreted to abolish, modify, restrict, limit, or alter the law in this State applicable to the professional relationship and liabilities between the individual furnishing the professional services and the person receiving the professional services, the standards of professional conduct applicable to the rendering of the services, or any responsibilities, obligations, or sanctions imposed under applicable licensing statutes. A ~~member or~~ member, ~~manager~~ manager, director, or executive of a professional limited liability company is not individually liable, directly or indirectly, including by indemnification, contribution, assessment, or otherwise, for debts, obligations, and liabilities of, or chargeable to, the professional limited liability company that arise from errors, omissions, negligence, malpractice, incompetence, or malfeasance committed by another member, manager, director, executive, employee, agent, or other representative of the professional limited liability company; provided, however, nothing in this Chapter shall affect the liability of a ~~member or~~ member, ~~manager~~ manager, director, or executive of a professional limited liability company for his or her own errors, omissions, negligence, malpractice, incompetence, or malfeasance committed in the rendering of professional services."

SECTION 56. G.S. 57C-2-02 reads as rewritten:

"**§ 57C-2-02. Powers of the limited liability company.**

Unless its articles of organization or this Chapter provide otherwise, each limited liability company has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including, without limitation, power:

(1) To sue and be sued, complain, and defend in its own name;

(2) To make and amend operating agreements, not inconsistent with its articles of organization or with the laws of this State, for managing the business and regulating the affairs of the limited liability company;

(3) To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

(4) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(5) To purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any other entity;

(6) To make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations (which may be convertible

into or include the option to purchase other interests in the limited liability company), and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(7) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(8) To be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(9) To conduct its business, locate offices, and exercise the powers granted by this Chapter within or without this State;

(10) To elect or appoint managers, directors, executives, officers, employees, and agents of the limited liability company, define their duties, fix their compensation, and lend them money and credit;

(11) To pay pensions and establish pension plans, pension trusts, profit-sharing plans, and other benefit or incentive plans for any or all of its current or former managers, directors, executives, officers, employees, and agents;

(12) To make donations for the public welfare or for charitable, religious, cultural, scientific, or educational purposes;

(13) To transact any lawful business that will aid governmental policy;

(14) To make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the limited liability company;

(15) To provide insurance for its benefit on the life or physical or mental ability of any of its managers, directors, executives, officers, or employees or on the life or physical or mental ability of any owner of any interest in the limited liability company for the purpose of acquiring the interest owned by him at the time of his death or disability, and for these purposes the limited liability company is deemed to have an insurable interest in its managers, directors, executives, officers, employees, or members and other interest owners; and to provide insurance for its benefit on the life or physical or mental ability of any other person in whom it has an insurable interest; and

(16) To render professional services, subject to G.S. 57C-2-01(c)."

SECTION 57. G.S. 57C-2-20(c) reads as rewritten:

"(c) Organization of a limited liability company requires one or more initial members and any further action as may be determined by the initial member or members. 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 58. G.S. 57C-2-21(a) reads as rewritten:

"(a) The articles of organization must set forth:

(1) A name for the limited liability company that satisfies the provisions of G.S. 57C-2-30;

(2) If the limited liability company is to dissolve by a specific date, the latest date on which the limited liability company is to dissolve. If no date for dissolution is specified, there shall be no limit on the duration of the limited liability company;

(3) The name and address of each person executing the articles of organization and whether the person is executing the articles of organization in the capacity of a member or an organizer;

(4) The street address, and the mailing address if different from the street address, of the limited liability company's initial registered office, the county in which the initial registered office is located, and the name of the limited liability company's initial registered agent at that address; ~~and~~

(4a) The street address, and the mailing address if different from the street address, of the limited liability company's principal office, if any, and the county in which the principal office, if any, is located; and

(5) Unless all of the members by virtue of their status as members shall be managers of the limited liability company, a statement that, except as provided in G.S. 57C-3-20(a), the members shall not be managers by virtue of their status as members."

SECTION 59. G.S. 57C-2-23(a) reads as rewritten:

"(a) Each domestic limited liability company other than a professional limited liability company governed by G.S. 57C-2-01(c) and each foreign limited liability company authorized to transact business in this State, shall deliver to the Secretary of State for filing an annual report, in a form ~~jointly~~ prescribed by the ~~Secretary of Revenue and~~ Secretary of State, that sets forth all of the following:

(1) The name of the limited liability or foreign limited liability company and the state or country under whose law it is ~~organized.~~formed.

(2) The street address, and the mailing address if different from the street address, of the registered office, the county in which the registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of the registered office or registered agent, or both.

(3) The address and telephone number of its principal office.

(4) The names and business addresses of its ~~managers.~~managers or, if the limited liability company has never had members, its organizers.

(5) A brief description of the nature of its business.

If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (5) of this subsection. The Secretary of State shall make available the form required to file an annual report."

SECTION 59A. G.S. 57C-2-23(c) reads as rewritten:

"(c) The Secretary of State must notify limited liability companies of the annual report filing requirement. The annual report shall be delivered to the Secretary of State by ~~the fifteenth day of the fourth month following the close of the limited liability company's fiscal~~ April 15th of each year."

SECTION 60. G.S. 57C-2-30(a)(2) reads as rewritten:

"(2) ~~May~~ Shall not contain language stating or implying that the limited liability company is ~~organized~~ formed for a purpose other than that permitted by G.S. 57C-2-01 and its articles of organization; and".

SECTION 61. G.S. 57C-2-32(b) reads as rewritten:

"(b) A foreign limited liability company registers its name, or its name with any required addition, by filing with the Secretary of State an application:

(1) Setting forth its name, or its name with any required addition, the state or country and date of its ~~organization,~~ formation, and a brief description of the nature of the business in which it is engaged; and

(2) Accompanied by a certificate of existence (or a document of a similar import) from the state or country of ~~organization.~~formation."

SECTION 62. G.S. 57C-2-32(e) reads as rewritten:

"(e) A foreign limited liability company whose registration is effective may thereafter qualify as a foreign limited liability company under that name or consent in writing to the use of that name by a limited liability company thereafter ~~organized~~ formed under this Chapter or by another foreign limited liability company thereafter authorized to transact business in this State. The registration terminates when the domestic limited liability company is ~~organized~~ formed or the foreign limited liability company qualifies or consents to the qualification of another foreign limited liability company under the registered name."

SECTION 63. G.S. 57C-2-34(b) reads as rewritten:

"(b) The Secretary of State shall adopt uniform certificates to be furnished for registration in accordance with this section. In the case of a foreign limited liability company, a similar certificate by any competent authority of the jurisdiction of ~~organization~~ formation may be registered in accordance with this section."

SECTION 64. G.S. 57C-3-01 is amended by adding the following new subsection to read:

"(c) Nothing in this Chapter precludes a person from being a member of a limited liability company because that person has not made, and has no obligation to make, any

contributions to the limited liability company and has no right to receive any distributions from the limited liability company or share in any profits or losses of the limited liability company."

SECTION 65. G.S. 57C-3-02(3)e. reads as rewritten:

"e. Seeking, consenting to, or acquiescing in, the appointment of a trustee or receiver for, or liquidation of the ~~member~~ person or of all or any substantial part of ~~his~~ that person's properties; or".

SECTION 66. G.S. 57C-3-04(e) reads as rewritten:

"(e) The managers or directors shall have the right to keep confidential from members who are not ~~managers,~~ managers or directors, for such period of time as the managers or directors deem reasonable, any information which the managers or directors reasonably believe to be in the nature of trade secrets or other information the disclosure of which the managers or directors in good faith believe is not in the best interest of the limited liability company."

SECTION 67. G.S. 57C-3-20(a) reads as rewritten:

"(a) Unless the articles of organization provide otherwise, all members by virtue of their status as members shall be managers of the limited liability company, together with any other persons that may be designated as managers ~~in~~ in, or in accordance with, the articles of organization or a written operating agreement. If the articles of organization provide that all members are not necessarily managers by virtue of their status as members, then those persons designated as managers ~~in~~ in, or in accordance with, the articles of organization or a written operating agreement shall be managers, but for any period during which no such designation has been made or is in effect, all members shall be managers."

SECTION 68. G.S. 57C-3-22 is amended by adding a new subsection to read:

"(f) Except to the extent otherwise provided in the articles of organization or a written operating agreement, each director and executive shall be subject to the same requirements and afforded the same rights as are provided in this section for a manager when the director or executive exercises authority in the management of a limited liability company's affairs that would otherwise be vested in the managers pursuant to G.S. 57C-3-20(b)."

SECTION 69. G.S. 57C-3-30 reads as rewritten:

"**§ 57C-3-30. Liability to third parties of ~~members and managers;~~ members, managers, directors, and executives; parties to actions; governing law.**

(a) A person who is a ~~member or manager, or both,~~ member, manager, director, executive, or any combination thereof of a limited liability company is not liable for the obligations of a limited liability company solely by reason of being a ~~member or manager or both,~~ member, manager, director, or executive and does not become so by participating, in whatever capacity, in the management or control of the business. A ~~member or manager~~ member, manager, director, or executive may, however, become personally liable by reason of ~~his~~ that person's own acts or conduct.

(b) A member of a limited liability company is not a proper party to proceedings by or against a limited liability company, except where the object of the proceeding is to enforce a member's right against or liability to the limited liability company.

(c) The liability of ~~members and managers~~ members, managers, directors, and executives of a limited liability company ~~organized~~ formed and existing under this Chapter shall at all times be determined solely and exclusively by this Chapter and the laws of this State.

(d) If a conflict arises between the laws of this State and the laws of any other jurisdiction with regard to the liability of a ~~member or manager~~ members, managers, directors, or executives of a limited liability company ~~organized~~ formed and existing under this Chapter for the debts, obligations, and liabilities of the limited liability company, this Chapter and the laws of this State shall govern in determining the liability."

SECTION 70. G.S. 57C-3-31 reads as rewritten:

"**§ 57C-3-31. Mandatory indemnification of ~~managers~~ managers, directors, executives, and members.**

(a) ~~A~~ Unless otherwise provided in the articles of organization or a written operating agreement, a limited liability company must indemnify every ~~manager~~ manager, director, and executive in respect of payments made and personal liabilities reasonably incurred by the ~~manager~~ manager, director, and executive in the authorized conduct of its business or for the preservation of its business or property.

(b) ~~Unless limited by its~~ Unless otherwise provided in the articles of ~~organization,~~ organization or a written operating agreement, a limited liability company shall indemnify a ~~member or manager~~ member, manager, director, or executive who is wholly successful, on the merits or otherwise, in the defense of any proceeding to which ~~he~~ the person was a party because ~~he~~ the person is or was a ~~member or manager~~ member, manager, director, or executive of the limited liability company against reasonable expenses incurred by ~~him~~ the person in connection with the proceeding."

SECTION 71. G.S. 57C-3-32 reads as rewritten:

"**§ 57C-3-32. Limitation of liability of ~~managers~~ managers, directors, executives, and members and permissive indemnification of ~~managers~~ managers, directors, executives, and members; insurance.**

(a) Subject to subsection (b) of this section, the articles of organization or a written operating agreement may:

(1) Eliminate or limit the personal liability of a ~~manager~~ manager, director, or executive for monetary damages for breach of any duty provided for in G.S. 57C-3-22 (other than liability under G.S. 57C-4-07); and

(2) Provide for indemnification of a ~~manager or member~~ manager, member, director, or executive for judgments, settlements, penalties, fines, or expenses incurred in a proceeding to which the ~~member or manager~~ member, manager, director, or executive is a party because ~~he~~

the person is or was a ~~manager or member~~ manager, member, director, or executive. For purposes of this subdivision, the words "expenses", "proceeding", and "party" shall have the meanings set forth in G.S. 55-8-50(b).

(b) No provision permitted under subsection (a) of this section shall limit, eliminate, or indemnify against the liability of a ~~manager~~ manager, director, or executive for (i) acts or omissions that the ~~manager~~ manager, director, or executive knew at the time of the acts or omissions were clearly in conflict with the interests of the limited liability company, (ii) any transaction from which the ~~manager~~ manager, director, or executive derived an improper personal benefit, or (iii) acts or omissions occurring prior to the date the provision became effective, except that indemnification pursuant to subdivision (2) of subsection (a) of this section may be provided if approved by all the members. As used in this subsection, "improper personal benefit" does not include reasonable compensation or other reasonable incidental benefit for or on account of service as a manager, ~~an~~ director, executive, officer, ~~an~~ employee, ~~an~~ independent contractor, ~~an~~ attorney, or ~~a~~ consultant of the limited liability company.

(c) A limited liability company may purchase and maintain insurance on behalf of an individual who is or was a manager, ~~an~~ director, executive, officer, employee, or ~~an~~ agent of the limited liability company, or who, while a manager, ~~an~~ director, executive, officer, employee, or ~~an~~ agent of the limited liability company is or was serving at the request of the limited liability company as a director, ~~an~~ executive, officer, ~~a~~ partner, ~~a~~ member, manager, ~~a~~ trustee, ~~an~~ employee, or ~~an~~ agent of a person, against liability asserted against or incurred by ~~him~~ the person in that capacity or arising from ~~his~~ the person's status as a manager, ~~an~~ director, executive, officer, employee, or ~~an~~ agent, whether or not the limited liability company would have the power to indemnify ~~him~~ the person against the same liability under any provision of this Chapter."

SECTION 72. G.S. 57C-4-07 reads as rewritten:

"**§ 57C-4-07. Liability upon wrongful distribution.**

(a) A manager or director who votes for or assents to a distribution in violation of G.S. 57C-4-06 or a written operating agreement is personally liable to the limited liability company for the amount of the distribution that exceeds what could have been distributed without violating G.S. 57C-4-06 or the operating agreement if it is established that the manager or director did not act in compliance with G.S. 57C-3-22.

(b) Each manager or director held liable under subsection (a) of this section for a wrongful distribution is entitled to:

(1) Contribution from each other manager or director who could be held liable under subsection (a) of this section for the wrongful distribution; and

(2) Reimbursement from each member for the amount the member received knowing that the distribution was made in violation of G.S. 57C-4-06 or the operating agreement.

(c) A proceeding under this section is barred unless it is commenced within three years after the date on which the effect of the distribution is measured under G.S. 57C-4-06(c)."

SECTION 73. G.S. 57C-6-02(2) reads as rewritten:

"(2) A member if it is established that (i) the ~~managers or those~~ managers, directors, or any other persons in control of the limited liability company are deadlocked in the management of the affairs of the limited liability company, the members are unable to break the deadlock, and irreparable injury to the limited liability company is threatened or being suffered, or the business and affairs of the limited liability company can no longer be conducted to the advantage of the members generally, because of the deadlock; (ii) liquidation is reasonably necessary for the protection of the rights or interests of the complaining member, (iii) the assets of the limited liability company are being misapplied or wasted; or (iv) the articles of organization or a written operating agreement entitles the complaining member to dissolution of the limited liability company; or".

SECTION 74. G.S. 57C-6-03(c) reads as rewritten:

"(c) A limited liability company administratively dissolved under this section may apply to the Secretary of State for reinstatement not later than five years after the effective date of the administrative dissolution. The procedures for reinstatement and for the appeal of any denial of the limited liability company's application for reinstatement shall be the same procedures applicable to ~~business~~ corporations under G.S. 55-14-22, 55-14-23, and 55-14-24. The effect of reinstatement of a limited liability company shall be the same as for a corporation under G.S. 55-14-22."

SECTION 75. G.S. 57C-6-04(a) reads as rewritten:

"(a) Except as otherwise provided in this Chapter, the articles of organization, or a written operating agreement, the managers shall wind up the limited liability company's affairs following its dissolution. If the dissolved limited liability company has no ~~manages,~~ managers, and provision is not otherwise made in the articles of organization or a written operating agreement, the legal representative of or successor to the ~~member whose event of withdrawal has resulted in the dissolution may wind up~~ last remaining member may wind up the limited liability company's affairs. The court may wind up the limited liability company's affairs, or appoint a person to wind up its affairs, on application of any member, his legal representative, or assignee."

SECTION 76. G.S. 57C-6-06(5) reads as rewritten:

"(5) Any other information the ~~members or~~ managers filing the articles of dissolution determine."

SECTION 77. G.S. 57C-6-06.1(5) reads as rewritten:

"(5) Any other information the ~~members or~~ managers filing the articles of cancellation determine."

SECTION 78. G.S. 57C-7-01 reads as rewritten:

"**§ 57C-7-01. Law governing.**

The laws of the state or other jurisdiction under which a foreign limited liability company is ~~organized~~ formed shall govern its formation, ~~organization~~ organization, and internal affairs and the liability of its managers and members, regardless of whether the foreign limited liability company procured or should have procured a certificate of authority under this Chapter, and a foreign limited liability company ~~may~~ shall not be denied a certificate of authority by reason of any difference between the laws under which it is ~~organized~~ formed and the laws of this State. A foreign limited liability company with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic limited liability company of like character."

SECTION 79. 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;~~ formed;

(3) Its date of ~~organization~~ formation 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, if any, and the county in which the principal office, if any, is located;

(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 80. G.S. 57C-7-04(b) reads as rewritten:

"(b) The foreign limited liability company shall deliver with the completed application a certificate of existence (or a document of similar import) duly authenticated by the Secretary of State or other official having custody of limited liability company records in the state or country under whose law it is ~~organized.~~ formed."

SECTION 81. G.S. 57C-7-05(a)(3) reads as rewritten:

"(3) The state or country of its ~~organization.~~ formation."

SECTION 82. G.S. 57C-7-05(b)(2) reads as rewritten:

"(2) The name of the state or country under whose law it is ~~organized;~~ formed;".

SECTION 83. G.S. 57C-7-06(b)(1) reads as rewritten:

"(1) The name of a corporation, limited partnership, or limited liability company ~~organized~~ formed in this State, or a foreign corporation, foreign limited partnership, or foreign limited liability company authorized to transact business in this State;".

SECTION 84. G.S. 57C-7-06(c) reads as rewritten:

"(c) A foreign limited liability company may apply to the Secretary of State for authorization to use in this State a name that is not distinguishable upon the Secretary of State's records from the name of another limited liability company ~~(organized~~ (formed or authorized to transact business in this State). The Secretary of State shall authorize use of the name applied for if:

(1) The other person who has or uses the name or who has reserved or registered the name consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying limited liability company; or

(2) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this State."

SECTION 85. G.S. 57C-7-10(b) reads as rewritten:

"(b) Whenever a foreign limited liability company authorized to transact business in this State 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 foreign limited liability company 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 the Secretary of ~~State~~ State, or with any clerk ~~having charge of the limited liability company department of the Secretary of State's office,~~ authorized by the Secretary of State to accept service of process, 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 in this subsection, the Secretary of State shall immediately mail one of the copies thereof, by registered or certified mail, return receipt requested, to the foreign limited liability company at its principal office ~~shown in its application for certificate of authority or amended certificate of authority or at the address indicated in the latest communication received by the Secretary of State from the foreign 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 foreign limited liability company at its registered office. Service on a foreign 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 86. G.S. 57C-7-11(b) reads as rewritten:

"(b) A foreign limited liability company authorized to transact business in this State may apply for a certificate of withdrawal 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 and the name of the state or country under whose law it is ~~organized;~~ formed;

(2) That it is not transacting business in this State and that it surrenders its authority to transact business in this State;

(3) That the foreign limited liability company revokes the authority of its registered agent to accept service of process and consents that service of process in any action or proceeding based upon any cause of action arising in this State, or arising out of business transacted in this State, during the time the foreign limited liability company was authorized to transact business in this State, may thereafter be made on such foreign limited liability company by service thereof on the Secretary of State;

(4) A mailing address to which the Secretary of State may mail a copy of any process served on ~~him~~ the Secretary of State under subdivision (3) of this subsection; and

(5) A commitment to ~~notify~~ file with the Secretary of State ~~in the future~~ a statement of any subsequent change in its mailing address."

SECTION 87. G.S. 57C-7-11(d) reads as rewritten:

"(d) After the withdrawal of the foreign limited liability company is effective, service of process on the Secretary of State in accordance with ~~subdivision (b)(3)~~ subsection (b) of this section ~~is service on the foreign limited liability company.~~ 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 that process and the fee required by G.S. 57C-1-22(b). Upon receipt of ~~process,~~ process in the manner provided in this subsection, the Secretary of State shall mail a copy of the process by registered or certified mail, return receipt requested, to the foreign limited liability company at the mailing address ~~set forth under~~ designated pursuant to subsection (b) of this section."

SECTION 88. G.S. 57C-7-12(a) reads as rewritten:

"(a) Whenever a foreign limited liability company authorized to transact business in this State ceases its separate existence as a result of a statutory merger, consolidation, or conversion permitted by the laws of the state or country under which it was ~~organized,~~ formed, or converts into another type of entity as permitted by those laws, the surviving or resulting entity shall apply for a certificate of withdrawal for the foreign limited liability company by delivering to the Secretary of State for filing a copy of the articles of merger, consolidation, or conversion or a certificate reciting the facts of the merger, consolidation, or conversion, duly authenticated by the Secretary of State or other official having custody of limited liability company records in the state or country under the laws of which the foreign limited liability company was ~~organized.~~ formed. If

the surviving or resulting entity is not authorized to transact business in this State, the articles or certificate must be accompanied by an application which must set forth:

(1) The name of the foreign limited liability company authorized to transact business in this State, the type of entity and name of the surviving or resulting entity, and a statement that the surviving or resulting entity is not authorized to transact business in this State;

(2) A statement that the surviving or resulting entity consents that service of process based upon any cause of action arising in this State, or arising out of business transacted in this State, during the time the foreign limited liability company was authorized to transact business in this State, may thereafter be made by service thereof on the Secretary of State;

(3) A mailing address to which the Secretary of State may mail a copy of any process served on ~~him~~ the Secretary of State under subdivision (a)(2) of this section; and

(4) A commitment to file with the Secretary of State a statement of any subsequent change in its ~~subsequent~~ mailing address."

SECTION 89. G.S. 57C-7-12 is amended by adding a new subsection to read:

"(c) After the withdrawal of the foreign limited liability company is effective, service of process on the Secretary of State in accordance with subsection (a) of this section 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 process and the fee required by G.S. 57C-1-22(b). Upon receipt of process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving or resulting entity at the mailing address designated pursuant to subsection (a) of this section."

SECTION 90. G.S. 57C-8-01(b) reads as rewritten:

"(b) The complaint shall allege with particularity the efforts, if any, made by the plaintiff to obtain the action the plaintiff desires from the ~~managers or comparable~~ managers, directors, or other applicable authority and the reasons for the plaintiff's failure to obtain the action, or for not making the effort. Whether or not a demand for action was made, if the limited liability company commences an investigation of the charges made in the demand or complaint, the court may stay any proceeding until the investigation is completed."

SECTION 91. G.S. 57C-8-01(c) reads as rewritten:

"(c) Upon motion of the limited liability company, the court may appoint a committee composed of two or more disinterested ~~managers~~ managers, directors, or other disinterested persons, acceptable to the limited liability company, to determine whether it is in the best interest of the limited liability company to pursue a particular legal right or remedy. The committee shall report its findings to the court. After

considering the report and any other relevant evidence, the court shall determine whether the proceeding should be continued or not."

SECTION 92. The heading of Part 1 of Article 9A of Chapter 57C of the General Statutes reads as rewritten:

"Part 1. ~~Conversions.~~ Conversion to Limited Liability Company."

SECTION 93. G.S. 57C-9A-01 reads as rewritten:

"**§ 57C-9A-01. Conversion.**

~~(a) A domestic limited liability company may convert to a domestic limited partnership pursuant to Part 10A of Article 5 of Chapter 59 of the General Statutes.~~

~~(b) A foreign limited liability company, a domestic or foreign limited partnership as defined in G.S. 59-102, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State (including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this State) may convert to a domestic limited liability company if:~~

~~(1) The converting business entity complies with the requirements of this Part; and~~

~~(2) If the converting business entity is a foreign limited liability company, a foreign limited partnership, or other partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by a law other than the laws of this State, the conversion is permitted by the laws of the state or country governing the organization and internal affairs of the converting business entity and the converting business entity complies with those laws.~~

A business entity other than a domestic limited liability company may convert to a domestic limited liability company if:

(1) The conversion is permitted by the laws of the state or country governing the organization and internal affairs of the converting business entity; and

(2) The converting business entity complies with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section."

SECTION 94. G.S. 57C-9A-02 reads as rewritten:

"**§ 57C-9A-02. Plan of conversion.**

(a) The ~~holders of the interests in the~~ converting business entity shall approve a written plan of conversion containing:

(1) The name of the resulting domestic limited liability company into which the converting business entity shall convert;

(1a) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs;

(2) The terms and conditions of the conversion; and

(3) The manner and basis for converting the interests in the converting business entity into interests, obligations, or securities of the resulting domestic limited liability company or into cash or other property in whole or in part.

The plan of conversion may ~~also~~ contain other provisions relating to the conversion.

(b) ~~In the case of a domestic limited partnership or other partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by the laws of this State, the plan of conversion must be approved in the manner provided for the approval of such a conversion in a written partnership agreement that is binding on all the partners or, if there is no such provision, by the unanimous consent of all the partners. In the case of a foreign limited liability company, a foreign limited partnership, or other partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by a law other than the laws of this State, the~~ The plan of conversion must be approved in accordance with the laws of the state or country governing the organization and internal affairs of the converting business entity.

(c) After a plan of conversion has been approved as provided in subsection (b) of this section, but before articles of organization for the resulting domestic limited liability company become effective, the plan of conversion may be amended or abandoned to the extent ~~provided in the plan of conversion.~~permitted by the laws that govern the organization and internal affairs of the converting business entity."

SECTION 95. G.S. 57C-9A-03 reads as rewritten:

"**§ 57C-9A-03. Filing of articles of organization by converting business entity.**

(a) After a plan of conversion has been approved by the converting business entity as provided in G.S. 57C-9A-02, the converting business entity shall deliver articles of organization to the Secretary of State for filing. In addition to the matters required or permitted by G.S. 57C-2-21, the articles of organization shall ~~state:~~ contain articles of conversion stating:

(1) That the domestic limited liability company is being formed pursuant to a conversion of another business entity;

(2) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs; and

(3) That a plan of conversion has been approved by the converting business entity as required by law.

If the plan of conversion is abandoned after the articles of organization have been filed with the Secretary of State but before the articles of organization become effective, the converting business entity ~~promptly~~ shall deliver to the Secretary of State for filing prior to the time the articles of organization become effective an amendment to the articles of organization ~~reflecting the abandonment of the plan of conversion.~~ withdrawing the articles of organization.

(b) The conversion takes effect when the articles of organization become effective.

~~(c) The converting business entity shall furnish a copy of the plan of conversion, on request and without cost, to any member or partner (whether general or limited) of the converting business entity.~~

(d) Certificates of conversion shall also be registered as provided in G.S. 47-18.1."

SECTION 96. Article 9A of Chapter 57C of the General Statutes is amended by adding a new Part to read:

"Part 1A. Conversion of Limited Liability Company.

"**§ 57C-9A-10. Conversion.**

A domestic limited liability company may convert to a different business entity if:

(1) The conversion is permitted by the laws of the state or country governing the organization and internal affairs of such other business entity; and

(2) The converting domestic limited liability company complies with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section.

"**§ 57C-9A-11. Plan of conversion.**

(a) The converting domestic limited liability company shall approve a written plan of conversion containing:

(1) The name of the converting domestic limited liability company;

(2) The name of the resulting business entity into which the domestic limited liability company shall convert, its type of business entity, and the state or country whose laws govern its organization and internal affairs;

(3) The terms and conditions of the conversion; and

(4) The manner and basis for converting the interests in the domestic limited liability company into interests, obligations, or securities of the resulting business entity or into cash or other property in whole or in part.

The plan of conversion may contain other provisions relating to the conversion.

(b) The plan of conversion shall be approved by the domestic limited liability company in the manner provided for the approval of such conversion in its articles of organization or a written operating agreement or, if there is no such provision, by the unanimous consent of its members. If any member of the converting domestic limited liability company has or will have personal liability for any existing or future obligation of the resulting business entity solely as a result of holding an interest in the resulting business entity, then in addition to the requirements of the preceding sentence, approval of the plan of conversion by the domestic limited liability company shall require the consent of that member. The converting domestic limited liability company shall provide a copy of the plan of conversion to each member of the converting domestic limited liability company at the time provided in its articles of organization or a written

operating agreement or, if there is no such provision, prior to its approval of the plan of conversion.

(c) After a plan of conversion has been approved by a domestic limited liability company but before the articles of conversion become effective, the plan of conversion (i) may be amended as provided in the plan of conversion or (ii) may be abandoned, subject to any contractual rights, as provided in the plan of conversion, articles of organization, or written operating agreement or, if not so provided, as determined by the managers or directors of the domestic limited liability company in accordance with G.S. 57C-3-20(b).

"**§ 57C-9A-12. Articles of conversion.**

(a) After a plan of conversion has been approved by the converting domestic limited liability company as provided in G.S. 57C-9A-11, the converting domestic limited liability company shall deliver articles of conversion to the Secretary of State for filing. The articles of conversion shall state:

(1) The name of the converting domestic limited liability company;

(2) The name of the resulting business entity, its type of business entity, the state or country whose laws govern its organization and internal affairs, and, if the resulting business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address; and

(3) That a plan of conversion has been approved by the domestic limited liability company as required by law.

If the domestic limited liability company is converting to a business entity whose formation or whose status as a registered limited liability partnership, as defined in G.S. 59-32, or limited liability limited partnership, as defined in G.S. 59-102, requires the filing of a document with the Secretary of State, then the articles of conversion shall be included as part of that document instead of separately filing the articles of conversion.

If the plan of conversion is abandoned after the articles of conversion have been filed with the Secretary of State but before the articles of conversion become effective, the converting domestic limited liability company shall deliver to the Secretary of State for filing prior to the time the articles of conversion become effective an amendment of the articles of conversion withdrawing the articles of conversion.

(b) The conversion takes effect when the articles of conversion become effective.

(c) Certificates of conversion shall also be registered as provided in G.S. 47-18.1.

"**§ 57C-9A-13. Effects of conversion.**

(a) When the conversion takes effect:

(1) The converting domestic limited liability company ceases its prior form of organization and continues in existence as the resulting business entity;

(2) The title to all real estate and other property owned by the converting domestic limited liability company continues vested in the resulting business entity without reversion or impairment;

(3) All liabilities of the converting domestic limited liability company continue as liabilities of the resulting business entity;

(4) A proceeding pending by or against the converting domestic limited liability company may be continued as if the conversion did not occur; and

(5) The interests in the converting domestic limited liability company that are to be converted into interests, obligations, or securities of the resulting business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of interests in the converting domestic limited liability company are entitled only to the rights provided in the plan of conversion.

The conversion shall not affect the liability or absence of liability of any holder of an interest in the converting domestic limited liability company for any acts, omissions, or obligations of the converting domestic limited liability company made or incurred prior to the effectiveness of the conversion. The cessation of the existence of the converting domestic limited liability company in its form of organization as a domestic limited liability company in the conversion shall not constitute a dissolution or termination of the converting domestic limited liability company.

(b) If the resulting business entity is not a domestic corporation or a domestic limited partnership, when the conversion takes effect the resulting business entity is deemed:

(1) To agree that it may be served with process in this State for enforcement of (i) any obligation of the converting domestic limited liability company and (ii) any obligation of the resulting business entity arising from the conversion; and

(2) To have appointed the Secretary of State as its agent for service of process in any such proceeding. 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 the process and the fee required by G.S. 57C-1-22(b). Upon receipt of service of process on behalf of a resulting business 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 resulting business entity. If the resulting business entity is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file,

its registered office. If the resulting business entity is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 57C-9A-12(a)(2)."

SECTION 97. G.S. 57C-9A-21(b) reads as rewritten:

"(b) In the case of a merging domestic limited liability company, the plan of merger must be approved in the manner provided in its articles of organization or a written operating agreement for approval of a merger with the type of business entity contemplated in the plan of merger, or, if there is no provision, by the unanimous consent of its members. If any member of a merging domestic limited liability company will have personal liability for any existing or future obligation of the surviving business entity solely as a result of holding an interest in the surviving business entity, then in addition to the requirements of the preceding sentence, approval of the plan of merger by the domestic limited liability company shall require the consent of each such member. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of the merging business entity."

SECTION 98. G.S. 57C-9A-22(a) reads as rewritten:

"(a) After a plan of merger has been approved by each merging domestic limited liability company and each other merging business entity as provided in G.S. 57C-9A-21, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

(1) The plan of merger;

(2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

(3) The name ~~and address~~ of the surviving business ~~entity;~~ entity and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address;

(4) A statement that the plan of merger has been approved by each merging business entity in the manner required by law; and

(5) The effective date and time of the merger if it is not to be effective at the time of filing of the articles of merger.

If the plan of merger is amended or abandoned after the articles of merger have been filed but before the articles of merger become effective, the surviving business entity ~~promptly~~ shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger."

SECTION 99. 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~~ partnership, when the merger takes ~~effect,~~ 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) To have appointed the Secretary of State as its registered agent for service of process in any such proceeding. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of ~~State~~ State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of such 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 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. If the surviving business entity is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the surviving business entity is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to ~~subdivision (3) of subsection (d) of this section.~~ G.S. 57C-9A-22(a)(3)."

SECTION 100. G.S. 57C-10-02 reads as rewritten:

"**§ 57C-10-02. Applicability of provisions to foreign and interstate commerce.**

The provisions of this Chapter shall apply to determine the rights and obligations of a limited liability company ~~organized~~ formed hereunder in commerce with foreign nations and among the several states, except as prohibited by law."

SECTION 101. G.S. 57C-10-06 reads as rewritten:

"**§ 57C-10-06. Income taxation.**

A limited liability company, a foreign limited liability company authorized to transact business in this State, and a member of one of these companies are subject to taxation under Article 4 of Chapter 105 of the General Statutes in accordance with their

classification for federal income tax purposes. Accordingly, if a limited liability company or a foreign limited liability company authorized to transact business in this State is classified for federal income tax purposes as a ~~corporation, the company is~~ C corporation as defined in G.S. 105-131(b)(2) or an S corporation as defined in G.S. 105-131(b)(8), the company and its members are subject to tax under Article 4 of Chapter 105 of the General Statutes to the same extent as a ~~corporation.~~ C corporation or an S corporation, as the case may be, and its shareholders. If a limited liability company or a foreign limited liability company authorized to transact business in this State is classified for federal income tax purposes as a partnership, the company and its members are subject to tax under Article 4 of Chapter 105 of the General Statutes to the same extent as a partnership and its members. If a limited liability company or a foreign limited liability company authorized to transact business in this State is classified for federal income tax purposes as other than a corporation or a partnership, the company and its members are subject to tax under Article 4 of Chapter 105 of the General Statutes in a manner consistent with that classification. This section does not require a limited liability company or a foreign limited liability company to obtain an administrative ruling from the Internal Revenue Service on its classification under the Internal Revenue Code."

SECTION 102. G.S. 57C-10-07 reads as rewritten:

"**§ 57C-10-07. Intent.**

It is the intent of the General Assembly that the legal existence of limited liability companies ~~organized~~ formed under this Chapter be recognized outside the boundaries of this State and that, subject to any reasonable requirement of registration, a domestic limited liability company transacting business outside this State be granted full faith and credit under Section 1 of Article IV of the Constitution of the United States."

PART IV. AMENDMENTS TO THE LAW GOVERNING PARTNERSHIPS.

SECTION 103. G.S. 59-32 reads as rewritten:

"**§ 59-32. Definition of terms.**

As used in this Chapter, except as otherwise defined in Article 5 of this Chapter for purposes of that Article, unless the context otherwise requires:

(01) 'Act' means the North Carolina Uniform Partnership Act and refers to all provisions therein.

(1) 'Bankrupt' means bankrupt under the Federal Bankruptcy Act or insolvent under any State insolvent act.

(2) 'Business' means every trade, occupation, or profession.

(3) 'Conveyance' means every assignment, lease, mortgage, or encumbrance.

(4) 'Court' means every court and judge having jurisdiction in the case.

(4a) 'Domestic corporation' has the same meaning as in G.S. 55-1-40.

(4b) 'Domestic limited liability company' has the same meaning as in G.S. 57C-1-03.

(4c) 'Domestic limited partnership' has the same meaning as in G.S. 59-102.

(4d) 'Domestic nonprofit corporation' means a corporation as defined in G.S. 55A-1-40.

(4e) 'Foreign corporation' has the same meaning as in G.S. 55-1-40.

(4f) 'Foreign limited liability company' has the same meaning as in G.S. 57C-1-03.

~~(4a)~~(4g) 'Foreign limited liability partnership' means a partnership that (i) is formed under laws other than the laws of this State, and (ii) has the status of a limited liability partnership or registered limited liability partnership under those laws.

(4h) 'Foreign limited partnership' has the same meaning as in G.S. 59-102.

(4i) 'Foreign nonprofit corporation' means a foreign corporation as defined in G.S. 55A-1-40.

(5) 'Person' means individuals, partnerships, corporations, limited liability companies, and other associations.

(5a) 'Principal office' means the office (in or out of this State) where the principal executive offices of a registered limited liability partnership or a foreign limited liability partnership are located, as designated in its most recent annual report filed with the Secretary of State or, if no annual report has yet been filed, in its application for registration as a registered limited liability partnership or foreign limited liability partnership.

(6) 'Real property' means land and any interest or estate in land.

(7) 'Registered limited liability partnership' means a partnership that is registered under G.S. 59-84.2 and complies with G.S. 59-84.3."

SECTION 104. Part 1 of Article 2 of Chapter 59 of the General Statutes is amended by adding a new section to read:

"**§ 59-35.1. Filing of documents.**

(a) To be entitled to filing by the Secretary of State, a document submitted pursuant to this act shall meet all of the following requirements:

(1) The document shall contain the information required by this act. It may contain other information as well.

(2) The document shall be typewritten or printed.

(3) The document shall be in the English language.

(4) A document submitted by a partnership other than a domestic or foreign limited partnership shall be executed by a general partner of the partnership. A document submitted by any other type of entity shall be executed by a person authorized to execute documents (i) pursuant to G.S. 55-1-20(f) if the entity is a domestic or foreign corporation, (ii) pursuant to G.S. 55A-1-20(f) if the entity is a domestic or foreign nonprofit corporation, (iii) pursuant to G.S. 57C-1-

20(f) if the entity is a domestic or foreign limited liability company, or (iv) pursuant to G.S. 59-204 if the entity is a domestic or foreign limited partnership.

(5) The person executing the document shall sign it and state beneath or opposite the person's signature the person's name and the capacity in which the person signs. Any signature on the document may be a facsimile. The document may, but need not, contain an acknowledgment, verification, or proof.

(6) The document shall be delivered to the office of the Secretary of State for filing and shall be accompanied by one exact or conformed copy and by the required filing fee.

(b) A partnership may correct a document filed by the Secretary of State pursuant to this act if the document (i) contains a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively executed, attested, sealed, verified, or acknowledged.

A document is corrected by:

(1) Preparing articles of correction that (i) describe the document, including its filing date, or have attached to them a copy of the document, (ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective, and (iii) correct the incorrect statement or defective execution; and

(2) Delivering the articles of correction to the Secretary of State for filing, accompanied by one exact or conformed copy and the required filing fee.

Articles of correction are effective on the effective date of the document that is corrected except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

(c) The Secretary of State may adopt and furnish on request forms for:

(1) An application for registration as a registered limited liability partnership;

(2) Cancellation of registration as a registered limited liability partnership;

(3) Application for registration as a foreign limited liability partnership; and

(4) Cancellation of registration as a foreign limited liability partnership.

If the Secretary of State so requires, use of these forms is mandatory.

(d) The Secretary of State may adopt and furnish on request forms for other documents required or permitted to be filed by this act, but their use is not mandatory.

(e) The Secretary of State shall collect the following fees when the documents described in this subsection are submitted by a partnership to the Secretary of State for filing:

Document	Fee

(1)	Registered limited liability partnership's or foreign limited liability partnership's statement of change of registered agent or registered office or both	$5.00
(2)	Agent's statement of change of registered office for each affected registered limited liability partnership or foreign limited liability partnership	5.00
(3)	Agent's statement of resignation	No Fee
(4)	Designation of registered agent or registered office or both	5.00
(5)	Articles of conversion (other than articles of conversion included as part of another document)	50.00
(6)	Articles of merger	50.00
(7)	Application for registration as a registered limited liability partnership	125.00
(8)	Certificate of amendment of registration as a registered limited liability partnership	25.00
(9)	Cancellation of registration as a registered limited liability partnership	25.00
(10)	Application for registration as a foreign limited liability partnership	125.00
(11)	Certificate of amendment of registration as a foreign limited liability partnership	25.00
(12)	Cancellation of registration as a foreign limited liability partnership	25.00
(13)	Application for certificate of withdrawal by reason of merger, consolidation, or conversion	10.00
(14)	Annual report	200.00
(15)	Articles of correction	10.00
(16)	Any other document required or permitted to be filed pursuant to this act	10.00
(17)	Advisory review of a document	200.00

(f) The Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary of State under this act. The party to the proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

(g) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of a document filed pursuant to this act:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) Five dollars ($5.00) for the certificate.

(h) The Secretary of State shall guarantee the expedited filing of a document upon receipt of the document in proper form and the payment of the required filing fee. The Secretary of State may collect the following additional fees for the expedited filing of a document received in good form:

(1) Two hundred dollars ($200.00) for the filing by the end of the same business day of a document received by 12:00 noon Eastern Standard Time; and

(2) One hundred dollars ($100.00) for the filing of a document within 24 hours after receipt, excluding weekends and holidays.

The Secretary of State shall not collect the fees allowed in this subsection unless the person submitting the document for filing requests an expedited filing and is informed by the Secretary of State of the fees prior to the filing of the document.

(i) Upon request, the Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this act. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this subsection and filings under subsection (h) of this section. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing.

(j) Except as provided in this subsection and in subsection (b) of this section, a document accepted for filing is effective:

(1) At the time of filing on the date it is filed, as evidenced by the Secretary of State's date and time endorsement on the original document; or

(2) At the time specified in the document as its effective time on the date it is filed.

A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at 11:59:59 P.M. on that date. A delayed effective date for a document shall not be later than the 90th day after the date it is filed.

The fact that a document has become effective under this subsection does not determine its validity or invalidity or the correctness or incorrectness of the information contained in the document.

(k) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of this act, the Secretary of State shall file it. Documents filed with the Secretary of State pursuant to this act may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this act, or under any predecessor act, by photographic, microfilm, optical disk media, or other means of reproduction and may destroy the originals of those documents reproduced.

The Secretary of State files a document by stamping or otherwise endorsing 'Filed', together with the Secretary of State's name and official title and the date and time of filing, on both the original and the document copy. After filing a document, the Secretary of State shall deliver the document copy to the submitting business entity or its representative.

If the Secretary of State refuses to file a document, the Secretary of State shall return it to the submitting business entity or its representative within five days after the document was received, together with a brief, written explanation of the reason for refusal. The Secretary of State may correct apparent errors and omissions on a document submitted for filing if authorized to make the corrections by the person submitting the document for filing. Prior to making the correction, the Secretary shall confirm the authorization to make the corrections according to procedures adopted by rule.

The Secretary of State's duty is to review and file documents that satisfy the requirements of this Act. The Secretary of State's filing or refusing to file a document does not:

(1) Affect the validity or invalidity of the document in whole or in part;

(2) Relate to the correctness or incorrectness of information contained in the document; or

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

(l) If the Secretary of State refuses to file a document delivered to the Secretary of State's office for filing, the person tendering the document for filing may, within 30 days after the refusal, appeal the refusal to the Superior Court of Wake County. The appeal is commenced by filing a petition with the court and with the Secretary of State requesting the court to compel the Secretary of State to file the document. The petition shall have attached to it the document to be filed and the Secretary of State's explanation for the refusal to file. The appeal to the Superior Court is not governed by Chapter 150B of the General Statutes, the Administrative Procedure Act, and the court shall determine, based upon what is appropriate under the circumstances, any further notice and opportunity to be heard.

Upon consideration of the petition and any response made by the Secretary of State, the court may, prior to entering final judgment, order the Secretary of State to file the document or take other action the court considers appropriate.

The court's final decision may be appealed as in other civil proceedings.

(m) A certificate attached to a copy of a document filed by the Secretary of State, bearing the Secretary of State's signature, which may be in facsimile, and the seal of office and certifying that the copy is a true copy of the document, is conclusive evidence that the original document is on file with the Secretary of State. A photographic, microfilm, optical disk media, or other reproduced copy of a document filed pursuant to this act or any predecessor act, when certified by the Secretary, shall be considered an original for all purposes and is admissible in evidence in like manner as an original.

(n) A person commits an offense if the person signs a document the person knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing. An offense under this subsection is a Class 1 misdemeanor.

(o) Whenever title to real property in this State held by a partnership is vested by operation of law in another entity upon merger, consolidation, or conversion of the partnership, a certificate reciting the merger, consolidation, or conversion shall be recorded in the office of the register of deeds of the county where the property is located, or if the property is located in more than one county, then in each county where any portion of the property is located.

The Secretary of State shall adopt uniform certificates to be furnished for registration in accordance with this subsection. In the case of a partnership formed under a law other than the laws of this State, a similar certificate by any competent authority of the jurisdiction of organization may be registered in accordance with this subsection.

The certificate required by this subsection shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgment, probate, or approval by any other officer shall be required. The former name of the partnership holding title to the real property before the merger, consolidation, or conversion shall appear in the 'Grantor' index, and the name of the other entity holding title to the real property by virtue of the merger, consolidation, or conversion shall appear in the 'Grantee' index."

SECTION 105.(a) Chapter 59 of the General Statutes is amended by recodifying Part 7 of Article 2 as a separate new Article to read:

"Article 2A.

"Conversion and Merger."

SECTION 105.(b) G.S. 59-73.2, 59-73.3, 59-73.4, 59-73.5, and 59-73.6 are recodified as G.S. 59-73.20, 59-73.30, 59-73.31, 59-73.32, and 59-73.33, respectively, in Article 2A of Chapter 59 of the General Statutes, as enacted by this act.

SECTION 105.(c) G.S. 59-73.7 is repealed.

SECTION 106. Article 2A of Chapter 59 of the General Statutes, as enacted by this act, is amended by adding a new Part to read as follows and to include current G.S. 59-73.1 in Part 1:

"Part 1. General Provisions."

SECTION 107. G.S. 59-73.1 reads as rewritten:

"**§ 59-73.1. Definitions.**

As used in this ~~Part~~ Article:

(1) "Business entity" means a domestic corporation ~~as defined in G.S. 55-1-40~~ (including a professional corporation as defined in G.S. 55B-2), a foreign corporation ~~as defined in G.S. 55-1-40~~ (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit ~~corporation~~ corporation, ~~as defined in G.S. 55A-1-40,~~ a domestic or foreign limited liability ~~company as defined in G.S. 57C-1-03,~~ company, a domestic or foreign limited ~~partnership~~ partnership, ~~as defined in G.S. 59-102,~~ a domestic partnership, or any other ~~partnership as defined in G.S. 59-36 formed under a law other than the laws of this State (including a limited liability partnership).~~ partnership.

(2) "Domestic partnership" means a partnership as defined in G.S. 59-36 that is formed under the laws of this State, including a registered limited liability ~~partnership~~ partnership, ~~as defined in G.S. 59-32,~~ but excluding a domestic limited ~~partnership as defined in G.S. 59-102.~~ partnership.

(3) "Partnership" means a partnership as defined in G.S. 59-36 whether or not formed under the laws of this State including a registered limited liability partnership and ~~any other~~ a foreign limited liability ~~partnership formed under a law other than the laws of this State~~ partnership, but excluding a domestic limited partnership ~~as defined in G.S. 59-102~~ and a foreign limited ~~partnership as defined in G.S. 59-102.~~ partnership."

SECTION 108. Article 2A of Chapter 59 of the General Statutes, as enacted by this act, is amended by adding a new Part to read:

"Part 2. Conversion to Domestic Partnership.

"**§ 59-73.10. Conversion.**

A business entity other than a domestic partnership may convert to a domestic partnership if:

(1) The conversion is permitted by the laws of the state or country governing the organization and internal affairs of the converting business entity; and

(2) The converting business entity complies with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section.

"**§ 59-73.11. Plan of conversion.**

(a) The converting business entity shall approve a written plan of conversion containing:

(1) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs;
(2) The name of the resulting domestic partnership into which the converting business entity shall convert;
(3) The terms and conditions of the conversion; and
(4) The manner and basis for converting the interests in the converting business entity into interests, obligations, or securities of the resulting domestic partnership or into cash or other property in whole or in part.

The plan of conversion may contain other provisions relating to the conversion.

(b) The plan of conversion shall be approved in accordance with the laws of the state or country governing the organization and internal affairs of the converting business entity.

(c) After a plan of conversion has been approved as provided in subsection (b) of this section but before the articles of conversion to domestic partnership become effective, the plan of conversion may be amended or abandoned to the extent permitted by the laws that govern the organization and internal affairs of the converting business entity.

"**§ 59-73.12. Filing of articles of conversion by converting business entity.**

(a) After a plan of conversion has been approved by the converting business entity as provided in G.S. 59-73.11, the converting business entity shall deliver articles of conversion to the Secretary of State for filing. The articles of conversion shall state:

(1) That the domestic partnership is being formed pursuant to a conversion of another business entity;
(2) The name of the resulting domestic partnership, a designation of its mailing address, and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address;
(3) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs; and
(4) That a plan of conversion has been approved by the converting business entity as required by law.

If the resulting domestic partnership is to be a registered limited liability partnership when the conversion takes effect, then instead of separately filing the articles of conversion, the articles of conversion shall be included as part of the application for registration filed pursuant to G.S. 59-84.2 in addition to the matters otherwise required or permitted by law.

If the plan of conversion is abandoned after the articles of conversion have been filed with the Secretary of State but before the articles of conversion become effective, the converting business entity shall deliver to the Secretary of State for filing prior to the time the articles of conversion become effective an amendment to the articles of conversion withdrawing the articles of conversion to domestic partnership.

(b) The conversion takes effect when the articles of conversion become effective.

(c) Certificates of conversion shall also be registered as provided in G.S. 47-18.1.

"**§ 59-73.13. Effects of conversion.**

(a) When the conversion takes effect:

(1) The converting business entity ceases its prior form of organization and continues in existence as the resulting domestic partnership;

(2) The title to all real estate and other property owned by the converting business entity continues vested in the resulting domestic partnership without reversion or impairment;

(3) All liabilities of the converting business entity continue as liabilities of the resulting domestic partnership;

(4) A proceeding pending by or against the converting business entity may be continued as if the conversion did not occur; and

(5) The interests in the converting business entity that are to be converted into interests, obligations, or securities of the resulting domestic partnership or into the right to receive cash or other property are thereupon so converted, and the former holders of interests in the converting business entity are entitled only to the rights provided in the plan of conversion.

The conversion shall not affect the liability or absence of liability of any holder of an interest in the converting business entity for any acts, omissions, or obligations of the converting business entity made or incurred prior to the effectiveness of the conversion. The cessation of the existence of the converting business entity in its prior form of organization in the conversion shall not constitute a dissolution or termination of the converting business entity.

(b) When the conversion takes effect, the resulting domestic partnership is deemed:

(1) To agree that it may be served with process in this State for enforcement of (i) any obligation of the converting business entity and (ii) any obligation of the resulting domestic partnership arising from the conversion; and

(2) To have appointed the Secretary of State as its agent for service of process in any such proceeding. 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 the process and the fee required by G.S. 59-35.1(f). Upon receipt of service of process on behalf of a resulting domestic partnership 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 resulting domestic partnership. If the resulting domestic partnership is a registered limited liability partnership, the address for

mailing shall be its principal office or, if there is no principal office on file, its registered office. If the resulting domestic partnership is not a registered limited liability partnership, the address for mailing shall be the mailing address designated pursuant to G.S. 59-73.12(a)(2)."

SECTION 109. Article 2A of Chapter 59 of the General Statutes, as enacted by this act, is amended by adding a new Part to read as follows and to include G.S. 59-73.20, as recodified in Section 105 of this act, as the first section in Part 3:

"Part 3. Conversion of Domestic Partnership."

SECTION 110. G.S. 59-73.20, as recodified in Section 105 of this act, reads as rewritten:

"**§ 59-73.20. Conversion.**

A domestic partnership may convert to a ~~domestic limited liability company pursuant to Part 1 of Article 9A of Chapter 57C of the General Statutes, or to a domestic limited partnership pursuant to Part 10A of Article 5 of Chapter 59 of the General Statutes.~~ different business entity if:

(1) The conversion is permitted by the laws of the state or country governing the organization and internal affairs of such other business entity; and

(2) The converting domestic partnership complies with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section."

SECTION 111. Part 3 of Article 2A of Chapter 59 of the General Statutes, as created by Section 109 of this act, is amended by adding the following new sections to read:

"**§ 59-73.21. Plan of conversion.**

(a) The converting domestic partnership shall approve a written plan of conversion containing:

(1) The name of the converting domestic partnership;

(2) The name of the resulting business entity into which the domestic partnership shall convert, its type of business entity, and the state or country whose laws govern its organization and internal affairs;

(3) The terms and conditions of the conversion; and

(4) The manner and basis for converting the interests in the domestic partnership into interests, obligations, or securities of the resulting business entity or into cash or other property in whole or in part.

The plan of conversion may contain other provisions relating to the conversion.

(b) The plan of conversion shall be approved by the domestic partnership in the manner provided for the approval of the conversion in a written partnership agreement or, if there is no such provision, by the unanimous consent of its partners. If any partner of the converting domestic partnership has or will have personal liability for any existing or future obligation of the resulting business entity solely as a result of holding an interest in the resulting business entity, then in addition to the requirements of the

preceding sentence, approval of the plan of conversion by the domestic partnership shall require the consent of that partner. The converting domestic partnership shall provide a copy of the plan of conversion to each partner of the converting domestic partnership at the time provided in a written partnership agreement or, if there is no such provision, prior to its approval of the plan of conversion.

(c) After a plan of conversion has been approved by a domestic partnership but before the articles of conversion become effective, the plan of conversion (i) may be amended as provided in the plan of conversion or (ii) may be abandoned, subject to any contractual rights, as provided in the plan of conversion or written partnership agreement or, if not so provided, as determined in the manner necessary for approval of the plan of conversion.

"**§ 59-73.22. Articles of conversion.**

(a) After a plan of conversion has been approved by the converting domestic partnership as provided in G.S. 59-73.21, the converting domestic partnership shall deliver articles of conversion to the Secretary of State for filing. The articles of conversion shall state:

(1) The name of the converting domestic partnership;

(2) The name of the resulting business entity, its type of business entity, the state or country whose laws govern its organization and internal affairs, and, if the resulting business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address; and

(3) That a plan of conversion has been approved by the domestic partnership as required by law.

If the domestic partnership is converting to a business entity whose formation or whose status as a limited liability limited partnership, as defined in G.S. 59-102, requires the filing of a document with the Secretary of State, then the articles of conversion shall be included as part of that document instead of separately filing the articles of conversion.

If the plan of conversion is abandoned after the articles of conversion have been filed with the Secretary of State but before the articles of conversion become effective, the converting domestic partnership shall deliver to the Secretary of State for filing prior to the time the articles of conversion become effective an amendment of the articles of conversion withdrawing the articles of conversion.

(b) The conversion takes effect when the articles of conversion become effective.

(c) Certificates of conversion shall also be registered as provided in G.S. 47-18.1.

"**§ 59-73.23. Effects of conversion.**

(a) When the conversion takes effect:

(1) The converting domestic partnership ceases its prior form of organization and continues in existence as the resulting business entity;

(2) The title to all real estate and other property owned by the converting domestic partnership continues vested in the resulting business entity without reversion or impairment;

(3) All liabilities of the converting domestic partnership continue as liabilities of the resulting business entity;

(4) A proceeding pending by or against the converting domestic partnership may be continued as if the conversion did not occur; and

(5) The interests in the converting domestic partnership that are to be converted into interests, obligations, or securities of the resulting business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of interests in the converting domestic partnership are entitled only to the rights provided in the plan of conversion.

The conversion shall not affect the liability or absence of liability of any holder of an interest in the converting domestic partnership for any acts, omissions, or obligations of the converting domestic partnership made or incurred prior to the effectiveness of the conversion. The cessation of the existence of the converting domestic partnership in its form of organization as a domestic partnership in the conversion shall not constitute a dissolution or termination of the converting domestic partnership.

(b) If the resulting business entity is not a domestic corporation, a domestic limited partnership, or a domestic limited liability company, when the conversion takes effect the resulting business entity is deemed:

(1) To agree that it may be served with process in this State for enforcement of (i) any obligation of the converting domestic partnership and (ii) any obligation of the resulting business entity arising from the conversion; and

(2) To have appointed the Secretary of State as its agent for service of process in any such proceeding. 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 the process and the fee required by G.S. 59-35.1(f). Upon receipt of service of process on behalf of a resulting business 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 resulting business entity. If the resulting business entity is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the resulting business entity is not authorized to transact business or conduct affairs in this State, the address for

mailing shall be the mailing address designated pursuant to G.S. 59-73.12(a)(2)."

SECTION 112. Article 2A of Chapter 59 of the General Statutes, as enacted by this act, is amended by adding a new Part to read as follows and to include G.S. 59-73.30, 59-73.31, 59-73.32, 59-73.33, each as recodified in Section 105 of this act, in Part 4:

"Part 4. Merger."

SECTION 113. G.S. 59-73.31(b), as recodified by Section 105 of this act, reads as rewritten:

"(b) In the case of a merging domestic partnership, the plan of merger must be approved in the manner provided in a written partnership agreement that is binding on all the partners for approval of a merger with the type of business entity contemplated in the plan of merger or, if there is no provision, by the unanimous consent of its partners. If any partner of a merging domestic partnership has or will have personal liability for any existing or future obligation of the surviving business entity solely as a result of holding an interest in the surviving business entity, then in addition to the requirements of the preceding sentence, approval of the plan of merger by the domestic partnership shall require the consent of that partner. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of such merging business entity."

SECTION 114. G.S. 59-73.32(a), as recodified by Section 105 of this act, reads as rewritten:

"(a) After a plan of merger has been approved by each merging domestic partnership and each other merging business entity as provided in ~~G.S. 59-73.4,~~ G.S. 59-73.31, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

(1) The plan of merger;

(2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

(3) The name ~~and address~~ of the surviving business ~~entity;~~ entity and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address;

(4) A statement that the plan of merger has been approved by each merging business entity in the manner required by law; and

(5) The effective date and time of the merger if it is not to be effective at the time of filing of the articles of merger.

If the plan of merger is amended or abandoned after the articles of merger have been filed but before the articles of merger become effective, the surviving business entity

~~promptly~~ shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger."

SECTION 115. G.S. 59-73.33(b), as recodified by Section 105 of this act, 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~~partnership, when the merger takes ~~effect~~,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) To have appointed the Secretary of State as its registered agent for service of process in any such proceeding. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of ~~State~~State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of such process and the ~~fees~~fee required by ~~G.S. 59-73.7(c).~~G.S. 59-35.1(f). Upon receipt of service of process on behalf of a surviving business 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. If the surviving business entity is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the surviving business entity is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to ~~subdivision (3) of subsection (d) of this section.~~G.S. 59-73.32(a)(3)."

SECTION 116. G.S. 59-77 reads as rewritten:

"**§ 59-77. When personal representative may take inventory; receiver.**

If the surviving partner should neglect or refuse to have such inventory made, the personal representative of the deceased partner may have the same made in accordance with the provisions of G.S. 59-76. Should any surviving partner fail to take such an

inventory or refuse to allow the personal representative of the deceased partner's estate to do so, such personal representative of the deceased partner's estate may forthwith apply to a court of competent jurisdiction for the appointment of a receiver for such partnership, who shall thereupon proceed to wind up the same and dispose of the assets thereof in accordance with law."

SECTION 117. G.S. 59-84.1 reads as rewritten:

"**§ 59-84.1. Partnership to comply with "assumed name" ~~statute.~~statute; income taxation.**

(a) Every partnership other than a limited partnership shall comply with, and be subject to, the provisions of Articles 14 and 15 of Chapter 66 of the General Statutes in all cases in which the same are applicable.

(b) A partnership, including a registered limited liability partnership and a foreign limited liability partnership, and a partner of one of these partnerships are subject to taxation under Article 4 of Chapter 105 of the General Statutes in accordance with their classification for federal income tax purposes. Accordingly, if any such partnership is classified for federal income tax purposes as a C corporation as defined in G.S. 105-131(b)(2) or an S corporation as defined in G.S. 105-131(b)(8), the partnership and its partners are subject to tax under Article 4 of Chapter 105 of the General Statutes to the same extent as a C corporation or an S corporation, as the case may be, and its shareholders. If any such partnership is classified for federal income tax purposes as a partnership, the partnership and its partners are subject to tax under Article 4 of Chapter 105 of the General Statutes accordingly. If any such partnership is classified for federal income tax purposes as other than a corporation or a partnership, the partnership and its partners are subject to tax under Article 4 of Chapter 105 of the General Statutes in a manner consistent with that classification. This section does not require a partnership, including any registered limited liability partnership or foreign limited liability partnership authorized to transact business in this State, to obtain an administrative ruling from the Internal Revenue Service on its classification under the Internal Revenue Code."

SECTION 118. G.S. 59-84.2 reads as rewritten:

"**§ 59-84.2. Registered limited liability partnerships.**

(a) ~~To become a registered limited liability partnership, a partnership must file~~ A partnership whose internal affairs are governed by the laws of this State, other than a limited partnership, may become a registered limited liability partnership by filing with the Secretary of State an application ~~stating:~~stating all of the following:

(1) The name of the partnership.

(2) The street ~~address~~address, and the mailing address if different from the street address, of its principal ~~office.~~office and the county in which the principal office is located.

(3) The name and street address, and the mailing address if different from the street address, ~~for~~of the partnership's registered agent and registered office for service of process.

(4) The county in this State in which the registered office is located.
~~(5) A brief statement of the business in which the partnership engages.~~
~~(6) A deferred effective date, if any.~~
(7) The fiscal year end of the partnership.

(a1) The terms and conditions on which a partnership becomes a limited liability partnership must be approved ~~by the vote necessary~~ in the manner provided in ~~to amend~~ the partnership ~~agreement except~~,agreement; provided, however, if the partnership agreement does not contain any such provision, the terms and conditions shall be approved (i) in the case of a partnership having a partnership agreement that expressly considers obligations to contribute to the partnership, ~~the vote~~in the manner necessary to amend those ~~provisions.~~provisions, or (ii) in any other case, in the manner necessary to amend the partnership agreement.

~~(b) An application for registration as a registered limited liability partnership must be executed by one or more partners.~~

~~(c) An application for registration as a registered limited liability partnership must be accompanied by a fee of one hundred twenty-five dollars ($125.00).~~

~~(d) The Secretary of State shall register a partnership that submits a completed application with the required fee.~~

~~(e) A registration is effective on the later of the date the registration is filed or the date specified in the application for registration, unless it is voluntarily withdrawn by filing with the Secretary of State a written withdrawal notice executed by one or more of the partners, or is revoked pursuant to G.S. 59-84.4(f).~~

~~(f) The Secretary of State may provide forms for applications for registration.~~

(f1) A partnership becomes a registered limited liability partnership when its application for registration becomes effective.

(g) The status of a registered limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the application for registration.

(h) A partnership shall promptly amend its registration to reflect any change in the information contained in its application for registration, other than changes that are properly included in other documents filed with the Secretary of State. A registration is amended by filing a certificate of amendment ~~thereto in the office of~~with the Secretary of State. The certificate of amendment shall set ~~forth the following:~~forth:

(1) The name of the ~~partnership.~~partnership as reflected on the application for registration.
(2) The date of filing of the application for registration.
(3) The amendment to the application for registration.

(i) Each registered limited liability partnership shall continuously maintain in this State:

(1) A registered office that may be the same as any of its places of business; and

(2) ~~The~~ A registered agent ~~of a registered limited liability partnership for service of process must~~who shall be (i) an individual who is a resident of this State and whose business office is identical with the registered office; (ii) a domestic corporation, nonprofit corporation, or limited liability company whose business office is identical with the registered office; or (iii) a foreign corporation, nonprofit corporation, or limited liability company authorized to transact business or conduct affairs in this State whose business office is identical with the registered office. The sole duty of the registered agent to the registered limited liability partnership is to forward to the registered limited liability partnership at its last known address any notice, process, or demand that is served on the registered agent.

(j) A partnership may cancel its registration by filing a certificate of cancellation with the Secretary of State. The certificate of cancellation shall set forth:

(1) The name of the partnership as reflected on the application for registration;

(2) The date of filing of the application for registration;

(3) A mailing address to which the Secretary of State may mail a copy of any process served on the Secretary of State under this subsection;

(4) A commitment to file with the Secretary of State a statement of any subsequent change in its mailing address; and

(5) The effective date and time of cancellation if it is not to be effective at the time of filing the certificate.

Cancellation of registration terminates the authority of the partnership's registered agent to accept service of process, notice, or demand, and appoints the Secretary of State as agent to accept service on behalf of the partnership with respect to any action or proceeding based upon any cause of action arising in this State, or arising out of business transacted in this State, during the time the partnership was registered as a registered limited liability partnership. 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 authorized by the Secretary of State to accept service of process, duplicate copies of such process, notice, or demand and the fee required by G.S. 59-35.1(f). Upon receipt of process, notice, or demand in the manner provided in this section, the Secretary of State shall immediately mail a copy of the process, notice, or demand by registered or certified mail, return receipt requested, to the partnership at the mailing address designated pursuant to this subsection.

(k) A registered limited liability partnership may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(1) The name of the registered limited liability partnership;

(2) The street address, and the mailing address if different from the street address, of the registered limited liability partnership's current registered office and the county in which it is located;

(3) If the address of the registered limited liability partnership's registered office is to be changed, the street address, and the mailing address if different from the street address, of the new registered office and the county in which it is located;

(4) The name of its current registered agent;

(5) If the current registered agent is to be changed, the name of the new registered agent and the new registered agent's written consent (either on the statement or attached to it) to the appointment; and

(6) That after the change or changes are made, the addresses of its registered office and the business office of its registered agent will be identical.

If a registered agent changes the address of the registered agent's business office, the registered agent may change the address of the registered office of any registered limited liability partnership for which the agent is the registered agent by notifying the registered limited liability partnership in writing of the change and signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement that complies with the requirements of this subsection and recites that the registered limited liability partnership has been notified of the change.

A registered limited liability partnership may change its registered office or registered agent by including in its annual report required by G.S. 59-84.4 the information and any written consent required by this subsection.

(l) The following provisions shall apply for the resignation of a registered agent:

(1) A registered agent may resign the agent's appointment by signing and filing with the Secretary of State the signed original and two exact or conformed copies of a statement of resignation which may include a statement that the registered office is also discontinued. The statement must include or be accompanied by a certification from the registered agent that the agent has mailed or delivered to the registered limited liability partnership at its last known address written notice of the agent's resignation. Such certification shall include the name and title of the partner notified, if any, and the address to which the notice was mailed or delivered.

(2) After filing the statement, the Secretary of State shall mail one copy to the registered office (if not discontinued) and the other copy to the registered limited liability partnership at its principal office.

(3) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

(m) The registered agent of a registered limited liability partnership is an agent of the registered limited liability partnership for service of process, notice, or demand required or permitted by law to be served on the registered limited liability partnership.

(n) Whenever a registered limited liability partnership 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 registered limited liability partnership upon whom any such 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 authorized by the Secretary of State to accept service of process, duplicate copies of the process, notice, or demand and the fee required by G.S. 59-35.1(f). In the event any such process, notice, or demand is served on the Secretary of State in the manner provided in this subsection, the Secretary of State shall immediately mail one of the copies thereof, by registered or certified mail, return receipt requested, to the registered limited liability partnership at its principal office or, if there is no mailing address for the principal office on file, to the registered limited liability partnership at its registered office. Service on a registered limited liability partnership under this subsection shall be effective for all purposes from and after the date of the service on the Secretary of State.

(o) The Secretary of State shall keep a record of all processes, notices, and demands served upon the Secretary of State under this section and shall record therein the time of such service and the Secretary of State's action with reference thereto.

(p) Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a registered limited liability partnership in any other manner now or hereafter permitted by law."

SECTION 119. G.S. 59-84.4(c) reads as rewritten:

"(c) The annual report shall be delivered to the Secretary of State by the fifteenth day of the fourth month following the close of the registered or foreign limited liability partnership's fiscal year. ~~The annual report must be accompanied by a fee of two hundred dollars ($200.00).~~"

SECTION 120. G.S. 59-91 reads as rewritten:

"**§ 59-91. Statement of foreign registration.**

(a) Before transacting business in this State, a foreign limited liability partnership must file an application for registration as a foreign limited liability partnership. The application must contain:

(1) The name of the foreign limited liability partnership that satisfies the requirements of the State or other jurisdiction under whose law it is formed and ends with the words "registered limited liability partnership" or "limited liability partnership" or the abbreviation "R.L.L.P.", "L.L.P.", "RLLP", or "LLP".

(2) The street ~~address~~ address, and the mailing address if different from the street address, of the partnership's principal ~~office.~~ office, and the county in which the principal office is located.

(3) The name and street address, and the mailing address if different from the street address, for the partnership's registered agent and registered office for service of process, and the county in which the registered office is located.

~~(4) A brief statement of the business in which the partnership is engaged.~~

~~(5) A deferred effective date, if any.~~

(6) The fiscal year end of the partnership.

The foreign limited liability partnership shall deliver with the completed application a certificate of existence, or a document with similar import, duly authenticated by the ~~secretary of state~~ Secretary of State or other official having custody of the records of registered limited liability partnerships in the state or country under whose law it is registered.

~~(b) The registered agent of a foreign limited liability partnership for service of process must be (i) an individual who is a resident of this State and whose business office is identical with the registered office; (ii) a domestic corporation, nonprofit corporation, or limited liability company whose business office is identical with the registered office; or (iii) a foreign corporation, nonprofit corporation, or limited liability company authorized to transact business in this State whose business office is identical with the registered office. The sole duty of the registered agent to the foreign limited liability partnership is to forward to the foreign limited liability partnership at its last known address any notice, process, or demand that is served on the registered agent.~~

~~(c) An application for registration as a foreign limited liability partnership must be accompanied by a fee of one hundred twenty-five dollars ($125.00).~~

~~(d) The Secretary of State shall register a partnership that submits a completed application for registration as a foreign limited liability partnership with the required fee.~~

~~(e) The status of a partnership as a foreign limited liability partnership is effective on the later of the date the registration is filed or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is voluntarily withdrawn by filing with the Secretary of State a written withdrawal notice executed by one or more partners or revoked pursuant to G.S. 59-84.4(f).~~

~~(f) 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.~~

~~(g) An application for registration as a foreign limited liability partnership must be executed by one or more partners.~~

(h) A foreign limited liability partnership authorized to transact business in this State shall be subject to the provisions of G.S. 59-84.4 regarding annual reports and revocation of registration.

(i) A foreign limited liability partnership becomes registered as a foreign limited liability partnership when its application for registration becomes effective.

(j) A foreign limited liability partnership shall promptly amend its registration to reflect any change in the information contained in its application for registration, other than changes in its registered agent, registered office, or principal office. A registration is amended by filing a certificate of amendment with the Secretary of State. The certificate of amendment shall set forth:

(1) The name of the foreign limited liability partnership under which it is registered in this State;

(2) The date of filing of the application for registration; and

(3) The amendment to the application for registration.

(k) A foreign limited liability partnership may cancel its registration by filing a certificate of cancellation with the Secretary of State. The certificate of cancellation shall set forth:

(1) The name of the foreign limited liability partnership under which it is registered in this State;

(2) The date of filing of the application for registration;

(3) A mailing address to which the Secretary of State may mail a copy of any process served on the Secretary of State under this subsection;

(4) A commitment to file with the Secretary of State a statement of any subsequent change in its mailing address; and

(5) The effective date and time of cancellation if it is not to be effective at the time of filing the certificate.

Cancellation of registration terminates the authority of the foreign limited liability partnership's registered agent to accept service of process, notice, or demand and appoints the Secretary of State as agent to accept such service on behalf of the foreign limited liability partnership with respect to any action or proceeding based upon any cause of action arising in this State, or arising out of business transacted in this State, during the time the foreign limited liability partnership was registered in this State. 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 authorized by the Secretary of State to accept service of process, duplicate copies of such process, notice, or demand and the fee required by G.S. 59-35.1(f). Upon receipt of process, notice, or demand in the manner herein provided, the Secretary of State shall immediately mail a copy of the process, notice, or demand by registered or certified mail, return receipt requested, to the foreign limited liability partnership at the mailing address designated pursuant to this subsection.

(l) Each foreign limited liability partnership registered in this State must continuously maintain in this State:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent who shall be (i) an individual who is a resident of this State and whose business office is identical with the registered office; (ii) a domestic corporation, nonprofit corporation, or limited liability company whose business office is identical with the registered office; or (iii) a foreign corporation, nonprofit corporation, or limited liability company authorized to transact business or conduct affairs in this State whose business office is identical with the registered office.

The sole duty of the registered agent to the foreign limited liability partnership is to forward to the foreign limited liability partnership at its last known address any notice, process, or demand that is served on the registered agent.

(m) A foreign limited liability partnership may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(1) The name of the foreign limited liability partnership;

(2) The street address, and the mailing address if different from the street address, of the foreign limited liability partnership's current registered office and the county in which it is located;

(3) If the address of the foreign limited liability partnership's registered office is to be changed, the street address, and the mailing address if different from the street address, of the new registered office and the county in which it is located;

(4) The name of its current registered agent;

(5) If the current registered agent is to be changed, the name of the new registered agent and the new registered agent's written consent (either on the statement or attached to it) to the appointment; and

(6) That after the change or changes are made, the addresses of its registered office and the business office of its registered agent will be identical.

If a registered agent changes the address of the registered agent's business office, the registered agent may change the address of the registered office of any foreign limited liability partnership for which the agent is the registered agent by notifying the foreign limited liability partnership in writing of the change and signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement that complies with the requirements of this subsection and recites that the foreign limited liability partnership has been notified of the change.

A foreign limited liability partnership may change its registered office or registered agent by including in its annual report required by G.S. 59-84.4 the information and any written consent required by this subsection.

(n) The following provisions shall apply for the resignation of a registered agent:

(1) A registered agent may resign the agent's appointment by signing and filing with the Secretary of State the signed original and two exact or conformed copies of a statement of resignation which may include a statement that the registered office is also discontinued. The statement must include or be accompanied by a certification from the registered agent that the agent has mailed or delivered to the foreign limited liability partnership at its last known address written notice of the agent's resignation. Such certification shall include the name and title of the partner notified, if any, and the address to which the notice was mailed or delivered.

(2) After filing the statement, the Secretary of State shall mail one copy to the registered office (if not discontinued) and the other copy to the foreign limited liability partnership at its principal office.

(3) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

(o) The registered agent of a foreign limited liability partnership registered in the State is an agent of the foreign limited liability partnership for service of process, notice, or demand required or permitted by law to be served on the foreign limited liability partnership.

(p) Whenever a foreign limited liability partnership registered in this State 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 foreign limited liability partnership 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 the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process, notice, or demand and the fee required by G.S. 59-35.1(f). In the event any process, notice, or demand is served on the Secretary of State in the manner provided in this subsection, the Secretary of State shall immediately mail one of the copies thereof, by registered or certified mail, return receipt requested, to the foreign limited liability partnership at its principal office or, if there is no mailing address for the principal office on file, to the foreign limited liability partnership at its registered office. Service on a foreign limited liability partnership under this subsection shall be effective for all purposes from and after the date of the service on the Secretary of State.

(q) The Secretary of State shall keep a record of all processes, notices, and demands served upon the Secretary of State under this section and shall record therein the time of service and the Secretary of State's action with reference thereto.

(r) Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a foreign limited liability partnership in any other manner now or hereafter permitted by law.

(s) Whenever a foreign limited liability partnership authorized to transact business in this State ceases its separate existence as a result of a statutory merger or consolidation permitted by the laws of the state or country under which it was organized, or converts into another type of entity as permitted by those laws, the surviving or resulting entity shall apply for a certificate of withdrawal for the foreign limited liability partnership by delivering to the Secretary of State for filing a copy of the articles of merger, consolidation, or conversion or a certificate reciting the facts of the merger, consolidation, or conversion, duly authenticated by the Secretary of State or other official having custody of limited liability partnership records in the state or country under the laws of which the foreign limited liability partnership was organized. If the surviving or resulting entity is not authorized to transact business or conduct affairs in this State, the articles or certificate must be accompanied by an application which must set forth:

(1) The name of the foreign liability limited partnership authorized to transact business in this State, the type of entity and name of the surviving or resulting entity, and a statement that the surviving or resulting entity is not authorized to transact business or conduct affairs in this State;

(2) A statement that the surviving or resulting entity consents that service of process based on any cause of action arising in this State, or arising out of business transacted in this State, during the time the foreign limited liability partnership was authorized to transact business in this State, may thereafter be made by service thereof on the Secretary of State;

(3) A mailing address to which the Secretary of State may mail a copy of any process served upon the Secretary under subdivision (2) of this subsection; and

(4) A commitment to file with the Secretary of State a statement of any subsequent change in its mailing address.

(t) If the Secretary of State finds that the articles or certificate and the application for withdrawal, if required, conform to law, the Secretary of State shall:

(1) Endorse on the articles or certificate and the application for withdrawal, if required, the word "filed" and the hour, day, month, and year of filing thereof;

(2) File the articles or certificate and the application, if required;

(3) Issue a certificate of withdrawal; and

(4) Send to the surviving or resulting entity or its representative the certificate of withdrawal, together with the exact or conformed copy of the application, if required, affixed thereto.

(u) After the withdrawal of the foreign limited liability partnership is effective, service of process on the Secretary of State in accordance with subsection (s) of this section 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 and the fee required by G.S. 59-35.1(f). Upon receipt of process in the manner herein provided, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving or resulting entity at the mailing address designated pursuant to subsection (s) of this section."

SECTION 121. G.S. 59-102 reads as rewritten:

"**§ 59-102. Definitions.**

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

(1) "Business" means any lawful trade, investment, or other purpose or activity, whether or not the trade, investment, purpose, or activity is carried on for profit.

(1a) "Business entity" means a domestic corporation ~~as defined in G.S. 55-1-40 (including, without limitation,~~ (including a professional corporation as defined in G.S. 55B-2), a foreign corporation ~~as defined in G.S. 55-1-40 (including, without limitation,~~ (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit ~~corporation as defined in G.S. 55A-1-40,~~ corporation, a domestic ~~limited liability company as defined in G.S. 57C-1-03, a~~ or foreign limited liability ~~company as defined in G.S. 57C-1-03,~~ company, a domestic limited partnership, a foreign limited partnership, a registered limited liability partnership, a foreign limited liability partnership, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this ~~State (including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this State).~~State.

(1b) "Certificate of limited partnership" means the certificate referred to in G.S. 59-201, and the certificate as amended.

(2) "Conformed copy" shall include a photostatic or other photographic copy of the original document.

(3) "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

(3a) "Domestic corporation" has the same meaning as in G.S. 55-1-40.

(3b) "Domestic limited liability company" has the same meaning as in G.S. 57C-1-03.

(3c) "Domestic nonprofit corporation" means a corporation as defined in G.S. 55A-1-40.

(4) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in G.S. 59-402.

(4a) "Foreign corporation" has the same meaning as in G.S. 55-1-40.

(4b) "Foreign limited liability company" has the same meaning as in G.S. 57C-1-03.

(5) "Foreign limited partnership" means a partnership formed under the laws of any state, province, country, or other jurisdiction other than this State and having as partners one or more general partners and one or more limited ~~partners.~~partners, and includes, for all purposes of the laws of the State of North Carolina, a limited partnership having the status of a limited liability limited partnership under the laws of its jurisdiction of formation.

(5a) "Foreign nonprofit corporation" means a foreign corporation as defined in G.S. 55A-1-40.

(6) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.

(6a) "Limited liability limited partnership" and "registered limited liability limited partnership" mean a limited partnership that is registered under and complies with G.S. 59-210.

(7) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

(8) "Limited partnership" and "domestic limited partnership" mean a partnership formed by two or more persons under the laws of this State and having one or more general partners and one or more limited ~~partners.~~partners, and includes, for all purposes of the laws of the State of North Carolina, a limited liability limited partnership.

(9) "Partner" means a limited or general partner.

(10) "Partnership agreement" means any valid agreement of the partners as to the affairs of a limited partnership, the conduct of its business, and the responsibilities and rights of its partners. The term "partnership agreement" includes any written or oral agreement, whether or not the agreement is set forth in a document referred to by the partners as a "partnership agreement", and includes any amendment agreed upon by the partners unanimously or in accordance with the terms of the agreement. The term also includes any agreement of the partners to waive or revise the terms of the partnership agreement in one or more specific instances and not necessarily on an ongoing or permanent basis.

(11) "Partnership interest" means a partner's share of the allocations of income, gain, loss, deduction or credit of a limited partnership and the right to receive distributions of cash or other partnership assets.

(12) "Person" means a natural person, domestic or foreign partnership, domestic or foreign limited ~~partnership (domestic or foreign),~~partnership, domestic or foreign limited liability company, trust, estate, unincorporated association, ~~or corporation.~~domestic or foreign corporation, or another entity.

(12a) "Principal office" means the office (in or out of this State) where the principal executive offices of a limited liability limited partnership are located, as designated in its most recent annual report filed with the Secretary of State or, if no annual report has yet been filed, in its application for registration as limited liability limited partnership.

(13) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico."

SECTION 122. G.S. 59-103 reads as rewritten:

"**§ 59-103. Name.**

(a) The name of the limited partnership shall contain ~~without abbreviation~~ the words ~~"limited partnership";~~'limited partnership' or have the abbreviated 'L.P.' or 'LP' as the last letters of its name, except that in the case of a limited liability limited partnership, its name shall comply with the provisions of G.S. 59-210(a)(1).

(b) The limited partnership name shall not contain the name of a limited partner unless (i) it is also the name of a general partner or the corporate name of a corporate general partner, or (ii) the business of the limited partnership has been carried on under that name before the admission of that limited ~~partner;~~partner.

(c) The limited partnership name shall not contain any word or phrase ~~which~~ that is likely to mislead the ~~public or which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its certificate of limited partnership;~~public."

SECTION 123. G.S. 59-105 reads as rewritten:

"**§ 59-105. Registered office and registered agent.**

(a) Each limited partnership shall have and continuously maintain in this State:

(1) A registered office that may be the same as any of its places of business;

(2) A registered agent, who shall be (i) an individual resident of this State whose business office is identical with such registered office; (ii) a domestic corporation, nonprofit corporation, or limited liability company whose business office is identical with such registered office; or (iii) a foreign corporation, nonprofit corporation, or limited liability company authorized to transact business or conduct affairs in this State, whose business office is identical with such registered office.

The sole duty of the registered agent to the limited partnership is to forward to the limited partnership at its last known address any notice, process, or demand that is served on the registered agent.

(b) Limited partnerships formed prior to October 1, 1986, shall file a certificate of limited partnership with the Office of the Secretary of State pursuant to G.S. 59-201(a) designating the address of the registered office of the limited partnership and the identity of the registered agent at such address.

(b1) Any process, notice or demand, which is required or permitted by law to be served upon a limited partnership, may be served upon the duly appointed registered agent of the limited partnership. Such service upon the registered agent is deemed to have been made on the limited partnership itself.

(b2) A limited partnership may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(1) The name of the limited partnership;

(2) The street address, and the mailing address if different from the street address, of the limited partnership's current registered office and the county in which it is located;

(3) If the address of the limited partnership's registered office is to be changed, the street address, and the mailing address if different from the street address, of the new registered office and the county in which it is located;

(4) The name of its current registered agent;

(5) If the current registered agent is to be changed, the name of the new registered agent and the new registered agent's written consent (either on the statement or attached to it) to the appointment; and

(6) That after the change or changes are made, the addresses of its registered office and the business office of its registered agent will be identical.

(b3) If a registered agent changes the address of the agent's business office, the agent may change the address of the registered office of any limited partnership for which the agent is the registered agent by notifying the limited partnership in writing of the change and signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (b2) of this section and that recites that the limited partnership has been notified of the change.

(c) Whenever a limited partnership 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 limited partnership 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 the Secretary of State, or with any clerk ~~having charge of the limited partnership department of his office,~~ authorized by the Secretary of State to accept service of process, duplicate copies of ~~such~~the process, ~~notice~~ notice, or ~~demand.~~ demand and the fee required by G.S. 59-1106(b). In the event any ~~such~~ process, ~~notice~~ notice, or demand is served on the Secretary of State, ~~he~~ the Secretary of State shall immediately cause one of the copies thereof to be forwarded by registered or certified

mail, ~~addressed~~ to the limited ~~partnership at its~~ partnership. If the limited partnership is a limited liability limited partnership, the address for mailing shall be its principal office or, if there is no principal office on file, its registered office. If the limited partnership is not a limited liability limited partnership, the address for mailing shall be the limited partnership's registered office. ~~Any such~~ Service on a limited partnership ~~so served~~ under this subsection shall be ~~in court~~ effective for all purposes from and after the date of such service on the Secretary of State.

(d) The Secretary of State shall keep a record of all processes, ~~notices~~ notices, and demands served upon ~~him~~ the Secretary of State under this ~~section,~~ section and shall record therein the time of such service and ~~his~~ the Secretary of State's action with reference thereto.

(e) Nothing herein contained shall limit or affect the right to serve any process, ~~notice~~ notice, or demand required or permitted by law to be served upon a limited partnership in any other manner now or hereafter permitted by law.

(f) The following provisions shall apply for the resignation of a registered agent:

(1) A registered agent may resign the agent's appointment by signing and filing with the Secretary of State the signed original and two exact or conformed copies of a statement of resignation which may include a statement that the registered office is also discontinued. The statement shall include or be accompanied by a certification from the registered agent that the agent has mailed or delivered to the limited partnership at its last known address written notice of the agent's resignation. The certification shall include the name and title of the partner notified, if any, and the address to which the notice was mailed or delivered.

(2) After filing the statement, the Secretary of State shall mail one copy to the registered office, if not discontinued, and the other copy to the limited partnership at the address certified in the statement of resignation.

(3) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed."

SECTION 124. G.S. 59-201(a)(3) reads as rewritten:

"(3) ~~The~~ If the limited partnership is to dissolve by a specific date, the latest date upon which the limited partnership is to dissolve. If no date for dissolution is specified, there shall be no limit on the duration of the limited partnership."

SECTION 124A. G.S. 59-201 is amended by adding a new subsection to read:

"(e) If the limited partnership is to be a limited liability limited partnership at its formation, then instead of separately filing the application for registration as a limited liability limited partnership, the application for registration shall be included as part of the certificate of limited partnership."

SECTION 125. G.S. 59-204(a) reads as rewritten:

"(a) Each certificate required by this Article to be filed in the office of the Secretary of State shall be executed in the following manner:

(1) An original certificate of limited partnership must be signed by all general partners;

(2) A certificate of amendment must be signed by at least one general partner and by each other partner designated in the certificate as a new general partner; and

(3) A certificate of cancellation must be signed by all general partners.

Any other document submitted by a domestic or foreign limited partnership for filing pursuant to this or any other Chapter must be signed by at least one general partner. Any document submitted by a business entity other than a domestic or foreign limited partnership must be executed by a person authorized to execute documents (i) pursuant to G.S. 55-1-20(f) if the business entity is a domestic or foreign corporation, (ii) pursuant to G.S. 55A-1-20(f) if the business entity is a domestic or foreign nonprofit corporation, (iii) pursuant to G.S. 57C-1-20(f) if the business entity is a domestic or foreign limited liability company, or (iv) pursuant to G.S. ~~59-73.7(a)(4)~~ 59-35.1(a)(4) if the business entity is a partnership as defined in G.S. 59-36, whether or not formed under the laws of this State, other than a domestic or foreign limited partnership."

SECTION 126. G.S. 59-206 is amended by adding the following new subsections to read:

"(d) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of this Article, the Secretary of State shall file it. Documents filed with the Secretary of State pursuant to this Article may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this Article, or under any predecessor act, by photographic, microfilm, optical disk media, or other means of reproduction and may destroy the originals of those documents reproduced.

(e) If the Secretary of State refuses to file a document, the Secretary of State shall return it to the person submitting the document for filing within five days after the document was received, together with a brief, written explanation of the reason for refusal.

(f) The Secretary of State's duty is to review and file documents that satisfy the requirements of this Article. The Secretary of State's filing or refusing to file a document does not:

(1) Affect the validity or invalidity of the document in whole or in part;

(2) Relate to the correctness or incorrectness of information contained in the document; or

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

(g) A person commits an offense if the person signs a document the person knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing. An offense under this subsection is a Class 1 misdemeanor."

SECTION 127. Part 2 of Article 5 of Chapter 59 of the General Statutes is amended by adding the following new sections to read:

"**§ 59-209. Certificate of existence.**

(a) Anyone may apply to the Secretary of State to furnish a certificate of existence for a domestic limited partnership or a certificate of authorization for a foreign limited partnership.

(b) A certificate of existence or authorization sets forth:

(1) The domestic limited partnership's name or the foreign limited partnership's name used in this State;

(2) That (i) the domestic limited partnership has filed a certificate of limited partnership under the law of this State, the effective date of the filing, and the period of the domestic limited partnership's duration, or (ii) the foreign limited partnership is authorized to transact business in this State;

(3) If the limited partnership has registered as a limited liability limited partnership, that the registration has not been cancelled or revoked;

(4) That a certificate of cancellation of the certificate of limited partnership has not been filed; and

(5) Other facts of record in the office of the Secretary of State that may be requested by the applicant.

(c) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Secretary of State may be relied upon as conclusive evidence that the domestic limited partnership has filed a certificate of limited partnership and has not filed a certificate of cancellation or that the foreign limited partnership is authorized to transact business in this State, and, if applicable, that the domestic limited partnership has registered as a limited liability limited partnership and that such registration has not been cancelled or revoked.

"**§ 59-210. Limited liability limited partnerships.**

(a) To become a limited liability limited partnership, a limited partnership shall file with the Secretary of State an application stating:

(1) The name of the limited liability limited partnership, which shall contain the words 'registered limited liability limited partnership' or 'limited liability limited partnership' or the abbreviation 'L.L.L.P.', 'R.L.L.L.P.', 'LLLP', or 'RLLLP' as the last words or letters of its name.

(2) The street address, and mailing address if different from the street address, of its principal office, and the county in which the principal office is located.

(3) The fiscal year end of the limited liability limited partnership.

(b) The terms and conditions on which a limited partnership becomes a limited liability limited partnership shall be approved in the manner provided in the partnership agreement; provided, however, if the partnership agreement does not contain any such provision, the terms and conditions must be approved (i) in the case of a limited partnership having a partnership agreement that expressly considers obligations to contribute to the partnership, in the manner necessary to amend those provisions, or (ii) in any other case, in the manner necessary to amend the partnership agreement.

(c) A limited partnership becomes a limited liability limited partnership when its application for registration becomes effective.

(d) The status of a limited liability limited partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the application for registration.

(e) A limited liability limited partnership shall promptly amend its registration to reflect any change in the information contained in its application for registration, other than changes that are properly included in other documents filed with the Secretary of State. A registration is amended by filing a certificate of amendment with the Secretary of State. The certificate of amendment shall set forth:

(1) The name of the limited liability limited partnership as reflected on the application for registration;

(2) The date of filing of the application for registration; and

(3) The amendment to the application for registration.

(f) A limited liability limited partnership may cancel its registration by filing a certificate of cancellation with the Secretary of State. The certificate of cancellation shall set forth:

(1) The name of the limited liability limited partnership as reflected on the application for registration;

(2) The date of filing of the application for registration; and

(3) The effective date and time of cancellation if it is not to be effective at the time of filing the certificate.

(g) A limited liability limited partnership shall be subject to the provisions of G.S. 59-84.4(f) regarding annual reports and revocation of registration as if it were a registered limited liability partnership."

SECTION 128. G.S. 59-402(6) reads as rewritten:

"(6) In the case of a general partner who is a natural person,

a. ~~His~~ The general partner's death; or

b. The entry ~~or~~ of an order by a court of competent jurisdiction adjudicating ~~him~~ the general partner incompetent to manage his or her person or ~~his estate;~~ property;".

SECTION 129. G.S. 59-402(9) reads as rewritten:

"(9) In the case of a general partner that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter; ~~or~~".

SECTION 130. G.S. 59-402(10) reads as rewritten:

"(10) Unless otherwise provided in the partnership agreement, or with the consent of all partners, in ~~In~~ the case of a general partner that is an estate, the distribution by the fiduciary of the estate's entire interest in the ~~partnership.~~ partnership;".

SECTION 131. G.S. 59-402 is amended by adding the following new subdivisions to read:

"(11) In the case of a general partner that is a limited liability company, the dissolution and commencement of winding up of the limited liability company; or

(12) In the case of a general partner that is not a natural person, trust, separate partnership, corporation, estate, or limited liability company, the termination of the general partner."

SECTION 132. G.S. 59-403(b) reads as rewritten:

"(b) Except as provided in this Article, a general partner of a limited partnership that is not a limited liability limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other ~~partners.~~ partners, and a general partner of a limited liability limited partnership has the liabilities of, and has the limitation on liability afforded to, a partner in a registered limited liability partnership under the North Carolina Uniform Partnership Act to persons other than the partnership and the other partners with respect to debts and obligations of the limited partnership incurred while it is a limited liability limited partnership. Except as provided in this Article or in the partnership agreement, a general partner of a limited partnership that is not a limited liability limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other ~~partners.~~ partners, and a general partner of a limited liability limited partnership has the liabilities of, and has the limitation on liability afforded to, a partner in a registered limited liability partnership under the North Carolina Uniform Partnership Act to the partnership and to the other partners."

SECTION 133. G.S. 59-403 is amended by adding a new subsection to read:

"(c) Unless otherwise provided in the partnership agreement, a general partner of a limited partnership has the power and authority to delegate to one or more other persons the general partner's rights and powers to manage and control the business and affairs of the limited partnership, including to delegate to agents, officers, and employees of the general partner or the limited partnership, and to delegate by a management agreement or another agreement with, or otherwise to, other persons. Unless otherwise provided in the partnership agreement, a delegation by a general partner of a limited partnership shall not cause the general partner to cease to be a general partner of the limited partnership and shall not reduce or absolve the general partner of the general partner's duties or obligations to the limited partnership or its other partners."

SECTION 134. G.S. 59-902 reads as rewritten:

"**§ 59-902. Registration.**

(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 street address, ~~including county and city or town, and street and number, if any,~~ and the mailing address if different from the street address, of the principal office of the foreign limited partnership;

(5) The street address, ~~including county and city or town, and street and number, if any,~~ and the mailing address if different from the street address, of the ~~proposed~~ registered office of the foreign limited partnership in this State, the county in which the registered office is located, 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; and

(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.~~effective date and time of the registration if it is not to be effective at the time of filing of the application.

(b) Without excluding other activities which ~~may~~shall not constitute transacting business in this State, a foreign limited partnership shall not be considered to be transacting business in this State, for the purpose of this Article, by reason of carrying on in this State any one or more of the following activities:

(1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;

(2) Holding meetings of its partners or carrying on other activities concerning its internal affairs;

(3) Maintaining bank accounts or borrowing money in this State, with or without security, even if such borrowings are repeated and continuous transactions;

(4) Maintaining offices or agencies for the transfer, exchange, and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities;

(5) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this State before becoming binding contracts;

(6) Making or investing in loans with or without security including servicing of mortgages or deeds of trust through independent agencies within the State, the conducting of foreclosure proceedings and ~~sale,~~ sales, the acquiring of property at foreclosure sale and the management and rental of such property for a reasonable time while liquidating its investment, provided no office or agency therefor is maintained in this State;

(7) Taking security for or collecting debts due to it or enforcing any rights in property securing the same;

(8) Transacting business in interstate commerce; and

(9) Conducting an isolated transaction completed within a period of six months and not in the course of a number of repeated transactions of like nature.

(b1) Each foreign limited partnership authorized to transact business in this State shall continuously maintain in this State:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent, who shall be (i) an individual who resides in this State and whose business office is identical with the registered office; (ii) a domestic corporation, nonprofit corporation, or limited liability

company whose business office is identical with the registered office, or (iii) a foreign corporation, nonprofit corporation, or limited liability company authorized to transact business or conduct affairs in this State whose business office is identical with the registered office.

The sole duty of the registered agent to the foreign limited partnership is to forward to the foreign limited partnership at its last known address any notice, process, or demand that is served on the registered agent.

(b2) A foreign limited partnership authorized to transact business in this State may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(1) Its name;

(2) The street address, and the mailing address if different from the street address, of its current registered office, and the county in which it is located;

(3) If the address of its registered office is to be changed, the street address, and the mailing address if different from the street address, of the new registered office, and the county in which it is located;

(4) The name of its current registered agent;

(5) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and

(6) That after the change or changes are made, the addresses of its registered office and the business office of its registered agent will be identical.

If a registered agent changes the address of the agent's business office, the registered agent may change the address of the registered office of any foreign limited partnership for which the agent is the registered agent by notifying the foreign limited partnership in writing of the change and signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement of change that complies with the requirements of this subsection and recites that the foreign limited partnership has been notified of the change.

(b3) The following provisions shall apply for the resignation of a registered agent:

(1) A registered agent may resign the agent's agency appointment by signing and filing with the Secretary of State the signed original and two exact or conformed copies of a statement of resignation which may include a statement that the registered office is also discontinued. The statement shall include or be accompanied by a certification from the registered agent that the agent has mailed or delivered to the foreign limited partnership at its last known address written notice of the agent's resignation. Such certification shall include the name and title of the partner notified, if any, and the address to which the notice was mailed or delivered.

(2) After filing the statement, the Secretary of State shall mail one copy to the registered office, if not discontinued, and the other copy to the foreign limited partnership at the address certified in the statement of resignation.

(3) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

(b4) The registered agent of a foreign limited partnership authorized to transact business in this State is an agent of the foreign limited partnership for service of process, notice, or demand required or permitted by law to be served on the foreign limited partnership.

(c) Whenever a foreign limited partnership 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 foreign limited partnership 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 limited partnership department of his office,~~ authorized by the Secretary of State to accept service of process, duplicate copies of ~~such~~the process, notice or ~~demand.~~demand and the fee required by G.S. 59-1106(b). In the event any such process, notice or demand is served on the Secretary of State, ~~he~~the Secretary of State shall immediately cause one of the copies thereof to be forwarded by registered or certified ~~mail, addressed~~ mail to the foreign limited partnership at its registered office. ~~Any such~~ Service on a foreign limited partnership ~~so served~~ under this subsection shall be ~~in court~~ effective for all purposes from and after the date of ~~such~~the service on the Secretary of State.

(d) The Secretary of State shall keep a record of all processes, notices and demands served upon ~~him~~the Secretary of State under this section, and shall record therein the time of such service and ~~his~~the Secretary of State's action with reference thereto.

(e) Nothing herein contained shall limit or affect the right to serve any process notice or demand required or permitted by law to be served upon a foreign limited partnership in any other manner now or hereafter permitted by law."

SECTION 135. G.S. 59-904 reads as rewritten:

"**§ 59-904. Name.**

A foreign limited partnership may register with the Secretary of State under any name (whether or not it is the name under which it is registered in its state of organization) that includes without abbreviation the words 'limited partnership' or has the abbreviation 'L.P.', 'LP', 'R.L.L.L.P.', 'RLLLP', 'L.L.L.P.', or 'LLLP' as the last letters of its name and that could be registered and used as its name under G.S. 59-103 by a domestic limited partnership."

SECTION 136. G.S. 59-909(a) reads as rewritten:

"(a) Whenever a foreign limited partnership authorized to transact business in this State ceases its separate existence as a result of a statutory merger or consolidation permitted by the laws of the state or country under which it was organized, or converts into another type of entity as permitted by those laws, the surviving or resulting entity shall apply for a certificate of withdrawal for the foreign limited partnership by delivering to the Secretary of State for filing a copy of the articles of merger, consolidation, or conversion or a certificate reciting the facts of the merger, consolidation, or conversion, duly authenticated by the Secretary of State or other official having custody of limited partnership records in the state or country under the laws of which the foreign limited partnership was organized. If the surviving or resulting entity is not authorized to transact business in this State, the articles or certificate must be accompanied by an application which must set forth:

(1) The name of the foreign limited partnership authorized to transact business in this State, the type of entity and name of the surviving or resulting entity, and a statement that the surviving or resulting entity is not authorized to transact business in this State;

(2) A statement that the surviving or resulting entity consents that service of process based on any cause of action arising in this State, or arising out of business transacted in this State, during the time the foreign limited partnership was authorized to transact business in this State, may thereafter be made by service thereof on the Secretary of State;

(3) A mailing address to which the Secretary of State may mail a copy of any process served upon the Secretary under subdivision (a)(2) of this section; and

(4) A commitment to ~~notify~~ file with the Secretary of State ~~in the future~~ a statement of any subsequent change in its mailing address."

SECTION 137. G.S. 59-909 is amended by adding a new subsection to read:

"(c) After the withdrawal of the foreign limited partnership is effective, service of process on the Secretary of State in accordance with subsection (a) of this section 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 the process and the fee required by G.S. 59-1106(b). Upon receipt of process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving or resulting entity at the mailing address designated pursuant to subsection (a) of this section."

SECTION 138. The heading of Part 10A of Chapter 59 of the General Statutes reads as rewritten:

"Part 10A. Conversion ~~and Merger.~~to Limited Partnership."

SECTION 139. G.S. 59-1050 reads as rewritten:

"**§ 59-1050. ~~Conversions.~~Conversion.**

~~(a) A domestic limited partnership may convert to a domestic limited liability company pursuant to Part 1 of Article 9A of Chapter 57C of the General Statutes.~~

~~(b) A domestic limited liability company as defined in G.S. 57C-1-03, a foreign limited liability company as defined in G.S. 57C-1-03, a foreign limited partnership, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State, including a registered limited liability partnership as defined in G.S. 59-32, and any other limited liability partnership formed under a law other than the laws of this State, but excluding a domestic limited partnership, may convert to a domestic limited partnership if:~~

~~(1) Such converting business entity complies with the requirements of G.S. 59-1051 and G.S. 59-1052; and~~

~~(2) If the converting business entity is a foreign limited liability company, a foreign limited partnership, or other partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by a law other than the laws of this State, the conversion is permitted by laws of the state or country governing the organization and internal affairs of the converting business entity, and the converting business entity complies with the laws.~~

A business entity other than a domestic limited partnership may convert to a domestic limited partnership if:

(1) The conversion is permitted by the laws of the state or country governing the organization and internal affairs of the converting business entity; and

(2) The converting business entity complies with the requirements of this part and, to the extent applicable, the laws referred to in subdivision (1) of this section."

SECTION 140. G.S. 59-1051 reads as rewritten:

"**§ 59-1051. Plan of conversion.**

(a) The ~~holders of the interests in the~~ converting business entity shall approve a written plan of conversion containing:

(1) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs;

~~(1)~~(2) The name of the resulting domestic limited partnership into which the converting business entity shall convert;

~~(2)~~(3) The terms and conditions of the conversion; and

~~(3)~~(4) The manner and basis for converting the interests in the converting business entity into interests, obligations, or securities of the resulting domestic limited partnership or into cash or other property in whole or in part.

The plan of conversion may contain other provisions relating to the conversion.

(b) ~~In the case of a domestic limited liability company, the plan of conversion must be approved in the manner provided for approval of such a conversion in its articles of organization or a written operating agreement or, if there is no such provision, by the unanimous consent of its members. In the case of a partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by the laws of this State, the plan of conversion must be approved in the manner provided for the approval of such a conversion in a written partnership agreement that is binding on all the partners or, if there is no such provision, by the unanimous consent of all the partners. In the case of a foreign limited liability company, a foreign limited partnership, or other partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by a law other than the laws of this State, the~~ The plan of conversion ~~must~~ shall be approved in accordance with the laws of the state or country governing the organization and internal affairs of the converting business entity.

(c) After a plan of conversion has been approved as provided in subsection (b) of this section, but before a certificate of limited partnership for the resulting domestic limited ~~liability company~~ partnership becomes effective, the plan of conversion may be amended or abandoned to the extent ~~provided in the plan of conversion.~~permitted by the laws that govern the organization and internal affairs of the converting business entity."

SECTION 141. G.S. 59-1052 reads as rewritten:

"**§ 59-1052. Filing of certificate of limited partnership by converting business entity.**

(a) After a plan of conversion has been approved by the converting business entity as provided in G.S. 59-1051, the converting business entity shall deliver a certificate of limited partnership to the Secretary of State for filing. In addition to the matters required or permitted by G.S. 59-201, the certificate of limited partnership shall ~~state:~~contain articles of conversion stating:

(1) That the domestic limited partnership is being formed pursuant to a conversion of another business entity;

(2) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs; and

(3) That a plan of conversion has been approved by the converting business entity in the manner required by law.

If the plan of conversion is abandoned after the certificate of limited partnership has been filed with the Secretary of State but before the certificate of limited partnership becomes effective, the converting business entity ~~promptly~~ shall deliver to the Secretary of State for filing prior to the time the articles of organization become effective an amendment to the certificate of limited partnership ~~reflecting the abandonment of the plan of conversion.~~ withdrawing the certificate of limited partnership.

(b) The conversion takes effect when the certificate of limited partnership becomes effective.

~~(c) The converting business entity shall furnish a copy of the plan of conversion, on request and without cost, to any member or partner (whether general or limited) of the converting business entity.~~

(d) Certificates of conversion shall also be registered as provided in G.S. 47-18.1."

SECTION 142. Article 5 of Chapter 59 of the General Statutes is amended by adding a new Part to read:

"Part 10B. Conversion of Limited Partnership.

"**§ 59-1060. Conversion.**

A domestic limited partnership may convert to a different business entity if:

(1) The conversion is permitted by the laws of the state or country governing the organization and internal affairs of such other business entity; and

(2) The converting domestic limited partnership complies with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section.

"**§ 59-1061. Plan of conversion.**

(a) The converting domestic limited partnership shall approve a written plan of conversion containing:

(1) The name of the converting domestic limited partnership;

(2) The name of the resulting business entity into which the domestic limited partnership shall convert, its type of business entity, and the state or country whose laws govern its organization and internal affairs;

(3) The terms and conditions of the conversion; and

(4) The manner and basis for converting the interests in the domestic limited partnership into interests, obligations, or securities of the resulting business entity or into cash or other property in whole or in part.

The plan of conversion may contain other provisions relating to the conversion.

(b) The plan of conversion shall be approved by the domestic limited partnership in the manner provided for the approval of the conversion in a written partnership agreement or, if there is no provision, by the unanimous consent of its partners. If any partner of the converting domestic limited partnership will have personal liability for any existing or future obligation of the resulting business entity solely as a result of holding an interest in the resulting business entity, then in addition to the requirements of the preceding sentence, approval of the plan of conversion by the domestic limited partnership shall require the consent of each such partner. The converting domestic limited partnership shall provide a copy of the plan of conversion to each partner of the converting domestic limited partnership at the time provided in a written partnership agreement or, if there is no such provision, prior to its approval of the plan of conversion.

(c) After a plan of conversion has been approved by a domestic limited partnership but before the articles of conversion become effective, the plan of conversion (i) may be amended as provided in the plan of conversion, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of conversion or written partnership agreement or, if not so provided, as determined by the general partners of the domestic limited partnership in accordance with G.S. 59-403.

"**§ 59-1062. Articles of conversion.**

(a) After a plan of conversion has been approved by the converting domestic limited partnership as provided in G.S. 59-1061, the converting domestic limited partnership shall deliver articles of conversion to the Secretary of State for filing. The articles of conversion shall state:

(1) The name of the converting domestic limited partnership;

(2) The name of the resulting business entity, its type of business entity, the state or country whose laws govern its organization and internal affairs, and, if the resulting business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address; and

(3) That a plan of conversion has been approved by the domestic limited partnership as required by law.

If the domestic limited partnership is converting to a business entity whose formation or whose status as a registered limited liability partnership, as defined in G.S. 59-32, requires the filing of a document with the Secretary of State, then the articles of conversion shall be included as part of that document instead of separately filing the articles of conversion.

If the plan of conversion is abandoned after the articles of conversion have been filed with the Secretary of State but before the articles of conversion become effective, the converting domestic limited partnership shall deliver to the Secretary of State for filing prior to the time the articles of conversion become effective an amendment of the articles of conversion withdrawing the articles of conversion.

(b) The conversion takes effect when the articles of conversion become effective.

(c) Certificates of conversion shall also be registered as provided in G.S. 47-18.1.

"**§ 59-1063. Effects of conversion.**

(a) When the conversion takes effect:

(1) The converting domestic limited partnership ceases its prior form of organization and continues in existence as the resulting business entity;

(2) The title to all real estate and other property owned by the converting domestic limited partnership continues vested in the resulting business entity without reversion or impairment;

(3) All liabilities of the converting domestic limited partnership continue as liabilities of the resulting business entity;

(4) A proceeding pending by or against the converting domestic limited partnership may be continued as if the conversion did not occur; and

(5) The interests in the converting domestic limited partnership that are to be converted into interests, obligations, or securities of the resulting business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of interests in the converting domestic limited partnership are entitled only to the rights provided in the plan of conversion.

The conversion shall not affect the liability or absence of liability of any holder of an interest in the converting domestic limited partnership for any acts, omissions, or obligations of the converting domestic limited partnership made or incurred prior to the effectiveness of the conversion. The cessation of the existence of the converting domestic limited partnership in its form of organization as a domestic limited partnership in the conversion shall not constitute a dissolution or termination of the converting domestic limited partnership.

(b) If the resulting business entity is not a domestic corporation or a domestic limited liability company when the conversion takes effect, the resulting business entity is deemed:

(1) To agree that it may be served with process in this State for enforcement of (i) any obligation of the converting domestic limited partnership, and (ii) any obligation of the resulting business entity arising from the conversion; and

(2) To have appointed the Secretary of State as its agent for service of process in any such proceeding. 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 the process and the fee required by G.S. 59-1106(b). Upon receipt of service of process on behalf of a resulting business 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 resulting business entity. If the resulting business entity is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the resulting business entity is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 59-1062(a)(2)."

SECTION 143. Article 5 of Chapter 59 of the General Statutes is amended by adding a new Part with the heading set forth below and containing G.S. 59-1054,

59-1055, 59-1056, and 59-1057, recodified as G.S. 59-1070, 59-1071, 59-1072, and 59-1073, respectively.

"Part 10C. Merger."

SECTION 144. G.S. 59-1070, as recodified by Section 143 of this act, reads as rewritten:

"**§ 59-1070. Merger.**

A domestic limited partnership may merge with one or more other domestic limited partnerships or other business entities if:

(1) The merger is permitted by the laws of the state or country governing the organization and internal affairs of each other merging business entity; and

(2) Each merging domestic limited partnership and each other merging business entity comply with the requirements of ~~G.S. 59-1055 and G.S. 59-1056,~~this Part, and, to the extent applicable, the laws referred to in subdivision (1) of this section."

SECTION 145. G.S. 59-1071(b), as recodified by Section 143 of this act, reads as rewritten:

"(b) In the case of a merging domestic limited partnership, the plan of merger must be approved in the manner provided in a written partnership agreement that is binding on all the partners for approval of a merger with the type of business entity contemplated in the plan of merger, or, if there is no provision, by the unanimous consent of its partners. If any partner of a merging domestic limited partnership has or will have personal liability for any existing or future obligation of the surviving business entity solely as a result of holding an interest in the surviving business entity, then in addition to the requirements of the preceding sentence, approval of the plan of merger by the domestic limited partnership shall require the consent of that partner. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of the merging business entity."

SECTION 146. G.S. 59-1072(a), as recodified by Section 143 of this act, reads as rewritten:

"(a) After a plan of merger has been approved by each merging domestic limited partnership and each other merging business entity as provided in G.S. ~~59-1055,~~ 59-1071, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

(1) The plan of merger;

(2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

(3) The name ~~and address~~ of the surviving business ~~entity;~~entity and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a

commitment to file with the Secretary of State a statement of any subsequent change in its mailing address;

(4) A statement that the plan of merger has been approved by each merging business entity in the manner required by law; and

(5) The effective date and time of the merger if it is not to be effective at the time of filing of the articles of merger.

If the plan of merger is amended or abandoned after the articles of merger have been filed but before the articles of merger become effective, the surviving business entity promptly shall deliver to the Secretary of State for filing an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger."

SECTION 147. G.S. 59-1073(b), as recodified by Section 143 of this act, 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~~ To have appointed the Secretary of State as its ~~registered~~ agent for service of process in any such proceeding.~~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~~ State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of ~~such process.~~the process and the fee required by G.S. 59-1106(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.~~entity. If the surviving business entity is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document

filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the surviving business entity is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 59-1072(a)(3)."

SECTION 148. G.S. 59-1105 is repealed.

SECTION 149. G.S. 59-1106 reads as rewritten:

"**§ 59-1106. Filing, service, and copying ~~Fees;~~ fees; expedited filings.**

(a) The Secretary of State shall collect the following fees ~~and remit them to the State Treasurer for the use of the State.~~when the documents described in this subsection are delivered to the Secretary of State for filing:

	Document	Fee
(1)	~~For filing a certificate~~ Certificate of limited partnership ~~(G.S. 59-201)~~ which does not include an application for registration as a limited liability limited partnership	$50.00
(1a)	Certificate of limited partnership which includes an application for registration as a limited liability limited partnership	125.00
(2)	~~For filing a certificate~~ Certificate of amendment ~~(G.S. 59-202; 59-905)~~	25.00
(3)	~~For filing a certificate~~ Certificate of cancellation ~~(G.S. 59-203; 59-906)~~	25.00
(4)	~~For filing an application~~ Application for reservation of name ~~(G.S. 59-104(a))~~	10.00
(5)	~~For filing a~~ Notice of transfer of name ~~(G.S. 59-104(d))~~	10.00
(5a)	Limited partnership's or foreign limited partnership's statement of change of registered agent or registered office or both	5.00
(5b)	Agent's statement of change of registered office for each affected partnership	5.00
(5c)	Agent's statement of resignation	No Fee
(5d)	Designation of registered agent or registered office or both	5.00
(6)	~~For filing an application~~ Application for registration as foreign limited	

	partnership ~~(G.S. 59-502)~~	50.00
~~(7)~~	~~For preparing and furnishing a copy of any document, instrument or paper filed or recorded relating to a limited partnership (G.S. 59-206(c))~~	
	~~For each page~~	~~1.00~~
	~~For affixing the certificate and official seal thereto~~	~~5.00~~
~~(8)~~	~~For comparing a copy furnished to him of any document instrument or paper filed or recorded relating to a limited partnership.~~	
	~~For each page~~	~~1.00~~
~~(9)~~	~~For filing any other document not herein specifically provided for~~	~~10.00~~
~~(10)~~	~~For the expedited filing by the end of the same business day of a document received in good order by 12:00 noon Eastern Standard Time~~	~~200.00 additional fee~~
~~(11)~~	~~For the expedited filing of a document received in good order within 24 hours after receipt, excluding weekends and holidays~~	~~100.00 additional fee~~
(12)	Advisory review of a document	~~200.00.~~200.00
(13)	Certificate of amendment of registration as foreign limited partnership	25.00
(14)	Cancellation of registration as foreign limited partnership	25.00
(15)	Application for certificate of withdrawal by reason of merger, consolidation, or conversion	10.00
(16)	Articles of merger	50.00
(17)	Articles of conversion (other than articles of conversion included as part of another document)	50.00
(18)	Application for registration as a limited liability limited partnership (other than an application included in the certificate of limited partnership)	125.00
(19)	Certificate of amendment of registration as a limited liability limited partnership	25.00
(20)	Certificate of cancellation of registration as a limited liability limited partnership	25.00
(21)	Annual report for a limited liability	

limited partnership 200.00

(22) Any other document required or permitted to be filed under this Article 10.00.

(b) The Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary under this Article. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign limited partnership:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) Five dollars ($5.00) for the certificate.

(d) The Secretary of State shall guarantee the expedited filing of a document upon receipt of the document in proper form and the payment of the required filing fee. The Secretary of State may collect the following additional fees for the expedited filing of a document received in good form:

(1) Two hundred dollars ($200.00) for the filing by the end of the same business day of a document received by 12:00 noon Eastern Standard Time; and

(2) One hundred dollars ($100.00) for the filing of a document within 24 hours after receipt, excluding weekends and holidays.

The Secretary of State shall not collect the fees allowed in ~~subdivisions (10) and (11) of~~ this ~~section~~ subsection unless the person submitting the document for filing requests an expedited filing and is informed by the Secretary of State of the fees prior to the filing of the document. ~~Upon receipt of a document in proper form and payment of the required filing fee, the Secretary of State shall guarantee the expedited filing of the document.~~"

SECTION 150. Part 11 of Article 5 of Chapter 59 of the General Statutes is amended by adding a new section to read:

"**§ 59-1107. Income taxation.**

A limited partnership, a foreign limited partnership authorized to transact business in this State, and a partner of one of these partnerships are subject to taxation under Article 4 of Chapter 105 of the General Statutes in accordance with their classification for federal income tax purposes. Accordingly, if a limited partnership or a foreign limited partnership authorized to transact business in this State is classified for federal income tax purposes as a C corporation as defined in G.S. 105-131(b)(2) or an S corporation as defined in G.S. 105-131(b)(8), the partnership and its partners are subject to tax under Article 4 of Chapter 105 of the General Statutes to the same extent as a C corporation or an S corporation, as the case may be, and its shareholders. If a limited partnership or a foreign limited partnership authorized to transact business in this State is classified for federal income tax purposes as a partnership, the partnership and its partners are subject

to tax under Article 4 of Chapter 105 of the General Statutes accordingly. If a limited partnership or a foreign limited partnership authorized to transact business in this State is classified for federal income tax purposes as other than a corporation or a partnership, the partnership and its partners are subject to tax under Article 4 of Chapter 105 of the General Statutes in a manner consistent with that classification. This section does not require a limited partnership or a foreign limited partnership to obtain an administrative ruling from the Internal Revenue Service on its classification under the Internal Revenue Code."

PART V. AMENDMENTS TO CHAPTER 105.

SECTION 151. 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~~ trust, or other person where no gain or loss arises on the transfer of the motor vehicle under section 351 or section 721 of the Code, or because the transfer is treated under the Code as being to an entity that is not a separate entity from its owner or whose separate existence is otherwise disregarded, or to a partnership, limited liability company, or corporation by merger, conversion, or consolidation in accordance with applicable law."

SECTION 152. G.S. 105-230(b) reads as rewritten:

"(b) Any act performed or attempted to be performed during the period of suspension is invalid and of no ~~effect.~~effect, unless the Secretary of State reinstates the corporation or limited liability company pursuant to G.S. 105-232."

SECTION 153. G.S. 105-232(a) reads as rewritten:

"(a) Any corporation or limited liability company whose articles of incorporation, articles of organization, or certificate of authority to do business in this State has been suspended by the Secretary of State under G.S. 105-230, that complies with all the requirements of this Subchapter and pays all State taxes, fees, or penalties due from it (which total amount due may be computed, for years prior and subsequent to the suspension, in the same manner as if the suspension had not taken place), and pays to the Secretary of Revenue a fee of twenty-five dollars ($25.00) to cover the cost of reinstatement, is entitled to exercise again its rights, privileges, and franchises in this State. The Secretary of Revenue shall notify the Secretary of State of this compliance and the Secretary of State shall reinstate the corporation or limited liability company by appropriate entry upon the records of the ~~Office of~~ office of the Secretary of State. Upon entry of reinstatement, it relates back to and takes effect as of the date of the suspension by the Secretary of State, and the corporation or limited liability company resumes carrying on its business as if the suspension had never occurred, subject to the rights of

any person who reasonably relied on that person's prejudice on the suspension. The Secretary of State shall immediately notify by mail the corporation or limited liability company of the reinstatement."

PART VI. MISCELLANEOUS PROVISIONS.

SECTION 154.(a) The Revisor of Statutes shall cause to be printed all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

SECTION 154.(b) Nothing in this act shall supersede the provisions of Article 10 or 65 of Chapter 58 of the General Statutes, and this act does not create an alternate means for an entity governed by Article 65 of Chapter 58 of the General Statutes to convert to a different business form.

PART VII. CONTINGENT CONFORMING CHANGES.

SECTION 155. Sections 1, 28, 32, 43, 53, 60, 61, 62, 63, 83, 84, 104, 105(c), 122, 123, 125, 126, and 135 of this act are repealed.

SECTION 156.(a) Section 118 of this act is repealed.

SECTION 156.(b) G.S. 59-84.2, as amended by House Bill 385, 2001 Regular Session of the General Assembly, reads as rewritten:

"**§ 59-84.2. Registered limited liability partnerships.**

(a) ~~To become a registered limited liability partnership, a partnership must file~~ A partnership whose internal affairs are governed by the laws of this State, other than a limited partnership, may become a registered limited liability partnership by filing with the Secretary of State an application ~~stating:~~stating all of the following:

(1) The name of the partnership.

(2) The street ~~address~~address, and the mailing address if different from the street address, of its principal ~~office.~~office and the county in which the principal office is located.

(3) The name and street address, and the mailing address if different from the street address, ~~for~~of the partnership's registered agent and registered office for service of process.

(4) The county in this State in which the registered office is located.

~~(5) A brief statement of the business in which the partnership engages.~~

~~(6) A deferred effective date, if any.~~

(7) The fiscal year end of the partnership.

(a1) The terms and conditions on which a partnership becomes a limited liability partnership must be approved ~~by the vote necessary~~ in the manner provided in ~~to amend~~ the partnership ~~agreement except~~, agreement; provided, however, if the partnership agreement does not contain any such provision, the terms and conditions shall be approved (i) in the case of a partnership having a partnership agreement that expressly considers obligations to contribute to the partnership, ~~the vote~~in the manner necessary to amend those ~~provisions.~~provisions, or (ii) in any other case, in the manner necessary to amend the partnership agreement.

~~(b) An application for registration as a registered limited liability partnership must be executed by one or more partners.~~

~~(c) An application for registration as a registered limited liability partnership must be accompanied by a fee of one hundred twenty-five dollars ($125.00).~~

~~(d) The Secretary of State shall register a partnership that submits a completed application with the required fee.~~

~~(e) A registration is effective on the later of the date the registration is filed or the date specified in the application for registration, unless it is voluntarily withdrawn by filing with the Secretary of State a written withdrawal notice executed by one or more of the partners, or is revoked pursuant to G.S. 59-84.4(f).~~

~~(f) The Secretary of State may provide forms for applications for registration.~~

(f1) A partnership becomes a registered limited liability partnership when its application for registration becomes effective.

(g) The status of a registered limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the application for registration.

(h) A partnership shall promptly amend its registration to reflect any change in the information contained in its application for registration, other than changes that are properly included in other documents filed with the Secretary of State. A registration is amended by filing a certificate of amendment ~~thereto in the office of~~with the Secretary of State. The certificate of amendment shall set ~~forth the following:~~forth:

(1) The name of the ~~partnership.~~partnership as reflected on the application for registration.

(2) The date of filing of the application for registration.

(3) The amendment to the application for registration.

(i) Each registered limited liability partnership must maintain a registered office and registered agent as required by Article 4 of Chapter 55D of the General Statutes and is subject to service on the Secretary of State under that Article.

(j) A partnership may cancel its registration by filing a certificate of cancellation with the Secretary of State. The certificate of cancellation shall set forth:

(1) The name of the partnership as reflected on the application for registration;

(2) The date of filing of the application for registration;

(3) A mailing address to which the Secretary of State may mail a copy of any process served on the Secretary of State under this subsection;

(4) A commitment to file with the Secretary of State a statement of any subsequent change in its mailing address; and

(5) The effective date and time of cancellation if it is not to be effective at the time of filing the certificate.

Cancellation of registration terminates the authority of the partnership's registered agent to accept service of process, notice, or demand, and appoints the Secretary of State as agent to accept service on behalf of the partnership with respect to any action or proceeding based upon any cause of action arising in this State, or arising out of business transacted in this State, during the time the partnership was registered as a

registered limited liability partnership. 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 authorized by the Secretary of State to accept service of process, duplicate copies of such process, notice, or demand and the fee required by G.S. 59-35.2. Upon receipt of process, notice, or demand in the manner provided in this section, the Secretary of State shall immediately mail a copy of the process, notice, or demand by registered or certified mail, return receipt requested, to the partnership at the mailing address designated pursuant to this subsection."

SECTION 157.(a) Section 120 of this act is repealed.

SECTION 157.(b) G.S. 59-91, as amended by House Bill 385, 2001 Regular Session of the General Assembly, reads as rewritten:

"**§ 59-91. Statement of foreign registration.**

(a) Before transacting business in this State, a foreign limited liability partnership must file an application for registration as a foreign limited liability partnership. The application must contain:

(1) The name of the foreign limited liability partnership that satisfies the requirements of the state or other jurisdiction under whose law it is formed and meets the requirements of Article 3 of Chapter 55D of the General Statutes.

(2) The street ~~address~~address, and the mailing address if different from the street address, of the partnership's principal ~~office.~~ office, and the county in which the principal office is located.

(3) The name and street address, and the mailing address if different from the street address, for the partnership's registered agent and registered office for service of process, and the county in which the registered office is located.

~~(4) A brief statement of the business in which the partnership is engaged.~~

~~(5) A deferred effective date, if any.~~

(6) The fiscal year end of the partnership.

The foreign limited liability partnership shall deliver with the completed application a certificate of existence, or a document with similar import, duly authenticated by the ~~secretary of state~~ Secretary of State or other official having custody of the records of registered limited liability partnerships in the state or country under whose law it is registered.

(b) Each foreign limited liability partnership maintaining a statement of foreign registration in this State must maintain a registered office and registered agent as required by Article 4 of Chapter 55D of the General Statutes and is subject to service on the Secretary of State under that Article.

~~(c) An application for registration as a foreign limited liability partnership must be accompanied by a fee of one hundred twenty-five dollars ($125.00).~~

~~(d) The Secretary of State shall register a partnership that submits a completed application for registration as a foreign limited liability partnership with the required fee.~~

~~(e) The status of a partnership as a foreign limited liability partnership is effective on the later of the date the registration is filed or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is voluntarily withdrawn by filing with the Secretary of State a written withdrawal notice executed by one or more partners or revoked pursuant to G.S. 59-84.4(f).~~

~~(f) 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.~~

~~(g) An application for registration as a foreign limited liability partnership must be executed by one or more partners.~~

(h) A foreign limited liability partnership authorized to transact business in this State shall be subject to the provisions of G.S. 59-84.4 regarding annual reports and revocation of registration.

(i) A foreign limited liability partnership becomes registered as a foreign limited liability partnership when its application for registration becomes effective.

(j) A foreign limited liability partnership shall promptly amend its registration to reflect any change in the information contained in its application for registration, other than changes that are properly included in other documents filed with the Secretary of State. A registration is amended by filing a certificate of amendment with the Secretary of State. The certificate of amendment shall set forth:

(1) The name of the foreign limited liability partnership under which it is registered in this State;

(2) The date of filing of the application for registration; and

(3) The amendment to the application for registration.

(k) A foreign limited liability partnership may cancel its registration by filing a certificate of cancellation with the Secretary of State. The certificate of cancellation shall set forth:

(1) The name of the foreign limited liability partnership under which it is registered in this State;

(2) The date of filing of the application for registration;

(3) A mailing address to which the Secretary of State may mail a copy of any process served on the Secretary of State under this subsection;

(4) A commitment to file with the Secretary of State a statement of any subsequent change in its mailing address; and

(5) The effective date and time of cancellation if it is not to be effective at the time of filing the certificate.

Cancellation of registration terminates the authority of the foreign limited liability partnership's registered agent to accept service of process, notice, or demand and appoints the Secretary of State as agent to accept such service on behalf of the foreign limited liability partnership with respect to any action or proceeding based upon any cause of action arising in this State, or arising out of business transacted in this State, during the time the foreign limited liability partnership was registered in this State. 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 authorized by the Secretary of State to accept service of process, duplicate copies of such process, notice, or demand and the fee required by G.S. 59-35.2. Upon receipt of process, notice, or demand in the manner herein provided, the Secretary of State shall immediately mail a copy of the process, notice, or demand by registered or certified mail, return receipt requested, to the foreign limited liability partnership at the mailing address designated pursuant to this subsection.

(l) Whenever a foreign limited liability partnership authorized to transact business in this State ceases its separate existence as a result of a statutory merger or consolidation permitted by the laws of the state or country under which it was organized, or converts into another type of entity as permitted by those laws, the surviving or resulting entity shall apply for a certificate of withdrawal for the foreign limited liability partnership by delivering to the Secretary of State for filing a copy of the articles of merger, consolidation, or conversion or a certificate reciting the facts of the merger, consolidation, or conversion, duly authenticated by the Secretary of State or other official having custody of limited liability partnership records in the state or country under the laws of which the foreign limited liability partnership was organized. If the surviving or resulting entity is not authorized to transact business or conduct affairs in this State, the articles or certificate must be accompanied by an application which must set forth:

(1) The name of the foreign liability limited partnership authorized to transact business in this State, the type of entity and name of the surviving or resulting entity, and a statement that the surviving or resulting entity is not authorized to transact business or conduct affairs in this State;

(2) A statement that the surviving or resulting entity consents that service of process based on any cause of action arising in this State, or arising out of business transacted in this State, during the time the foreign limited liability partnership was authorized to transact business in this State, may thereafter be made by service thereof on the Secretary of State;

(3) A mailing address to which the Secretary of State may mail a copy of any process served upon the Secretary under subdivision (2) of this subsection; and

(4) A commitment to file with the Secretary of State a statement of any subsequent change in its mailing address.

(m) If the Secretary of State finds that the articles or certificate and the application for withdrawal, if required, conform to law, the Secretary of State shall:

(1) Endorse on the articles or certificate and the application for withdrawal, if required, the word "filed" and the hour, day, month, and year of filing thereof;

(2) File the articles or certificate and the application, if required;

(3) Issue a certificate of withdrawal; and

(4) Send to the surviving or resulting entity or its representative the certificate of withdrawal, together with a copy of the application, if required, affixed thereto.

(n) After the withdrawal of the foreign limited liability partnership is effective, service of process on the Secretary of State in accordance with subsection (l) of this section 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 and the fee required by G.S. 59-35.2. Upon receipt of process in the manner herein provided, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving or resulting entity at the mailing address designated pursuant to subsection (l) of this section."

SECTION 158. G.S. 59-210(a)(1), as enacted by this act, reads as rewritten:

"(1) The name of the limited liability limited partnership, which ~~shall contain the words 'registered limited liability limited partnership' or 'limited liability limited partnership' or the abbreviation 'L.L.L.P.', 'R.L.L.L.P.', 'LLLP', or 'RLLLP' as the last words or letters of its name.~~must satisfy the requirements of Article 3 of Chapter 55D of the General Statutes."

SECTION 159.(a) Section 134 of this act is repealed.

SECTION 159.(b) G.S. 59-902, as amended by House Bill 385, 2001 Regular Session of the General Assembly, reads as rewritten:

"**§ 59-902. Registration.**

(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 street address, ~~including county and city or town, and street and number, if any,~~ and the mailing address if different from the street address, of the principal office of the foreign limited partnership;

(5) The street address, ~~including county and city or town, and street and number, if any,~~ and the mailing address if different from the street address, of the ~~proposed~~ registered office of the foreign limited partnership in this State, the county in which the registered office is located, and the name of its proposed registered agent in this ~~State at such address;~~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; and

(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.~~effective date and time of the registration if it is not to be effective at the time of filing of the application.

(b) Without excluding other activities which ~~may~~shall not constitute transacting business in this State, a foreign limited partnership shall not be considered to be transacting business in this State, for the purpose of this Article, by reason of carrying on in this State any one or more of the following activities:

(1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;

(2) Holding meetings of its partners or carrying on other activities concerning its internal affairs;

(3) Maintaining bank accounts or borrowing money in this State, with or without security, even if such borrowings are repeated and continuous transactions;

(4) Maintaining offices or agencies for the transfer, exchange, and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities;

(5) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this State before becoming binding contracts;

(6) Making or investing in loans with or without security including servicing of mortgages or deeds of trust through independent agencies within the State, the conducting of foreclosure proceedings and ~~sale,~~ sales, the acquiring of property at foreclosure sale and the management and rental of such property for a reasonable time while liquidating its investment, provided no office or agency therefor is maintained in this State;

(7) Taking security for or collecting debts due to it or enforcing any rights in property securing the same;

(8) Transacting business in interstate commerce; and

(9) Conducting an isolated transaction completed within a period of six months and not in the course of a number of repeated transactions of like nature.

(c) Each foreign limited partnership authorized to transact business in this State must maintain a registered agent as required by Article 4 of Chapter 55D of the General Statutes and is subject to service on the Secretary of State under that Article.

(d) Repealed.

(e) Repealed."

SECTION 160. The title of Chapter 55D of the General Statutes, as enacted by Section 1 and amended by Sections 12 and 42 of House Bill 385, 2001 Regular Session of the General Assembly, reads as rewritten:

"Chapter 55D.

"Filings, Names, and Registered Agents for Corporations, Nonprofit Corporations, ~~Limited Liability Companies, Limited partnerships,~~ and ~~Limited Liability~~ Partnerships."

SECTION 161. G.S. 55D-1, as enacted by House Bill 385, 2001 Regular Session of the General Assembly, reads as rewritten:

"**§ 55D-1. Applicable definitions.**

The following definitions apply in this Chapter:

(1) 'Corporation' or 'domestic corporation' is defined in G.S. 55-1-40(4).

(2) 'Deliver' is defined in G.S. 55-1-40(5).

(3) 'Entity' is defined in G.S. 55-1-40(9).

(4) 'Foreign corporation' is defined in G.S. 55-1-40(10).

(5) 'Foreign limited liability company' is defined in G.S. 57C-1-03(8).

(6) 'Foreign limited liability partnership' is defined in G.S. ~~59-32(4a).~~59-32(4g).

(7) 'Foreign limited partnership' is defined in G.S. 59-102(5).

(8) 'Foreign nonprofit corporation' means a foreign corporation as defined in G.S. 55A-1-40(11).

(9) 'Individual' is defined in G.S. 55-1-40(13).

(10) 'Limited liability company' or 'domestic limited liability company' is defined in G.S. 57C-1-03(11).

(11) 'Limited liability limited partnership' is defined in G.S. 59-102(6a).

~~(11)~~(12) 'Limited liability partnership' or 'registered limited liability partnership' means a registered limited liability partnership as defined in G.S. 59-32(7).

~~(12)~~(13) 'Limited partnership' or 'domestic limited partnership' is defined in G.S. 59-102(8).

~~(13)~~(14) 'Nonprofit corporation' or 'domestic nonprofit corporation' means a corporation as defined in G.S. 55A-1-40(5).

~~(14)~~(15) 'Person' is defined in G.S. 55-1-40(16)."

SECTION 162. G.S. 55D-20, as recodified and amended by House Bill 385, 2001 Regular Session of the General Assembly, reads as rewritten:

"**§ 55D-20. Name requirements.**

(a) In addition to the requirements of any other applicable section of the General Statutes:

(1) The name of ~~the~~ a corporation must contain the word 'corporation', 'incorporated', 'company', or 'limited', or the abbreviation 'corp.', 'inc.', 'co.', or ltd.'.

(2) The name of a limited liability company must contain the words 'limited liability company' or the abbreviation 'L.L.C.' or 'LLC', or the combination 'ltd. liability co.', 'limited liability co.', or 'ltd. liability company'.

(3) The name of a limited ~~partnership:~~

~~a.~~ ~~Must~~ partnership that is not a limited liability limited partnership must contain the words 'limited partnership', the abbreviation 'L.P.' or 'LP', or the combination 'ltd. ~~partnership';~~ ~~and~~partnership'.

~~b. Shall not contain the name of a limited partner unless (i) it is also the name of a general partner or the corporate name of a corporate general partner, or (ii) the business of the limited partnership has been carried on under that name before the admission of that limited partner.~~

(4) The name of a limited liability limited partnership must contain the words 'registered limited liability limited partnership' or 'limited

liability limited partnership' or the abbreviation 'L.L.L.P.', 'R.L.L.L.P.', 'LLLP', or 'RLLLP'.

(5) A registered limited liability partnership's name must contain the words 'registered limited liability partnership' or 'limited liability partnership' or the abbreviation 'L.L.P.', 'R.L.L.P.', 'LLP' or ~~'RLLP' as the last words or letters of its name.~~'RLLP'.

(b) In addition to the requirements of subsection (a) of this section, the name of a limited partnership shall not contain the name of a limited partner unless (i) it is also the name of a general partner or the corporate name of a corporate general partner, or (ii) the business of the limited partnership has been carried on under that name before the admission of that limited partner.

~~(b)~~(c) The name of a corporation, nonprofit corporation, or limited liability company shall not contain language stating or implying that the entity is organized for a purpose other than that permitted by G.S. 55-3-01, 55A-3-01, or 57C-2-01 and by its articles of incorporation or organization.

~~(c)~~(d) The use of assumed names or fictitious names, as provided for in Chapter 66, is not affected by this Chapter or by Chapter 55, 55A, 57C, or 59 of the General Statutes.

~~(d)~~(e) The filing of any document, the reservation or registration of any name under this Chapter or under Chapter 55, 55A, 55B, 57C, or 59 of the General Statutes, or the issuance of a certificate of authority to transact business or conduct affairs or a statement ~~or~~ of foreign registration does not authorize the use in this State of a name in violation of the rights of any third party under the federal trademark act, the trademark act of this State, or other statutory or common law, and is not a defense to an action for violation of any of those rights."

SECTION 163. G.S. 55D-21(d), as recodified by Section 14 and amended by Section 15 of House Bill 385, 2001 Regular Session of the General Assembly, reads as rewritten:

"(d) Except as otherwise provided in this subsection, the name of a corporation dissolved under Article 14 of Chapter 55 of the General Statutes, of a nonprofit corporation dissolved under Article 14 of Chapter 55A of the General Statutes, of a limited liability company dissolved under Article 6 of Chapter 57C of the General Statutes, ~~or~~ of a limited partnership dissolved under Part 8 of Article 5 of Chapter 59 of the General Statutes, or of a limited liability partnership whose registration as a limited liability partnership has been cancelled under G.S. 59-84.2 or revoked under G.S. 59-84.4, may not be used by another entity until:

(1) In the case of a nonjudicial dissolution other than an administrative ~~dissolution,~~ dissolution or cancellation of registration as a limited liability partnership, 120 days after the effective date of the ~~dissolution.~~dissolution or cancellation.

(2) In the case of an administrative ~~dissolution,~~ dissolution or revocation of registration as a limited liability partnership, the expiration of the period within which the entity or its registration may be reinstated.

(3) In the case of a judicial dissolution, 120 days after the later of the date the judgment has become final or the effective date of the dissolution. The person applying for the name must certify to the Secretary of State that no appeal or other judicial review of the judgment directing dissolution is pending.

The name of a dissolved entity may be used at any time if the entity changes its name to a name that is distinguishable upon the records of the Secretary of State from the names of other domestic corporations, nonprofit corporations, limited liability companies, limited partnerships, or registered limited liability partnerships or foreign corporations, foreign nonprofit corporations, foreign limited liability companies, or foreign limited partnerships authorized to transact business or conduct affairs in this State, or foreign limited liability partnerships maintaining a statement of foreign registration, in this State."

SECTION 164. G.S. 55D-22(a), as enacted by Section 15 of House Bill 385, 2001 Regular Session of the General Assembly, reads as rewritten:

"(a) If the name of a foreign corporation, foreign nonprofit corporation, foreign limited liability company, foreign limited partnership, or foreign limited liability partnership does not satisfy the requirements of G.S. 55D-20 and G.S. 55D-21, then to obtain or maintain a certificate of authority to transact business or conduct affairs in this State or a statement of foreign registration in this State, the entity may:

(1) If a foreign corporation or foreign nonprofit corporation, add the word 'corporation', 'incorporated', 'company', or 'limited', or the abbreviation 'corp.', 'inc.', 'co.', or 'ltd.' to its corporate name for use in this State;

(2) If a foreign limited liability company, add the words 'limited liability company', or the abbreviation 'L.L.C.', or 'LLC', or the combination 'ltd. liability co.', 'limited liability co.', or 'ltd. liability company' to its name for use in this State if the addition will cause the name to satisfy the requirements of G.S. 55D-20 and G.S. 55D-21;

(3) If a foreign limited ~~partnership,~~ partnership that does not have limited liability limited partnership status, add the words 'limited partnership' or the abbreviation 'L.P.' or 'LP', or the combination 'ltd. partnership';

(4) If a foreign limited partnership that has limited liability limited partnership status, add the words 'registered limited liability limited partnership' or 'limited liability limited partnership' or the abbreviation 'L.L.L.P.', 'R.L.L.L.P.', 'LLLP', or 'RLLLP'.

(5) If a foreign limited liability partnership, add the words 'registered limited liability partnership', or 'limited liability partnership' or the abbreviation 'L.L.P.', 'R.L.L.P.', 'LLP', or ~~'RLLP' as the last words or letters of its name; or~~'RLLP'; or

~~(5)~~(6) Use a fictitious name, which includes one or more of the words, abbreviations, or combinations in subdivisions (1) through ~~(4)~~ (5) of this subsection if applicable, to transact business or conduct affairs in this State if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution adopting the fictitious name."

SECTION 165.(a) G.S. 55D-24(b), as recodified by Section 14 and amended by Section 15 of House Bill 385, 2001 Regular Session of the General Assembly, reads as rewritten:

"(b) An entity described in subsection (a) of this section registers its name, or its name with any addition required by G.S. 55D-22, by filing with the Secretary of State an application:

(1) Setting forth its name, or its name with any addition required by G.S. 55D-22, the state or country and date of its ~~incorporation, organization,~~ incorporation or formation, and a brief description of the nature of the business or activities in which it is engaged; and

(2) Accompanied by a certificate of existence (or a document of a similar import) from the state or country of ~~incorporation, organization,~~ incorporation or formation."

SECTION 165.(b) G.S. 55D-24(e), as recodified by Section 14 and amended by Section 15 of House Bill 385, 2001 Regular Session of the General Assembly, reads as rewritten:

"(e) An entity whose registration is effective may thereafter become authorized to transact business or conduct affairs under that name or consent in writing to the use of that name by:

(1) A domestic corporation, nonprofit corporation, limited liability company, limited partnership, or registered limited liability partnership thereafter ~~incorporated, organized, or formed~~ incorporated, formed, or registered in this State under that name;

(2) A domestic corporation, nonprofit corporation, limited liability company, limited partnership, or registered limited liability partnership that changes its name to that name; or

(3) Another foreign corporation, foreign nonprofit corporation, foreign limited liability company, foreign limited partnership, or foreign limited liability partnership that becomes authorized to transact business or conduct affairs in this State under that name.

The registration terminates when the domestic corporation, nonprofit corporation, limited liability company, limited partnership, or registered limited liability partnership is incorporated, ~~organized,~~ formed, registered, or changes its name or the foreign corporation, foreign nonprofit corporation, foreign limited liability company, foreign limited partnership, or foreign limited liability partnership qualifies or registers or consents to the qualification or registration of another entity under the registered name."

SECTION 166. G.S. 55D-26(a)(1), as recodified by Section 14 and amended by Section 15 of House Bill 385, 2001 Regular Session of the General Assembly, reads as rewritten:

"(1) The name of any domestic corporation, nonprofit corporation, limited liability company, limited partnership, or registered limited liability partnership or foreign corporation, foreign nonprofit corporation, foreign limited liability company, foreign limited partnership, or foreign limited liability partnership that holds title to real property in this State is changed upon amendment to its articles of incorporation or organization, its certificate of limited partnership, or its ~~application for~~ registration as a limited liability ~~partnership;~~ partnership or foreign limited liability partnership; or".

SECTION 167. G.S. 55D-31(c), as recodified by Section 44 and amended by Section 45 of House Bill 385, 2001 Regular Session of the General Assembly, reads as rewritten:

"(c) A domestic corporation, limited liability company, limited liability limited partnership, registered limited liability partnership, foreign corporation, foreign limited liability company, or foreign limited liability partnership may change its registered office or registered agent by including in its annual report required by G.S. 55-16-22, 57C-2-23, ~~or 59-84.4~~ 59-84.4, or 59-210 the information and any written consent required by subsection (a) of this section."

SECTION 168. G.S. 55D-32(b), as recodified by Section 44 and amended by Section 45 of House Bill 385, 2001 Regular Session of the General Assembly, reads as rewritten:

"(b) After filing the statement the Secretary of State shall mail a copy to the registered office (if not discontinued) and a copy to the entity at its principal office address on file with the Secretary of State or, if none is on file, at the address contained in the certification included in or accompanying the statement of ~~resignation or, if different, at the address indicated in the latest document filed by the Secretary of State stating the entity's current mailing address.~~resignation."

SECTION 169.(a) G.S. 55-15-03(a)(1), as amended by Section 17 of House Bill 385, 2001 Regular Session of the General Assembly, reads as rewritten:

"(1) The name of the foreign corporation or, if its name is unavailable for use in this State, a corporate name that satisfies the requirements of ~~G.S. 55D-22;~~Article 3 of Chapter 55D of the General Statutes;".

SECTION 169.(b) G.S. 55A-15-03(a)(1), as amended by Section 21 of House Bill 385, 2001 Regular Session of the General Assembly, reads as rewritten:

"(1) The name of the foreign corporation or, if its name is unavailable for use in this State, a corporate name that satisfies the requirements of ~~G.S. 55D-22;~~Article 3 of Chapter 55D of the General Statutes;".

SECTION 170.(a) G.S. 59-35.1, as recodified by Section 9 and amended by Sections 9, 38, and 51(c) of House Bill 385, 2001 Regular Session of the General Assembly, reads as rewritten:

"**§ 59-35.1. Filing of documents.**

(a) A document required or permitted by this act to be filed by the Secretary of State must be filed under Chapter 55D of the General Statutes.

(b) A document submitted under this act for filing by the Secretary of State must be executed by a general partner of the partnership.

(c) The Secretary of State may adopt and furnish on request forms for:

(1) An application for registration as a registered limited liability partnership;

(2) Cancellation of registration as a registered limited liability partnership;

(3) Application for registration as a foreign limited liability partnership; and

(4) Cancellation of registration as a foreign limited liability partnership.

If the Secretary of State so requires, use of these forms is mandatory.

~~The Secretary of State shall collect the following fees when the documents described in this subsection are submitted by a partnership to the Secretary of State for filing:~~

~~Document~~	~~Fee~~
~~Application for reserved name~~	~~$10.00~~
~~Notice of transfer of reserved name~~	~~10.00~~
~~Application for registered name~~	~~10.00~~
~~Application for renewal of registered name~~	~~10.00~~
~~Articles of merger~~	~~50.00~~
~~Articles of correction~~	~~10.00~~

~~Whenever the Secretary of State is deemed appointed as a registered agent under this Act or under Chapter 55D of the General Statutes, the Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary of State under this Act. The party to the proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.~~

~~The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of a document filed by a partnership pursuant to this Part:~~

~~(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and~~

~~(2) Five dollars ($5.00) for the certificate.~~

(d) The Secretary of State may adopt and furnish on request forms for other documents required or permitted to be filed by this act, but their use is not mandatory."

SECTION 170.(b) Part 1 of Article 2 of Chapter 59 of the General Statutes is amended by adding a new section to read:

"**§ 59-35.2. Fees.**

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are submitted by a partnership to the Secretary of State for filing:

	Document	Fee
(1)	Application for reserved name	$10.00
(2)	Notice of transfer of reserved name	10.00
(3)	Application for registered name	10.00
(4)	Application for renewal of registered name	10.00
(5)	Registered limited liability partnership's or foreign limited liability partnership's statement of change of registered agent or registered office or both	5.00
(6)	Agent's statement of change of registered office for each affected registered limited liability partnership or foreign limited liability partnership	5.00
(7)	Agent's statement of resignation	No Fee
(8)	Designation of registered agent or registered office or both	5.00
(9)	Articles of conversion (other than articles of conversion included as part of another document)	50.00
(10)	Articles of merger	50.00
(11)	Application for registration as a registered limited liability partnership	125.00
(12)	Certificate of amendment of registration as a registered limited liability partnership	25.00
(13)	Cancellation of registration as a registered limited liability partnership	25.00
(14)	Application for registration as a foreign limited liability partnership	125.00
(15)	Certificate of amendment of registration as a foreign limited liability partnership	25.00
(16)	Cancellation of registration as a foreign limited liability partnership	25.00
(17)	Application for certificate of withdrawal by reason of merger, consolidation, or conversion	10.00
(18)	Annual report	200.00
(19)	Articles of correction	10.00
(20)	Any other document required or permitted	10.00

to be filed pursuant to this act

(b) Whenever the Secretary of State is deemed appointed as a resisted agent under this act or under Chapter 55D of the General Statutes, the Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary of State under this act. The party to the proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of a document filed pursuant to this act:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) Five dollars ($5.00) for the certificate."

SECTION 170.(c) G.S. 59-73.13(b)(2), 59-73.23(b)(2), and 59-73.33(b)(2), as enacted in this act, are amended by deleting "G.S. 59-35.1(f)" and substituting in lieu thereof "G.S. 59-35.2".

SECTION 171.(a) Sections 10(f) and 37 of House Bill 385, 2001 Regular Session of the General Assembly, are repealed.

SECTION 171.(b) G.S. 59-1106, as amended by Section 149 of this act, reads as rewritten:

"**§ 59-1106. Filing, service, and copying ~~fees; expedited filings.~~fees.**

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

	Document	Fee
(1)	Certificate of limited partnership which does not include an application for registration as a limited liability limited partnership	$50.00
~~(1a)~~(2)	Certificate of limited partnership which includes an application for registration as a limited liability limited partnership	125.00
~~(2)~~(3)	Certificate of amendment	25.00
~~(3)~~(4)	Certificate of cancellation	25.00
~~(4)~~(5)	Application for reservation of name	10.00
~~(5)~~(6)	Notice of transfer of reserved name	10.00
(7)	Application for registration of name	10.00
(8)	Application for renewal of registration name	10.00
~~(5a)~~(9)	Limited partnership's or foreign limited partnership's statement of change of registered agent or registered office or both	5.00
~~(5b)~~(10)	Agent's statement of change of registered office for each affected partnership	5.00
~~(5c)~~(11)	Agent's statement of resignation	No Fee

~~(5d)~~(12)	Designation of registered agent or registered office or both	5.00
~~(6)~~(13)	Application for registration as foreign limited partnership	50.00
		~~additional fee~~
~~(12)~~	~~Advisory review of a document~~	~~200.00~~
~~(13)~~(14)	Certificate of amendment of registration as foreign limited partnership	25.00
~~(14)~~(15)	Cancellation of registration as foreign limited partnership	25.00
~~(15)~~(16)	Application for certificate of withdrawal by reason of merger, consolidation, or conversion	10.00
~~(16)~~(17)	Articles of merger	50.00
~~(17)~~(18)	Articles of conversion (other than articles of conversion included as part of another document)	50.00
~~(18)~~(19)	Application for registration as a limited liability limited partnership (other than an application included in the certificate of limited partnership)	125.00
~~(19)~~(20)	Certificate of amendment of registration as a limited liability limited partnership	25.00
~~(20)~~(21)	Certificate of cancellation of registration as a limited liability limited partnership	25.00
~~(21)~~(22)	Annual report for a limited liability limited partnership	200.00
~~(22)~~(23)	Any other document required or permitted to be filed under this Article	10.00.

(b) The Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary under this Article. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign limited partnership:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) Five dollars ($5.00) for the certificate.

~~(d) The Secretary of State shall guarantee the expedited filing of a document upon receipt of the document in proper form and the payment of the required filing fee. The Secretary of State may collect the following additional fees for the expedited filing of a document received in good form:~~

~~(1) Two hundred dollars ($200.00) for the filing by the end of the same business day of a document received by 12:00 noon Eastern Standard Time; and~~

~~(2) One hundred dollars ($100.00) for the filing of a document within 24 hours after receipt, excluding weekends and holidays.~~

~~The Secretary of State shall not collect the fees allowed in this subsection unless the person submitting the document for filing requests an expedited filing and is informed by the Secretary of State of the fees prior to the filing of the document.~~"

SECTION 172. G.S. 59-103, as amended by Section 32 of House Bill 385, 2001 Regular Session of the General Assembly, reads as rewritten:

"**§ 59-103. Name.**

The name of the limited partnership must meet any requirements of Article 3 of Chapter 55D of the General Statutes."

SECTION 173. Section 53 of House Bill 385, 2001 Regular Session of the General Assembly, reads as rewritten:

"**SECTION 53.** This act becomes effective ~~October 1, 2001,~~ January 1, 2002, and applies to documents submitted for filing on or after that date."

SECTION 174. This Part becomes effective if House Bill 385, 2001 Regular Session of the General Assembly, becomes law.

PART VIII. EFFECTIVE DATE.

SECTION 175.(a) Section 59A of this act becomes effective September 1, 2001. The remainder of this act becomes effective January 1, 2002.

SECTION 175.(b) The amendment to G.S. 105-232 set forth in Section 153 of this act is intended to be retroactive. Accordingly, any act performed or attempted to be performed during the period of suspension of any corporation or limited liability company reinstated pursuant to G.S. 105-232(a) prior to January 1, 2002, shall not be deemed to be invalid and of no effect under G.S. 105-230, subject to the rights of any person who reasonably relied on that person's prejudice on the suspension.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 3

SENATE BILL 842

Judiciary I Committee Substitute Adopted 5/24/01
Third Edition Engrossed 6/27/01

Short Title: Business Entity Changes. (Public)

Sponsors:

Referred to:

April 4, 2001

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE NORTH CAROLINA BUSINESS CORPORATION ACT, THE NORTH CAROLINA NONPROFIT CORPORATION ACT, THE NORTH CAROLINA LIMITED LIABILITY COMPANY ACT, AND THE LAWS GOVERNING PARTNERSHIPS.

The General Assembly of North Carolina enacts:

PART I. AMENDMENTS TO THE NORTH CAROLINA BUSINESS CORPORATION ACT.

SECTION 1. G.S. 55-1-20(f) reads as rewritten:

"(f) A document submitted by a domestic or foreign corporation or nonprofit corporation must be executed:

(1) By the chairman of the board of directors, by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

A document submitted by an unincorporated entity must be executed by a person authorized to execute documents (i) pursuant to G.S. 57C-1-20(f) if the unincorporated entity is a domestic or foreign limited liability company, (ii) pursuant to G.S. 59-204 if the unincorporated entity is a domestic or foreign limited partnership, or (iii) pursuant to G.S. ~~59-73.7(a)(4)~~ 59-35.1(a)(4) if the unincorporated entity is any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State."

SECTION 2. G.S. 55-1-22(a) is amended by adding the following new subdivision to read:

"(12a) Articles of conversion (other than articles of conversion included as part of another document) 50.00".

SECTION 3. G.S. 55-1-40 is amended by adding the following new subdivisions, to be placed by the Revisor of Statutes in the appropriate order, to read:

"**§ 55-1-40. Chapter definitions.**

In this Chapter unless otherwise specifically provided:

...

(2a) 'Business entity,' as used in G.S. 55-11-10 and Article 11A of this Chapter, means a domestic corporation (including a professional corporation as defined in G.S. 55B-2), a foreign corporation, a domestic or foreign nonprofit corporation, a domestic or foreign limited liability company, a domestic or foreign limited partnership as defined in G.S. 59-102, a registered limited liability partnership or foreign limited liability partnership as defined in G.S. 59-32, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State.

...

(6b) 'Domestic limited liability company' has the same meaning as in G.S. 57C-1-03.

(6c) 'Domestic limited partnership' has the same meaning as in G.S. 59-102.

(6d) 'Domestic nonprofit corporation' means a corporation as defined in G.S. 55A-1-40.

(6e) 'Electronic' has the same meaning as in G.S. 66-312.

(6f) 'Electronic record' has the same meaning as in G.S. 66-312.

(6g) 'Electronic signature' has the same meaning as in G.S. 66-312.

...

(10a) 'Foreign limited liability company' has the same meaning as in G.S. 57C-1-02.

(10b) 'Foreign limited partnership' has the same meaning as in G.S. 59-102.

(10c) 'Foreign nonprofit corporation' means a foreign corporation as defined in G.S. 55A-1-40 that is a nonprofit corporation as defined in G.S. 55A-1-40.

...."

SECTION 4. G.S. 55-1-40(17) reads as rewritten:

"(17) 'Principal office' means the office (in or out of this State) ~~so designated in the annual report~~ where the principal executive offices of a domestic or foreign corporation are ~~located.~~located, as designated in its most recent annual report filed with the Secretary of State or, in the case of a domestic or foreign corporation that has not yet filed an annual report, in its articles of incorporation or application for a certificate of authority, respectively."

SECTION 5. G.S. 55-1-40(24a) reads as rewritten:

"(24a) 'Unincorporated entity' means a domestic or foreign limited liability ~~company~~ company, ~~as defined in G.S. 57C-1-03,~~ a domestic or foreign limited ~~partnership~~ partnership, ~~as defined in G.S. 59-102,~~ a registered limited liability partnership or foreign limited liability partnership as defined in G.S. 59-32, or any other partnership as defined in G.S. 59-36, whether or not formed under the laws of this ~~State, including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this~~ State."

SECTION 6. G.S. 55-1-41 reads as rewritten:

"**§ 55-1-41. Notice.**

(a) Notice under this Chapter shall be in writing unless oral notice is authorized in the corporation's articles of incorporation or bylaws and written notice is not specifically required by this Chapter.

(b) Notice may be communicated in person; by ~~telephone, telegraph, teletype, or other form of wire or wireless communication, or by facsimile transmission;~~ electronic means; or by mail or private carrier. If these forms of personal notice are impracticable as to one or more persons, notice may be communicated to such persons by publishing notice in a newspaper in the county wherein the corporation has its principal place of business in the State, or if it has no principal place of business in the State, the county wherein it has its registered office; or by radio, television, or other form of public broadcast communication.

(c) Written notice by a domestic or foreign corporation to its shareholder is effective when deposited in the United States mail with postage thereon prepaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders. To the extent the corporation pursuant to G.S. 55-1-50 and the shareholder have agreed, notice by a domestic corporation to its shareholder in the form of an electronic record sent by electronic means is effective when it is sent as provided in G.S. 66-325. A shareholder may terminate any such agreement at any time on a prospective basis effective upon written notice of termination to the corporation or upon such later date as may be specified in the notice.

(d) Written notice to a domestic or foreign corporation (authorized to transact business in this State) may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report on file in the office of the Secretary of State or, in the case of a domestic or foreign corporation that has not yet ~~delivered~~ filed an annual report, in its articles of incorporation or application for a certificate of ~~authority.~~authority, respectively.

(e) Except as provided in subsection (c), written notice is effective at the earliest of the following:

(1) When received;

(2) Five days after its deposit in the United States mail, as evidenced by the postmark or otherwise, if mailed with at least first-class postage thereon prepaid and correctly addressed;

(3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

In the case of notice in the form of an electronic record sent by electronic means, the time of receipt shall be determined as provided in G.S. 66-325.

(f) Oral notice is effective when actually communicated to the person entitled thereto.

(g) If this Chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this Chapter, those requirements govern."

SECTION 7. Article 1 of Chapter 55 of the General Statutes is amended by adding a new Part to read:

"Part 5. Miscellaneous.

"**§ 55-1-50. Electronic transactions.**

For purposes of applying Article 40 of Chapter 66 of the General Statutes to transactions under this Chapter, a corporation may agree to conduct a transaction by electronic means through provision in its articles of incorporation or bylaws or by action of its board of directors."

SECTION 8. G.S. 55-2-02(a) reads as rewritten:

"(a) The articles of incorporation must set forth:

(1) A corporate name for the corporation that satisfies the requirements of G.S. 55-4-01;

(2) The number of shares the corporation is authorized to issue and any other information required by G.S. 55-6-01;

(3) The street address, and the mailing address if different from the street address, of the corporation's initial registered office, the county in which the initial registered office is located, and the name of the corporation's initial registered agent at that address; ~~and~~

(3a) The street address, and the mailing address if different from the street address, of the corporation's principal office, if any, and the county in which the principal office, if any, is located; and

(4) The name and address of each incorporator."

SECTION 9. G.S. 55-2-02 is amended by adding the following new subsection to read:

"(d) Articles of incorporation filed to effect the conversion of another business entity pursuant to Article 11A of this Chapter shall also include the statements required by G.S. 55-11A-03(a)."

SECTION 10. G.S. 55-2-03(a) reads as rewritten:

"(a) ~~Unless a delayed effective date is specified, the corporate~~ Corporate existence begins when the articles of incorporation ~~are filed.~~ become effective."

SECTION 11. G.S. 55-7-04 reads as rewritten:

"**§ 55-7-04. Action without meeting.**

(a) Action required or permitted by this Chapter to be taken at a shareholders' meeting may be taken without a ~~meeting~~ meeting and without prior notice except as required by subsection (d) of this section, if the action is taken by all the shareholders entitled to vote on the ~~action.~~action or, subject to subsection (a1) of this section, if so provided in the articles of incorporation of a corporation that is not a public corporation at the time the action is taken, by shareholders having not less than the minimum number of votes that would be necessary to take the action at a meeting at which all shareholders entitled to vote were present and voted. The action must be evidenced by one or more written consents bearing the date of signature and signed by ~~all~~ the number of shareholders sufficient to take the action without a meeting, before or after such action, describing the action taken and delivered to the corporation for inclusion in the minutes or ~~filling~~ filing with the corporate records. To the extent the corporation has agreed pursuant to G.S. 55-1-50, a shareholder's consent to action taken without meeting may be in electronic form and delivered by electronic means.

(a1) Notwithstanding subsection (a) of this section, the following actions may be taken without a meeting only by all the shareholders entitled to vote on the action:

(1) If cumulative voting is not authorized, the election of directors at the annual meeting; or

(2) If cumulative voting is authorized, the election of directors and the removal of a director unless the entire board of directors is to be removed, and if G.S. 55-7-28(e) applies to the corporation, an amendment to deny or limit the right of shareholders to vote cumulatively and an amendment to the articles of incorporation or bylaws to decrease the number of directors.

The action must be evidenced by one or more written consents bearing the date of signature and signed by the number of shareholders sufficient to take the action without a meeting, before or after such action, describing the action taken and delivered to the corporation for inclusion in the minutes or filing with the corporate records. To the extent the corporation has agreed pursuant to G.S. 55-1-50, a shareholder's consent to action taken without meeting may be in electronic form and delivered by electronic means.

(b) If not otherwise fixed under G.S. 55-7-03 or G.S. 55-7-07, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (a). No written consent shall be effective to evidence the action referred to therein unless, within 60 days after the earliest date appearing on a written consent delivered to the corporation in the manner required by this section, the corporation receives written consents signed by shareholders sufficient to take the action without a meeting.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

(d) ~~If this Chapter requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by unanimous consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the proposed action at least 10 days before the action is taken.~~ Unless the articles of incorporation otherwise provide, if shareholder approval is required by this Chapter for (i) an amendment to the articles of incorporation pursuant to Article 10 of this Chapter, (ii) a plan of merger, conversion, or share exchange pursuant to Article 11 of this Chapter, (iii) the sale, lease, exchange, or other disposition of all, or substantially all, of the corporation's property pursuant to Article 12 of this Chapter, or (iv) a proposal for dissolution pursuant to Article 14 of this Chapter, and the approval is to be obtained through action without meeting, the corporation must give its shareholders, other than shareholders who consent to the action, written notice of the proposed action at least 10 days before the action is taken. The notice ~~must~~ shall contain or be accompanied by the same material that, under this Chapter, would have been required to be sent to ~~nonvoting~~ shareholders not entitled to vote on the action in a notice of meeting at which the proposed action would have been submitted to ~~the~~ shareholders for action.

(e) If action is taken without a meeting by less than all shareholders entitled to vote on the action, the corporation shall give written notice to all shareholders who have not consented to the action and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting with the same record date as the action taken without a meeting, within 10 days after the action is taken. The notice shall describe the proposed action and indicate that the action has been taken without a meeting of shareholders. Failure to comply with the requirements of this subsection shall not invalidate any action taken that otherwise complies with this section."

SECTION 12. Article 7 of Chapter 55 of the General Statutes is amended by adding a new section to read:

"**§ 55-7-08. Attendance.**

To the extent authorized by a corporation's board of directors, a shareholder or the shareholder's proxy not physically present at a meeting of shareholders may attend the meeting by electronic or other means of remote communication that allow the shareholder or proxy (i) to read or to hear the meeting proceedings substantially concurrently as the proceedings occur, (ii) to be read or to be heard substantially concurrently as the shareholder or proxy communicates, and (iii) to vote on matters to which the shareholder or proxy is entitled to vote."

SECTION 13. G.S. 55-7-20(c) reads as rewritten:

"(c) The corporation shall make the shareholders' list available at the meeting, and any shareholder, personally or by or with his representative, is entitled to inspect the list at any time during the meeting or any adjournment. The corporation is not required to make the list available through electronic or other means of remote communication to a

shareholder or proxy attending the meeting by remote communication pursuant to G.S. 55-7-08."

SECTION 14. G.S. 55-7-22(b) reads as rewritten:

"(b) A shareholder may appoint one or more proxies to vote or otherwise act for ~~him~~ the shareholder by signing an appointment form, either personally or by ~~his~~ the shareholder's attorney-in-fact. ~~A photocopy, telegram, cablegram, facsimile transmission, or equivalent reproduction of a writing appointing one or more proxies,~~Without limiting G.S. 55-1-50, an appointment in the form of an electronic record that bears the shareholder's electronic signature and that may be directly reproduced in paper form by an automated process shall be deemed a valid appointment form within the meaning of this section. In addition, ~~if and to the extent permitted by the corporation,~~ a public corporation may permit a shareholder ~~may~~ to appoint one or more proxies ~~(i) by an electronic mail message or other form of electronic, wire, or wireless communication that provides a written statement appearing to have been sent by the shareholder, or (ii) in the case of a public corporation,~~ by any kind of ~~electronic or~~ telephonic transmission, even if not accompanied by written communication, under circumstances or together with information from which the corporation can reasonably assume that the appointment was made or authorized by the shareholder."

SECTION 15. G.S. 55-8-21(a) reads as rewritten:

"(a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this Chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents signed by each director before or after such action, describing the action taken, and included in the minutes or filed with the corporate records. To the extent the corporation has agreed pursuant to G.S. 55-1-50, a director's consent to action taken without meeting may be in electronic form and delivered by electronic means."

SECTION 16. G.S. 55-9-01(b)(1) reads as rewritten:

"(1) 'Business combination' includes any ~~merger or consolidation~~ merger, consolidation, or conversion of a corporation with or into any other corporation or any unincorporated entity, or the sale or lease of all or any substantial part of the corporation's assets to, or any payment, sale or lease to the corporation or any subsidiary thereof in exchange for securities of the corporation of any assets (except assets having an aggregate fair market value of less than five million dollars ($5,000,000)) of any other entity."

SECTION 17. Chapter 55 of the General Statutes is amended by adding a new Article to read:

"Article 11A.

"Conversions.

"Part 1. Conversion to Corporation.

"**§ 55-11A-01. Conversion.**

A business entity, other than a domestic corporation, may convert to a domestic corporation if:

(1) The conversion is permitted by the laws of the state or country governing the organization and internal affairs of the converting business entity; and

(2) The converting business entity complies with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section.

"**§ 55-11A-02. Plan of conversion.**

(a) The converting business entity shall approve a written plan of conversion containing:

(1) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the resulting domestic corporation into which the converting business entity shall convert;

(3) The terms and conditions of the conversion; and

(4) The manner and basis for converting the interests in the converting business entity into shares, obligations, or other securities of the resulting domestic corporation or into cash or other property in whole or in part.

The plan of conversion may contain other provisions relating to the conversion.

(b) The plan of conversion shall be approved in accordance with the laws of the state or country governing the organization and internal affairs of the converting business entity.

(c) After a plan of conversion has been approved as provided in subsection (b) of this section, but before articles of incorporation for the resulting domestic corporation become effective, the plan of conversion may be amended or abandoned to the extent permitted by the laws that govern the organization and internal affairs of the converting business entity.

"**§ 55-11A-03. Filing of articles of incorporation by converting entity.**

(a) After a plan of conversion has been approved by the converting business entity as provided in G.S. 55-11A-02, the converting business entity shall deliver articles of incorporation to the Secretary of State for filing. In addition to the matters required or permitted by G.S. 55-2-02, the articles of incorporation shall contain articles of conversion stating:

(1) That the corporation is being formed pursuant to a conversion of a business entity;

(2) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs; and

(3) That a plan of conversion has been approved by the converting business entity as required by law.

(b) If the plan of conversion is abandoned after the articles of incorporation have been filed with the Secretary of State but before the articles of incorporation become effective, the converting business entity shall deliver to the Secretary of State for filing prior to the time the articles of incorporation become effective an amendment to the articles of incorporation withdrawing the articles of incorporation.

(c) The conversion takes effect when the articles of incorporation become effective.

(d) Certificates of conversion shall also be registered as provided in G.S. 47-18.1.

"**§ 55-11A-04. Effects of conversion.**

When the conversion takes effect:

(1) The converting business entity ceases its prior form of organization and continues in existence as the resulting domestic corporation;

(2) The title to all real estate and other property owned by the converting business entity continues vested in the resulting domestic corporation without reversion or impairment;

(3) All liabilities of the converting business entity continue as liabilities of the resulting domestic corporation;

(4) A proceeding pending by or against the converting business entity may be continued as if the conversion did not occur; and

(5) The interests in the converting business entity that are to be converted into shares, obligations, or other securities of the resulting domestic corporation or into the right to receive cash or other property are thereupon so converted, and the former holders of interests in the converting business entity are entitled only to the rights provided in the plan of conversion.

The conversion shall not affect the liability or absence of liability of any holder of an interest in the converting business entity for any acts, omissions, or obligations of the converting business entity made or incurred prior to the effectiveness of the conversion. The cessation of the existence of the converting business entity in its prior form of organization in the conversion shall not constitute a dissolution or termination of the converting business entity.

"Part 2. Conversion of Corporation.

"**§ 55-11A-10. Conversion.**

A domestic corporation may convert to a different business entity if:

(1) The conversion is permitted by the laws of the state or country governing the organization and internal affairs of such other business entity; and

(2) The converting domestic corporation complies with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section.

"**§ 55-11A-11. Plan of conversion.**

(a) The converting domestic corporation shall approve a written plan of conversion containing:

(1) The name of the converting domestic corporation;

(2) The name of the resulting business entity into which the domestic corporation shall convert, its type of business entity, and the state or country whose laws govern its organization and internal affairs;

(3) The terms and conditions of the conversion; and

(4) The manner and basis for converting the shares of the domestic corporation into interests, obligations, or securities of the resulting business entity or into cash or other property in whole or in part.

The plan of conversion may contain other provisions relating to the conversion.

(b) For a plan of conversion to be approved:

(1) The board of directors shall recommend the plan of conversion to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation, in which event the board of directors shall communicate the basis for its lack of a recommendation to the shareholders with the plan; and

(2) The shareholders entitled to vote shall approve the plan.

(c) The board of directors may condition its submission of the proposed conversion on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with G.S. 55-7-05. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the plan of conversion and contain or be accompanied by a copy of the plan.

(e) Unless this Chapter, the articles of incorporation, a bylaw adopted by the shareholders or the board of directors, acting pursuant to subsection (c) of this section, require a greater vote or a vote by voting groups, the plan of conversion to be authorized shall be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group and, for the purpose of Article 9 of this Chapter or any provision in the articles of incorporation or bylaws adopted prior to October 1, 2001, a conversion shall be deemed to be included within the term 'merger'. If any shareholder of the converting domestic corporation has or will have personal liability for any existing or future obligation of the resulting business entity solely as a result of holding an interest in the resulting business entity, then in addition to the requirements of the preceding sentence, approval of the plan of conversion by the domestic corporation shall require the affirmative vote or written consent of that shareholder.

(f) Separate voting by voting groups is required on a plan of conversion if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would require action by one or more separate voting groups on the

proposed amendment under G.S. 55-10-04, except where the consideration to be received in exchange for the shares of that group consists solely of cash.

(g) After a plan of conversion has been approved by a domestic corporation but before the articles of conversion become effective, the plan of conversion (i) may be amended as provided in the plan of conversion, or (ii) may be abandoned, subject to any contractual rights, as provided in the plan of conversion or, if there is no such provision, as determined by the board of directors without further shareholder action.

"**§ 55-11A-12. Articles of conversion.**

(a) After a plan of conversion has been approved by the converting domestic corporation as provided in G.S. 55-11A-11, the converting domestic corporation shall deliver articles of conversion to the Secretary of State for filing. The articles of conversion shall state:

(1) The name of the converting domestic corporation;

(2) The name of the resulting business entity, its type of business entity, the state or country whose laws govern its organization and internal affairs, and, if the resulting business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address; and

(3) That a plan of conversion has been approved by the domestic corporation as required by law.

If the domestic corporation is converting to a business entity whose formation or whose status as a registered limited liability partnership, as defined in G.S. 59-32, or limited liability limited partnership, as defined in G.S. 59-102, requires the filing of a document with the Secretary of State, then the articles of conversion shall be included as part of that document instead of separately filing the articles of conversion.

If the plan of conversion is abandoned after the articles of conversion have been filed with the Secretary of State but before the articles of conversion become effective, the converting domestic corporation shall deliver to the Secretary of State for filing prior to the time the articles of conversion become effective an amendment to the articles of conversion withdrawing the articles of conversion.

(b) The conversion takes effect when the articles of conversion become effective.

(c) Certificates of conversion shall also be registered as provided in G.S. 47-18.1.

"**§ 55-11A-13. Effects of conversion.**

(a) When the conversion takes effect:

(1) The converting domestic corporation ceases its prior form of organization and continues in existence as the resulting business entity;

(2) The title to all real estate and other property owned by the converting domestic corporation continues vested in the resulting business entity without reversion or impairment;

(3) All liabilities of the converting domestic corporation continue as liabilities of the resulting business entity;

(4) A proceeding pending by or against the converting domestic corporation may be continued as if the conversion did not occur;

(5) The shares in the converting domestic corporation that are to be converted into interests, obligations, or securities of the resulting business entity or into the right to receive cash or other property are thereupon so converted, and the former shareholders of the converting domestic corporation are entitled only to the rights provided in the plan of conversion or any rights they may have under Article 13 of this Chapter; and

(6) The resulting business entity is deemed to agree that it will promptly pay to the dissenting former shareholders of the converting domestic corporation the amount, if any, to which they are entitled under Article 13 of this Chapter and otherwise to comply with the requirements of Article 13 as if it were a domestic corporation.

The conversion shall not affect the liability or absence of liability of any shareholder of the converting domestic corporation for any acts, omissions, or obligations of the converting domestic corporation made or incurred prior to the effectiveness of the conversion. The cessation of the existence of the converting domestic corporation in its form of organization as a domestic corporation in the conversion shall not constitute a dissolution or termination of the converting domestic corporation.

(b) If the resulting business entity is not a domestic limited liability company or a domestic limited partnership, when the conversion takes effect the resulting business entity is deemed:

(1) To agree that it may be served with process in this State for enforcement of (i) any obligation of the converting domestic corporation, (ii) the rights of dissenting shareholders of the converting domestic corporation under Article 13 of this Chapter, and (iii) any obligation of the resulting business entity arising from the conversion; and

(2) To have appointed the Secretary of State as its agent for service of process in any proceeding described in subdivision (1) of this subsection. 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 the process and the fee required by G.S. 55-1-22(b). Upon receipt of service of process on behalf of a resulting business 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 resulting business entity. If the resulting business entity is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the

Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the resulting business entity is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 55-11A-12(a)(2)."

SECTION 18. G.S. 55-11-07(a) reads as rewritten:

"(a) One or more foreign corporations may merge or enter into a share exchange with one or more domestic corporations if:

(1) In a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(2) In a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;

(3) The foreign corporation complies with G.S. 55-11-05 if it is the surviving corporation of the merger or acquiring corporation of the share ~~exchange;~~ exchange and, if the foreign corporation is not authorized to transact business in this State, includes in the articles of merger or articles of share exchange filed pursuant to G.S. 55-11-05 a designation of the foreign corporation's mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address; and

(4) Each domestic corporation complies with the applicable provisions of G.S. 55-11-01 through G.S. 55-11-04 and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with G.S. 55-11-05."

SECTION 19. G.S. 55-11-07(b) reads as rewritten:

"(b) Upon the merger or share exchange taking effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange is deemed:

(1) To appoint the Secretary of State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange; and

(2) To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under Article 13.

Service on the Secretary of State of any process authorized by this subsection 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 the process and the fee required by G.S. 55-1-22(b). Upon receipt of service of process in

the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the foreign corporation. If the foreign corporation is authorized to transact business in this State, the address for mailing shall be its principal office or, if there is no mailing address for the principal office on file, its registered office. If the foreign corporation is not authorized to transact business in this State, the address for mailing shall be the mailing address designated pursuant to subdivision (3) of subsection (a) of this section."

SECTION 20. G.S. 55-11-09(a) reads as rewritten:

"(a) One or more domestic or foreign nonprofit corporations may merge with one or more domestic corporations if:

(1) Each domestic nonprofit corporation complies with the applicable provisions of G.S. 55A-11-01 through G.S. 55A-11-03;

(2) In a merger involving one or more foreign nonprofit corporations, the merger is permitted by law of the state or country under whose law each foreign nonprofit corporation is incorporated and each foreign nonprofit corporation complies with that law in effecting the merger;

(3) The domestic or foreign nonprofit corporation complies with G.S. 55-11-05 if it is the surviving ~~corporation;~~ corporation and, in the case of a foreign nonprofit corporation not authorized to conduct affairs in this State, includes in the articles of merger filed pursuant to G.S. 55-11-05 a designation of the foreign nonprofit corporation's mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address; and

(4) Each domestic corporation complies with the applicable provisions of G.S. 55-11-01, 55-11-03, and 55-11-04 and, if it is the surviving corporation, with G.S. 55-11-05."

SECTION 21. G.S. 55-11-09(b) reads as rewritten:

"(b) Upon the merger taking effect, if ~~the domestic or~~ a foreign nonprofit corporation is the surviving corporation, then it is deemed:

(1) To appoint the Secretary of State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger; and

(2) To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under Article 13 of this Chapter.

Service on the Secretary of State of any process authorized by this subsection 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 the process and the fee required by G.S. 55-1-22(b). Upon receipt of service of process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the

foreign nonprofit corporation. If the foreign nonprofit corporation is authorized to conduct affairs in this State, the address for mailing shall be its principal office as defined in G.S. 55A-1-40(20), or, if there is no mailing address for the principal office on file, its registered office. If the foreign nonprofit corporation is not authorized to conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to subdivision (3) of subsection (a) of this section."

SECTION 22. G.S. 55-11-10(a) is repealed.

SECTION 23. G.S. 55-11-10(c) reads as rewritten:

"(c) Each merging domestic corporation and each other merging business entity shall approve a written plan of merger containing:

(1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the merging business entity that shall survive the merger;

(3) The terms and conditions of the merger;

(4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part; and

(5) If the surviving business entity is a domestic corporation, any amendments to its articles of incorporation that are to be made in connection with the merger.

The plan of merger may contain other provisions relating to the merger.

In the case of a domestic corporation, approval of the plan of merger requires that the plan of merger be adopted by its board of directors as provided in G.S. 55-11-03 and, unless shareholder approval is not required under subsection (g) of G.S. 55-11-03, be approved by its shareholders as provided in G.S. 55-11-03. If any shareholder of a merging domestic corporation has or will have personal liability for any existing or future obligation of the surviving business entity solely as a result of holding an interest in the surviving business entity, then in addition to the requirements of the preceding sentence, approval of the plan of merger by the domestic corporation shall require the affirmative vote or written consent of that shareholder. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of that merging business entity.

After a plan of merger has been approved by a domestic corporation but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger or, if there is no such provision, as determined by the board of directors without further shareholder action."

SECTION 24. G.S. 55-11-10(e1)(2) reads as rewritten:

"(2) To have appointed the Secretary of State as its agent for service of process in any such proceeding. Service on the Secretary of State of

any such process shall be made by delivering to and leaving with the Secretary of ~~State~~ State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of such 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 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. If the surviving business entity is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the surviving business entity is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to subdivision (3) of subsection (d) of this section."

SECTION 25. G.S. 55-11-10(d) reads as rewritten:

"(d) After a plan of merger has been approved by each merging domestic corporation and each other merging business entity as provided in subsection (c) of this section, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

(1) The plan of merger;

(2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

(3) The name ~~and address~~ of the surviving business ~~entity;~~ entity and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address;

(4) A statement that the plan of merger has been approved by each merging business entity in the manner required by law; and

(5) The effective date and time of merger if it is not to be effective at the time of filing of the articles of merger.

If the plan of merger is amended or abandoned after the articles of merger have been filed but before the articles of merger become effective, the surviving business entity ~~promptly~~ shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger.

Certificates of merger shall also be registered as provided in G.S. 47-18.1."

SECTION 26. G.S. 55-13-02(a) is amended by adding the following new subdivision to read:

"(2a) Consummation of a plan of conversion pursuant to Part 2 of Article 11A of this Chapter;".

SECTION 27. G.S. 55-13-22(a) reads as rewritten:

"(a) If proposed corporate action creating dissenters' rights under G.S. 55-13-02 is ~~authorized~~ approved at a shareholders' meeting, the corporation shall mail by registered or certified mail, return receipt requested, a written dissenters' notice to all shareholders who satisfied the requirements of G.S. 55-13-21. If proposed corporate action creating dissenters' rights under G.S. 55-13-02 is approved by shareholder action without meeting pursuant to G.S. 55-7-04, the corporation shall mail by registered or certified mail, return receipt requested, a written dissenters' notice to each shareholder entitled to assert dissenters' rights. A shareholder who consents to such action taken without meeting pursuant to G.S. 55-7-04 approving a proposed corporate action is not entitled to payment for the shareholder's shares under this Article with respect to that corporate action."

SECTION 27A. G.S. 55-15-03(a) reads as rewritten:

"(a) A foreign corporation 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 corporation or, if its name is unavailable for use in this State, a corporate name that satisfies the requirements of G.S. 55-15-06;

(2) The name of the state or country under whose law it is incorporated;

(3) Its date of incorporation and period of duration;

(4) The street address, and the mailing address if different from the street address, of its principal ~~office;~~ office, if any, and the county in which the principal office, if any, is located;

(5) The street address, and the mailing address if different from the street address, of its registered office in this State, the county in which the registered office is located, and the name of its registered agent at that office; and

(6) The names and usual business addresses of its current officers."

SECTION 28. G.S. 55-15-10(b) reads as rewritten:

"(b) Whenever a foreign corporation authorized to transact business in this State 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, or whenever its certificate of authority shall have been revoked under G.S. 55-15-31, 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 office,~~ authorized by the Secretary of State to accept service of process, 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 in this subsection, 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 foreign corporation under this subsection shall be effective for all purposes from and after the date of ~~such~~ the service on the Secretary of State."

SECTION 29. G.S. 55-15-20(b) reads as rewritten:

"(b) A foreign corporation authorized to transact business in this State may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application must set forth:

(1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(2) That it is not transacting business in this State and that it surrenders its authority to transact business in this State;

(3) That the corporation revokes the authority of its registered agent to accept service of process and consents that service of process in any action or proceeding based upon any cause of action arising in this State, or arising out of business transacted in this State, during the time the corporation was authorized to transact business in this State may thereafter be made on such corporation by service thereof on the Secretary of State;

(4) A mailing address to which the Secretary of State may mail a copy of any process served on ~~him~~ the Secretary of State under subdivision (3); and

(5) A commitment to ~~notify~~ file with the Secretary of State ~~in the future~~ a statement of any subsequent change in its mailing address."

SECTION 30. G.S. 55-15-20(c) reads as rewritten:

"(c) After the withdrawal of the foreign corporation is effective, service of process on the Secretary of State in accordance with subsection ~~(b)(3)~~(b) of this section ~~is service on the foreign corporation.~~ shall be made by delivering to and leaving with the Secretary of State or any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55-1-22(b). Upon receipt of ~~process,~~ process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the foreign corporation at the mailing address ~~set forth under~~ designated pursuant to subsection ~~(b).~~(b) of this section."

SECTION 31. G.S. 55-15-21 reads as rewritten:

"**§ 55-15-21. Withdrawal of foreign corporation by reason of a merger, consolidation, or conversion.**

(a) Whenever a foreign corporation authorized to transact business in this State ceases its separate existence as a result of a statutory merger or consolidation permitted by the laws of the state or country under which it was incorporated, or converts into another entity as permitted by those laws, the surviving or resulting entity shall apply for a certificate of withdrawal for the foreign corporation by delivering to the Secretary of State for filing a copy of the articles of merger, consolidation, or conversion or a certificate reciting the facts of the merger, consolidation, or conversion, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under the laws of which such foreign corporation was incorporated. If the surviving or resulting entity is not authorized to transact business in this State the articles or certificate must be accompanied by an application which must set forth:

(1) The name of the foreign corporation authorized to transact business in this State, the type of entity and name of the surviving or resulting entity, and a statement that the surviving or resulting entity is not authorized to transact business in this State;

(2) A statement that the surviving or resulting entity consents that service of process based upon any cause of action arising in this State, or arising out of business transacted in this State, during the time the foreign corporation was authorized to transact business in this State may thereafter be made by service thereof on the Secretary of State;

(3) A mailing address to which the Secretary of State may mail a copy of any process served on ~~him~~ the Secretary of State under subdivision (a)(2) of this section; and

(4) A commitment to ~~notify~~ file with the Secretary of State ~~in the future~~ a statement of any subsequent change in its mailing address.

(b) If the Secretary of State finds that the articles or certificate and the application for withdrawal, if required, conform to law the Secretary of State shall:

(1) Endorse on the articles or certificate and the application for withdrawal, if required, the word "filed" and the hour, day, month and year of the filing thereof;

(2) File the articles or certificate and the application, if required;

(3) Issue a certificate of withdrawal; and

(4) Send to the surviving or resulting entity or its representative the certificate of withdrawal, together with the exact or conformed copy of the application, if required, affixed thereto.

(c) After the withdrawal of the foreign corporation is effective, service of process on the Secretary of State in accordance with subsection (a) of this section shall be made by delivering to and leaving with the Secretary of State, or any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55-1-22(b). Upon receipt of process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by

registered or certified mail, return receipt requested, to the surviving or resulting entity at the mailing address designated pursuant to subsection (a) of this section."

PART II. AMENDMENTS TO THE NORTH CAROLINA NONPROFIT CORPORATION ACT.

SECTION 32. G.S. 55A-1-20(f) reads as rewritten:

"(f) A document submitted by a domestic or foreign corporation or business corporation shall be executed:

(1) By the presiding officer of the board of directors by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

A document submitted by an unincorporated entity must be executed by a person authorized to execute documents (i) pursuant to G.S. 57C-1-20(f) if the unincorporated entity is a domestic or foreign limited liability company, (ii) pursuant to G.S. 59-204 if the unincorporated entity is a domestic or foreign limited partnership, or (iii) pursuant to ~~G.S. 59-73.7(a)(4)~~ G.S. 59-35.1(a)(4) if the unincorporated entity is any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State."

SECTION 33. G.S. 55A-1-40(20) reads as rewritten:

"(20) 'Principal office' means the office (in or out of this State) so designated in the articles of incorporation, the Designation of Principal Office Address form, or in any subsequent Corporation's Statement of Change of Principal Office Address form filed with the Secretary of State where the principal offices of a domestic or foreign corporation are ~~located.~~ located, as most recently designated by the domestic or foreign corporation in its articles of incorporation, a Designation of Principal Office Address form, a Corporation's Statement of Change of Principal Office Address form, or in the case of a foreign corporation, its application for a certificate of authority."

SECTION 34. G.S. 55A-1-40 is amended by adding the following new subdivisions, to be placed by the Revisor of Statutes in the appropriate order, to read:

"**§ 55A-1-40. Chapter definitions.**

In this Chapter unless otherwise specifically provided:

...

(2a) 'Business corporation' or 'domestic business corporation' means a corporation as defined in G.S. 55-1-40.

...

(8a) 'Domestic limited liability company' has the same meaning as in G.S. 57C-1-03.

(8b) 'Domestic limited partnership' has the same meaning as in G.S. 59-102.

...

(10a) 'Foreign business corporation' means a foreign corporation as defined in G.S. 55-1-40.

...

(11a) 'Foreign limited liability company' has the same meaning as in G.S. 57C-1-03.

(11b) 'Foreign limited partnership' has the same meaning as in G.S. 59-102.

...."

SECTION 35. G.S. 55A-1-40(24a) reads as rewritten:

"(24a) 'Unincorporated entity' means a domestic or foreign limited liability ~~company as defined in G.S. 57C-1-03,~~ company, a domestic or foreign limited ~~partnership as defined in G.S. 59-102,~~ partnership, a registered limited liability partnership or foreign limited liability partnership as defined in G.S. 59-32, or any other partnership as defined in G.S. 59-36, whether or not formed under the laws of this ~~State, including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this State.~~State."

SECTION 36. G.S. 55A-11-06(a) reads as rewritten:

"(a) Except as provided in G.S. 55A-11-02, one or more foreign nonprofit corporations may merge with one or more domestic nonprofit corporations if:

(1) The merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(2) The foreign corporation complies with G.S. 55A-11-04 if it is the surviving corporation of the ~~merger;~~ merger and, if the foreign corporation is not authorized to conduct affairs in this State, includes in the articles of merger filed with the Secretary of State pursuant to G.S. 55A-11-04 a designation of the foreign corporation's mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address; and

(3) Each domestic nonprofit corporation complies with the applicable provisions of G.S. 55A-11-01 through G.S. 55A-11-03 and, if it is the surviving corporation of the merger, with G.S. 55A-11-04."

SECTION 37. G.S. 55A-11-06(b) reads as rewritten:

"(b) Upon the merger taking effect, if the surviving ~~corporation, if it does not have a registered agent in this State,~~ corporation is a foreign corporation, it shall be deemed to have appointed the Secretary of State as its ~~registered~~ agent for service of process in a proceeding to enforce any obligation of a domestic corporation party to the ~~merger, until such time as it appoints a registered agent in this State.~~merger. 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 the process and the fee required by G.S. 55A-1-22(b). Upon receipt of service of process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the foreign corporation. If the foreign corporation is authorized to conduct affairs in this State, the address for mailing shall be its principal office or, if there is no mailing address for the principal office on file, its registered office. If the foreign corporation is not authorized to conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to subdivision (2) of subsection (a) of this section."

SECTION 38. G.S. 55A-11-08(a) reads as rewritten:

"(a) One or more domestic or foreign business corporations may merge with one or more domestic nonprofit corporations if:

(1) Each domestic business corporation complies with the applicable provisions of G.S. 55-11-01, 55-11-03, and 55-11-04;

(2) In a merger involving one or more foreign business corporations, the merger is permitted by the law of the state or country under whose law each foreign business corporation is incorporated and each foreign business corporation complies with that law in effecting the merger;

(3) The domestic or foreign business corporation complies with G.S. 55A-11-04 if it is the surviving ~~corporation;~~ corporation and, in the case of a foreign business corporation not authorized to transact business in this State, includes in the articles of merger filed pursuant to G.S. 55A-11-04 a designation of the foreign business corporation's mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address; and

(4) Each domestic nonprofit corporation complies with the applicable provisions of G.S. 55A-11-01 through G.S. 55A-11-03 and, if it is the surviving corporation, with G.S. 55A-11-04."

SECTION 39. G.S. 55A-11-08(b) reads as rewritten:

"(b) Upon the merger taking effect, if the surviving corporation ~~does not have a registered agent in this State,~~ is a foreign business corporation, it shall be deemed to have appointed the Secretary of State as its ~~registered~~ agent for service of process in a proceeding to enforce any obligation of a domestic nonprofit corporation party to the ~~merger, until such time as it appoints a registered agent in this State.~~merger. 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 the process and the fee required by G.S. 55A-1-22(b). Upon receipt of service of process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the foreign business corporation.

If the foreign business corporation is authorized to transact business in this State, the address for mailing shall be its principal office as defined in G.S. 55-1-40(17) or, if there is no mailing address for the principal office on file, its registered office. If the foreign business corporation is not authorized to transact business in this State, the address for mailing shall be the mailing address designated pursuant to subdivision (3) of subsection (a) of this section."

SECTION 40. G.S. 55A-11-09(a) reads as rewritten:

"(a) As used in this section, 'business entity' means a domestic business corporation ~~as defined in G.S. 55-1-40~~ (including a professional corporation as defined in G.S. 55B-2), a foreign business corporation ~~as defined in G.S. 55-1-40~~ (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit ~~corporation as defined in G.S. 55A-1-40,~~ corporation, a domestic or foreign limited liability ~~company~~ company, ~~as defined in G.S. 57C-1-03,~~ a domestic or foreign limited ~~partnership~~ partnership, ~~as defined in G.S. 59-102,~~ a registered limited liability partnership or foreign limited liability partnership as defined in G.S. 59-32; or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State."

SECTION 41. G.S. 55A-11-09(d) reads as rewritten:

"(d) After a plan of merger has been approved by each merging domestic nonprofit corporation and each other merging business entity as provided in subsection (c) of this section, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

(1) The plan of merger;

(2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

(3) The name of the surviving business entity and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address;

(4) A statement that the plan of merger has been approved by each merging business entity in the manner required by law; and

(5) The effective date and time of merger if it is not to be effective at the time of filing of the articles of merger.

If the plan of merger is amended or abandoned after the articles of merger have been filed but before the articles of merger become effective, the surviving business entity ~~promptly~~ shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger.

Certificates of merger shall also be registered as provided in G.S. 47-18.1."

SECTION 42. G.S. 55A-11-09(e1)(2) reads as rewritten:

"(2) To have appointed the Secretary of State as its agent for service of process in any such proceeding. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of ~~State~~ State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of such 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 in the manner provided ~~by~~ 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. If the surviving business entity is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the surviving business entity is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to subdivision (3) of subsection (d) of this section."

SECTION 43. G.S. 55A-15-10(b) reads as rewritten:

"(b) When a foreign corporation authorized to conduct affairs in this State 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, or when its certificate of authority shall have been revoked under G.S. 55A-15-31, the Secretary of State shall be an agent of such 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 the Secretary of State's office,~~ authorized by the Secretary of State to accept service of process, 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,~~ State in the manner provided for in this subsection, ~~he~~ 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 foreign corporation under this subsection shall be effective for all purposes from and after the date of ~~such~~ the service on the Secretary of State."

SECTION 44. G.S. 55A-15-20(b)(5) reads as rewritten:

"(5) A commitment to ~~notify~~ file with the Secretary of State ~~in the future~~ a statement of any subsequent change in its mailing address."

SECTION 45. G.S. 55A-15-20(d) reads as rewritten:

"(d) After the withdrawal of the foreign corporation is effective, service of process on the Secretary of State in accordance with ~~subdivision (b)(3)~~ subsection (b) of this section ~~is service on the foreign corporation.~~ shall be made by delivering to and leaving with the Secretary of State or any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55A-1-22(b). Upon receipt of ~~process,~~ process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the foreign corporation at the mailing address ~~set forth under~~ designated pursuant to subsection (b) of this section."

SECTION 46. G.S. 55A-15-21(a) reads as rewritten:

"(a) Whenever a foreign corporation authorized to conduct affairs in this State ceases its separate existence as a result of a statutory merger or consolidation permitted by the laws of the state or country under which it was incorporated, or converts into another entity as permitted by those laws, the surviving or resulting entity shall apply for a certificate of withdrawal for the foreign corporation by delivering to the Secretary of State for filing a copy of the articles of merger, consolidation, or conversion or a certificate reciting the facts of the merger, consolidation, or conversion duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under the laws of which the foreign corporation was incorporated. If the surviving or resulting entity is not authorized to conduct affairs in this State, the articles or certificate shall be accompanied by an application which must set forth:

(1) The name of the foreign corporation authorized to conduct affairs in this State, the type of entity and the name of the surviving or resulting entity, and a statement that the surviving or resulting entity is not authorized to conduct affairs in this State;

(2) A statement that the surviving or resulting entity consents that service of process based upon any cause of action arising in this State, or arising out of affairs conducted in this State, during the time the foreign corporation was authorized to conduct affairs in this State may thereafter be made by service thereof on the Secretary of State;

(3) A mailing address to which the Secretary of State may mail a copy of any process served on ~~him~~ the Secretary of State under subdivision (a)(2) of this section; and

(4) A commitment to ~~notify~~ file with the Secretary of State ~~in the future~~ a statement of any subsequent change in its mailing address."

SECTION 47. G.S. 55A-15-21 is amended by adding a new subsection to read:

"(c) After the withdrawal of the foreign corporation is effective, service of process on the Secretary of State in accordance with subsection (b) of this section shall be made by delivering to and leaving with the Secretary of State, or any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55A-1-22(b). Upon receipt of process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the foreign corporation at the mailing address designated pursuant to subsection (a) of this section."

PART III. AMENDMENTS TO THE NORTH CAROLINA LIMITED LIABILITY COMPANY ACT.

SECTION 48. G.S. 57C-1-03 is amended by adding the following new subdivisions, to be placed by the Revisor of Statutes in the appropriate order, to read:

"**§ 57C-1-03. Definitions.**

The following definitions apply in this Chapter, unless otherwise specifically provided:

...

(5a) Director. – For any limited liability company the management of whose affairs is vested in whole or in part in persons other than its managers pursuant to G.S. 57C-3-20(b), any person who is so vested with, or is one of a group of persons so vested with, the authority to direct the management of the limited liability company's affairs.

...

(6a) Domestic nonprofit corporation. – A corporation as defined in G.S. 55A-1-40(5).

(6b) Executive. – For any limited liability company the management of whose affairs is vested in whole or in part in persons other than its managers pursuant to G.S. 57C-3-20(b), any person who is so vested with authority to participate in the management of the limited liability company's affairs under the direction of the limited liability company's managers or directors.

...

(9a) Foreign nonprofit corporation. – A foreign corporation as defined in G.S. 55A-1-40(11) that is a nonprofit corporation as defined in G.S. 55A-1-40(17).

...

(12a) Management of the affairs. – In respect of an entity, unless the context indicates otherwise, the authority to direct and participate in the management of the entity.

...

(17a) Principal office. – The office, in or out of this State, where the principal executive offices of a domestic or foreign limited liability company are located, as designated in its most recent annual report

filed with the Secretary of State or, in the case of a domestic or foreign limited liability company that has not yet filed an annual report, in its articles of organization or application for a certificate of authority, respectively.

...."

SECTION 49. G.S. 57C-1-03(3a) reads as rewritten:

"(3a) Business entity. – A corporation (including a professional corporation as defined in G.S. 55B-2), a foreign corporation (including a foreign professional corporation defined in G.S. 55B-16), a domestic or foreign nonprofit ~~corporation~~ corporation, ~~as defined in G.S. 55A-1-40,~~ a domestic or foreign limited liability company, a domestic or foreign limited ~~partnership~~ partnership, ~~as defined in G.S. 59-102,~~ a registered limited liability partnership or foreign limited liability partnership as defined in G.S. 59-32, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this ~~State (including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this State).~~State."

SECTION 50. G.S. 57C-1-03(4) reads as rewritten:

"(4) ~~Corporation.~~ Corporation or domestic corporation. – Has the same meaning as in G.S. 55-1-40(4)."

SECTION 51. G.S. 57C-1-03(13) reads as rewritten:

"(13) Manager. – Has the following meanings: (i) with respect to a domestic limited liability ~~company that has set forth in its articles of organization that it is to be or may be managed by persons other than members,~~ company, any person designated in, or in accordance ~~with~~ with, G.S. 57C-3-20(a), ~~(ii) with respect to any other limited liability company, its members,~~ and ~~(iii)~~ (ii) with respect to a foreign limited liability company, any person authorized to act for and bind the foreign limited liability company."

SECTION 52. G.S. 57C-1-03(15) reads as rewritten:

"(15) Membership interest or interest. – In the context of a member of a limited liability company, the terms mean all of a member's rights in the limited liability company, including ~~without limitation the member's~~ any share of the profits and losses of the limited liability company, ~~the~~ any right to receive distributions of the limited liability company assets, any right to ~~vote,~~ vote on matters relating to the limited liability company, and any right to participate in ~~the management.~~ management of the limited liability company's affairs."

SECTION 53. G.S. 57C-1-20(f) reads as rewritten:

"(f) A document submitted by a domestic or foreign limited liability company must be executed:

(1) By a manager of the limited liability company;

~~(2) If managers have not been selected, or if the limited liability company does not have a manager other than a member, by any member;~~

(3) If the limited liability company has not been formed or if no initial members of the limited liability company have been identified in the manner provided in this Chapter, by an organizer; or

(4) If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

A document submitted by a business entity other than a domestic or foreign limited liability company must be executed by a person authorized to execute documents (i) pursuant to G.S. 55-1-20(f) if the business entity is a corporation or foreign corporation, (ii) pursuant to G.S. 55A-1-20(f) if the business entity is a domestic or foreign nonprofit corporation, (iii) pursuant to G.S. 59-204 if the business entity is a domestic or foreign limited partnership, or (iv) pursuant to ~~G.S. 59-73.7(a)(4)~~ G.S. 59-35.1(a)(4) if the business entity is any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State."

SECTION 54. G.S. 57C-1-22(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

	Document	Fee
(1)	Articles of organization	$125.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Limited liability company's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected limited liability company	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of organization	50.00
(11)	Restated articles of organization without amendment of articles	10.00
(12)	Restated articles of organization with amendment of articles	50.00
(12a)	Articles of conversion (other than articles of conversion included as part of another document)	50.00
(13)	Articles of merger	50.00
(14)	Articles of dissolution	30.00
(15)	Cancellation of articles of dissolution	10.00

(16)	Certificate of administrative dissolution	No fee
(16a)	Application for reinstatement following administrative dissolution	100.00
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	250.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00
(22)	Certificate of revocation of authority to transact business	No fee
(23)	Articles of correction	10.00
(24)	Application for certificate of existence or authorization	5.00
(25)	Annual report	200.00
(26)	Any other document required or permitted to be filed by this Chapter	10.00
(27)	Advisory review of a document	200.00."

SECTION 55. G.S. 57C-2-01 reads as rewritten:

"**§ 57C-2-01. Purposes.**

(a) Every limited liability company ~~organized~~ formed under this Chapter has the purpose of engaging in any lawful business unless a more limited lawful purpose is set forth in its articles of organization.

(b) A domestic or foreign limited liability company engaging in a business that is subject to regulation under another statute of this State may be formed or authorized to transact business under this Chapter only if permitted by and subject to all limitations of the other statute giving effect to subsection (c) of this section.

(c) Subsections (a) and (b) of this section to the contrary notwithstanding and except as set forth in this subsection, a domestic or foreign limited liability company shall engage in rendering professional services only to the extent that a professional corporation acting pursuant to Chapter 55B of the General Statutes or a corporation acting pursuant to Chapter 55 of the General Statutes may engage in rendering professional services under the conditions and limitations imposed by an applicable licensing statute. Chapter 55B of the General Statutes and each applicable licensing statute are deemed amended to provide that professionals licensed under the applicable licensing statute may render professional services through a domestic or foreign limited liability company. For purposes of applying the provisions, conditions, and limitations of Chapter 55B of the General Statutes and the applicable licensing statute to domestic and foreign limited liability companies that engage in rendering professional services, (i) unless the context clearly requires otherwise, references to Chapter 55 of the General Statutes (the North Carolina Business Corporation Act) shall be treated as references to this Chapter, and references to a "corporation" or "foreign corporation" shall be treated as references to a limited liability company or foreign limited liability company,

respectively, (ii) members shall be treated in the same manner as shareholders of a professional corporation, (iii) managers and directors shall be treated in the same manner as directors of a professional corporation, (iv) the persons signing the articles of organization of a limited liability company shall be treated in the same manner as the incorporators of a professional corporation, and (v) the name of a domestic or foreign limited liability company so engaged shall comply with G.S. 57C-2-30 or G.S. 57C-7-06 and, in addition, shall contain the word "Professional" or the abbreviation "P.L.L.C." or "PLLC". For purposes of this subsection, "applicable licensing statute" shall mean those provisions of the General Statutes referred to in G.S. 55B-2(6).

Nothing in this Chapter shall be interpreted to abolish, modify, restrict, limit, or alter the law in this State applicable to the professional relationship and liabilities between the individual furnishing the professional services and the person receiving the professional services, the standards of professional conduct applicable to the rendering of the services, or any responsibilities, obligations, or sanctions imposed under applicable licensing statutes. A ~~member or~~ member, ~~manager~~ manager, director, or executive of a professional limited liability company is not individually liable, directly or indirectly, including by indemnification, contribution, assessment, or otherwise, for debts, obligations, and liabilities of, or chargeable to, the professional limited liability company that arise from errors, omissions, negligence, malpractice, incompetence, or malfeasance committed by another member, manager, director, executive, employee, agent, or other representative of the professional limited liability company; provided, however, nothing in this Chapter shall affect the liability of a ~~member or~~ member, ~~manager~~ manager, director, or executive of a professional limited liability company for his or her own errors, omissions, negligence, malpractice, incompetence, or malfeasance committed in the rendering of professional services."

SECTION 56. G.S. 57C-2-02 reads as rewritten:

"**§ 57C-2-02. Powers of the limited liability company.**

Unless its articles of organization or this Chapter provide otherwise, each limited liability company has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including, without limitation, power:

(1) To sue and be sued, complain, and defend in its own name;

(2) To make and amend operating agreements, not inconsistent with its articles of organization or with the laws of this State, for managing the business and regulating the affairs of the limited liability company;

(3) To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

(4) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(5) To purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and

deal in and with shares or other interests in, or obligations of, any other entity;

(6) To make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations (which may be convertible into or include the option to purchase other interests in the limited liability company), and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(7) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(8) To be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(9) To conduct its business, locate offices, and exercise the powers granted by this Chapter within or without this State;

(10) To elect or appoint managers, directors, executives, officers, employees, and agents of the limited liability company, define their duties, fix their compensation, and lend them money and credit;

(11) To pay pensions and establish pension plans, pension trusts, profit-sharing plans, and other benefit or incentive plans for any or all of its current or former managers, directors, executives, officers, employees, and agents;

(12) To make donations for the public welfare or for charitable, religious, cultural, scientific, or educational purposes;

(13) To transact any lawful business that will aid governmental policy;

(14) To make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the limited liability company;

(15) To provide insurance for its benefit on the life or physical or mental ability of any of its managers, directors, executives, officers, or employees or on the life or physical or mental ability of any owner of any interest in the limited liability company for the purpose of acquiring the interest owned by him at the time of his death or disability, and for these purposes the limited liability company is deemed to have an insurable interest in its managers, directors, executives, officers, employees, or members and other interest owners; and to provide insurance for its benefit on the life or physical or mental ability of any other person in whom it has an insurable interest; and

(16) To render professional services, subject to G.S. 57C-2-01(c)."

SECTION 57. G.S. 57C-2-20(c) reads as rewritten:

"(c) Organization of a limited liability company requires one or more initial members and any further action as may be determined by the initial member or members. 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 58. G.S. 57C-2-21(a) reads as rewritten:

"(a) The articles of organization must set forth:

(1) A name for the limited liability company that satisfies the provisions of G.S. 57C-2-30;

(2) If the limited liability company is to dissolve by a specific date, the latest date on which the limited liability company is to dissolve. If no date for dissolution is specified, there shall be no limit on the duration of the limited liability company;

(3) The name and address of each person executing the articles of organization and whether the person is executing the articles of organization in the capacity of a member or an organizer;

(4) The street address, and the mailing address if different from the street address, of the limited liability company's initial registered office, the county in which the initial registered office is located, and the name of the limited liability company's initial registered agent at that address; ~~and~~

(4a) The street address, and the mailing address if different from the street address, of the limited liability company's principal office, if any, and the county in which the principal office, if any, is located; and

(5) Unless all of the members by virtue of their status as members shall be managers of the limited liability company, a statement that, except as provided in G.S. 57C-3-20(a), the members shall not be managers by virtue of their status as members."

SECTION 59. G.S. 57C-2-23(a) reads as rewritten:

"(a) Each domestic limited liability company other than a professional limited liability company governed by G.S. 57C-2-01(c) and each foreign limited liability company authorized to transact business in this State, shall deliver to the Secretary of State for filing an annual report, in a form ~~jointly~~ prescribed by the ~~Secretary of Revenue and~~ Secretary of State, that sets forth all of the following:

(1) The name of the limited liability or foreign limited liability company and the state or country under whose law it is ~~organized.~~formed.

(2) The street address, and the mailing address if different from the street address, of the registered office, the county in which the registered

office is located, and the name of its registered agent at that office in this State, and a statement of any change of the registered office or registered agent, or both.

(3) The address and telephone number of its principal office.

(4) The names and business addresses of its ~~managers.~~managers or if the limited liability company has never had members, its organizers.

(5) A brief description of the nature of its business.

If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (5) of this subsection. The Secretary of State shall make available the form required to file an annual report."

SECTION 59A. G.S. 57C-2-23(c) reads as rewritten:

"(c) The Secretary of State must notify limited liability companies of the annual report filing requirement. The annual report shall be delivered to the Secretary of State by ~~the fifteenth day of the fourth month following the close of the limited liability company's fiscal~~ April 15th of each year."

SECTION 60. G.S. 57C-2-30(a)(2) reads as rewritten:

"(2) ~~May~~ Shall not contain language stating or implying that the limited liability company is ~~organized~~ formed for a purpose other than that permitted by G.S. 57C-2-01 and its articles of organization; and".

SECTION 61. G.S. 57C-2-32(b) reads as rewritten:

"(b) A foreign limited liability company registers its name, or its name with any required addition, by filing with the Secretary of State an application:

(1) Setting forth its name, or its name with any required addition, the state or country and date of its ~~organization,~~ formation, and a brief description of the nature of the business in which it is engaged; and

(2) Accompanied by a certificate of existence (or a document of a similar import) from the state or country of ~~organization.~~formation."

SECTION 62. G.S. 57C-2-32(e) reads as rewritten:

"(e) A foreign limited liability company whose registration is effective may thereafter qualify as a foreign limited liability company under that name or consent in writing to the use of that name by a limited liability company thereafter ~~organized~~ formed under this Chapter or by another foreign limited liability company thereafter authorized to transact business in this State. The registration terminates when the domestic limited liability company is ~~organized~~ formed or the foreign limited liability company qualifies or consents to the qualification of another foreign limited liability company under the registered name."

SECTION 63. G.S. 57C-2-34(b) reads as rewritten:

"(b) The Secretary of State shall adopt uniform certificates to be furnished for registration in accordance with this section. In the case of a foreign limited liability company, a similar certificate by any competent authority of the jurisdiction of ~~organization~~ formation may be registered in accordance with this section."

SECTION 64. G.S. 57C-3-01 is amended by adding the following new subsection to read:

"(c) Nothing in this Chapter precludes a person from being a member of a limited liability company because that person has not made, and has no obligation to make, any contributions to the limited liability company and has no right to receive any distributions from the limited liability company or share in any profits or losses of the limited liability company."

SECTION 65. G.S. 57C-3-02(3)e. reads as rewritten:

"e. Seeking, consenting to, or acquiescing in, the appointment of a trustee or receiver for, or liquidation of the ~~member~~ person or of all or any substantial part of ~~his~~ that person's properties; or".

SECTION 66. G.S. 57C-3-04(e) reads as rewritten:

"(e) The managers or directors shall have the right to keep confidential from members who are not ~~managers,~~ managers or directors, for such period of time as the managers or directors deem reasonable, any information which the managers or directors reasonably believe to be in the nature of trade secrets or other information the disclosure of which the managers or directors in good faith believe is not in the best interest of the limited liability company."

SECTION 67. G.S. 57C-3-20(a) reads as rewritten:

"(a) Unless the articles of organization provide otherwise, all members by virtue of their status as members shall be managers of the limited liability company, together with any other persons that may be designated as managers ~~in~~ in, or in accordance with, the articles of organization or a written operating agreement. If the articles of organization provide that all members are not necessarily managers by virtue of their status as members, then those persons designated as managers ~~in~~ in, or in accordance with, the articles of organization or a written operating agreement shall be managers, but for any period during which no such designation has been made or is in effect, all members shall be managers."

SECTION 68. G.S. 57C-3-22 is amended by adding a new subsection to read:

"(f) Except to the extent otherwise provided in the articles of organization or a written operating agreement, each director and executive shall be subject to the same requirements and afforded the same rights as are provided in this section for a manager when the director or executive exercises authority in the management of a limited liability company's affairs that would otherwise be vested in the managers pursuant to G.S. 57C-3-20(b)."

SECTION 69. G.S. 57C-3-30 reads as rewritten:

"**§ 57C-3-30. Liability to third parties of members and managers; parties to actions; governing law.**

(a) A person who is a ~~member or manager, or both,~~ member, manager, director, executive, or any combination thereof of a limited liability company is not liable for the obligations of a limited liability company solely by reason of being a ~~member or~~

~~manager or both,~~ member, manager, director, or executive and does not become so by participating, in whatever capacity, in the management or control of the business. A ~~member or manager~~ member, manager, director, or executive may, however, become personally liable by reason of ~~his~~ that person's own acts or conduct.

(b) A member of a limited liability company is not a proper party to proceedings by or against a limited liability company, except where the object of the proceeding is to enforce a member's right against or liability to the limited liability company.

(c) The liability of ~~members and managers~~ members, managers, directors, and executives of a limited liability company organized and existing under this Chapter shall at all times be determined solely and exclusively by this Chapter and the laws of this State.

(d) If a conflict arises between the laws of this State and the laws of any other jurisdiction with regard to the liability of a member or manager of a limited liability company organized and existing under this Chapter for the debts, obligations, and liabilities of the limited liability company, this Chapter and the laws of this State shall govern in determining the liability."

SECTION 70. G.S. 57C-3-31 reads as rewritten:

"**§ 57C-3-31. Mandatory indemnification of ~~managers~~ managers, directors, executives, and members.**

(a) ~~A~~ Unless otherwise provided in the articles of organization or a written operating agreement, a limited liability company must indemnify every ~~manager~~ manager, director, and executive in respect of payments made and personal liabilities reasonably incurred by the ~~manager~~ manager, director, and executive in the authorized conduct of its business or for the preservation of its business or property.

(b) ~~Unless limited by its~~ Unless otherwise provided in the articles of ~~organization,~~ organization or a written operating agreement, a limited liability company shall indemnify a ~~member or manager~~ member, manager, director, or executive who is wholly successful, on the merits or otherwise, in the defense of any proceeding to which ~~he~~ the person was a party because ~~he~~ the person is or was a ~~member or manager~~ member, manager, director, or executive of the limited liability company against reasonable expenses incurred by ~~him~~ the person in connection with the proceeding."

SECTION 71. G.S. 57C-3-32 reads as rewritten:

"**§ 57C-3-32. Limitation of liability of ~~managers~~ managers, directors, executives, and members and permissive indemnification of ~~managers~~ managers, directors, executives, and members; insurance.**

(a) Subject to subsection (b) of this section, the articles of organization or a written operating agreement may:

(1) Eliminate or limit the personal liability of a ~~manager~~ manager, director, or executive for monetary damages for breach of any duty provided for in G.S. 57C-3-22 (other than liability under G.S. 57C-4-07); and

(2) Provide for indemnification of a ~~manager or member~~ manager, member, director, or executive for judgments, settlements, penalties, fines, or expenses incurred in a proceeding to which the ~~member or manager~~ member, manager, director, or executive is a party because ~~he~~ the person is or was a ~~manager or member~~ manager, member, director, or executive. For purposes of this subdivision, the words "expenses", "proceeding", and "party" shall have the meanings set forth in G.S. 55-8-50(b).

(b) No provision permitted under subsection (a) of this section shall limit, eliminate, or indemnify against the liability of a ~~manager~~ manager, director, or executive for (i) acts or omissions that the ~~manager~~ manager, director, or executive knew at the time of the acts or omissions were clearly in conflict with the interests of the limited liability company, (ii) any transaction from which the ~~manager~~ manager, director, or executive derived an improper personal benefit, or (iii) acts or omissions occurring prior to the date the provision became effective, except that indemnification pursuant to subdivision (2) of subsection (a) of this section may be provided if approved by all the members. As used in this subsection, "improper personal benefit" does not include reasonable compensation or other reasonable incidental benefit for or on account of service as a manager, ~~an~~ director, executive, officer, ~~an~~ employee, ~~an~~ independent contractor, ~~an~~ attorney, or ~~a~~ consultant of the limited liability company.

(c) A limited liability company may purchase and maintain insurance on behalf of an individual who is or was a manager, ~~an~~ director, executive, officer, employee, or ~~an~~ agent of the limited liability company, or who, while a manager, ~~an~~ director, executive, officer, employee, or ~~an~~ agent of the limited liability company is or was serving at the request of the limited liability company as a director, ~~an~~ executive, officer, ~~a~~ partner, ~~a~~ member, manager, ~~a~~ trustee, ~~an~~ employee, or ~~an~~ agent of a person, against liability asserted against or incurred by ~~him~~ the person in that capacity or arising from ~~his~~ the person's status as a member, manager, ~~an~~ employee, or ~~an~~ agent, whether or not the limited liability company would have the power to indemnify ~~him~~ the person against the same liability under any provision of this Chapter."

SECTION 72. G.S. 57C-4-07 reads as rewritten:

"**§ 57C-4-07. Liability upon wrongful distribution.**

(a) A manager or director who votes for or assents to a distribution in violation of G.S. 57C-4-06 or a written operating agreement is personally liable to the limited liability company for the amount of the distribution that exceeds what could have been distributed without violating G.S. 57C-4-06 or the operating agreement if it is established that the manager or director did not act in compliance with G.S. 57C-3-22.

(b) Each manager or director held liable under subsection (a) of this section for a wrongful distribution is entitled to:

(1) Contribution from each other manager or director who could be held liable under subsection (a) of this section for the wrongful distribution; and

(2) Reimbursement from each member for the amount the member received knowing that the distribution was made in violation of G.S. 57C-4-06 or the operating agreement.

(c) A proceeding under this section is barred unless it is commenced within three years after the date on which the effect of the distribution is measured under G.S. 57C-4-06(c)."

SECTION 73. G.S. 57C-6-02(2) reads as rewritten:

"(2) A member if it is established that (i) the ~~managers or those~~ managers, directors, or any other persons in control of the limited liability company are deadlocked in the management of the affairs of the limited liability company, the members are unable to break the deadlock, and irreparable injury to the limited liability company is threatened or being suffered, or the business and affairs of the limited liability company can no longer be conducted to the advantage of the members generally, because of the deadlock; (ii) liquidation is reasonably necessary for the protection of the rights or interests of the complaining member, (iii) the assets of the limited liability company are being misapplied or wasted; or (iv) the articles of organization or a written operating agreement entitles the complaining member to dissolution of the limited liability company; or".

SECTION 74. G.S. 57C-6-03(c) reads as rewritten:

"(c) A limited liability company administratively dissolved under this section may apply to the Secretary of State for reinstatement not later than five years after the effective date of the administrative dissolution. The procedures for reinstatement and for the appeal of any denial of the limited liability company's application for reinstatement shall be the same procedures applicable to business corporations under G.S. 55-14-22, 55-14-23, and 55-14-24. The effect of reinstatement of a limited liability company shall be the same as for a business corporation under G.S. 55-14-22."

SECTION 75. G.S. 57C-6-04(a) reads as rewritten:

"(a) Except as otherwise provided in this Chapter, the articles of organization, or a written operating agreement, the managers shall wind up the limited liability company's affairs following its dissolution. If the dissolved limited liability company has no ~~manages,~~ managers, and provision is not otherwise made in the articles of organization or a written operating agreement, the legal representative of or successor to the ~~member whose event of withdrawal has resulted in the dissolution may wind up~~ last remaining member may wind up the limited liability company's affairs. The court may wind up the limited liability company's affairs, or appoint a person to wind up its affairs, on application of any member, his legal representative, or assignee."

SECTION 76. G.S. 57C-6-06(5) reads as rewritten:

"(5) Any other information the ~~members or~~ managers filing the articles of dissolution determine."

SECTION 77. G.S. 57C-6-06.1(5) reads as rewritten:

"(5) Any other information the ~~members or~~ managers filing the articles of cancellation determine."

SECTION 78. G.S. 57C-7-01 reads as rewritten:

"**§ 57C-7-01. Law governing.**

The laws of the state or other jurisdiction under which a foreign limited liability company is ~~organized~~ formed shall govern its formation, ~~organization~~ organization, and internal affairs and the liability of its managers and members, regardless of whether the foreign limited liability company procured or should have procured a certificate of authority under this Chapter, and a foreign limited liability company ~~may~~ shall not be denied a certificate of authority by reason of any difference between the laws under which it is ~~organized~~ formed and the laws of this State. A foreign limited liability company with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic limited liability company of like character."

SECTION 79. 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;~~ formed;

(3) Its date of ~~organization~~ formation 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, if any, and the county in which the principal office, if any, is located;

(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 80. G.S. 57C-7-04(b) reads as rewritten:

"(b) The foreign limited liability company shall deliver with the completed application a certificate of existence (or a document of similar import) duly authenticated by the Secretary of State or other official having custody of limited liability company records in the state or country under whose law it is ~~organized.~~ formed."

SECTION 81. G.S. 57C-7-05(a)(3) reads as rewritten:

"(3) The state or country of its ~~organization.~~ formation."

SECTION 82. G.S. 57C-7-05(b)(2) reads as rewritten:

"(2) The name of the state or country under whose law it is ~~organized;~~ formed;".

SECTION 83. G.S. 57C-7-06(b)(1) reads as rewritten:

"(1) The name of a corporation, limited partnership, or limited liability company ~~organized~~ formed in this State, or a foreign corporation, foreign limited partnership, or foreign limited liability company authorized to transact business in this State;".

SECTION 84. G.S. 57C-7-06(c) reads as rewritten:

"(c) A foreign limited liability company may apply to the Secretary of State for authorization to use in this State a name that is not distinguishable upon the Secretary of State's records from the name of another limited liability company ~~(organized~~ (formed or authorized to transact business in this State). The Secretary of State shall authorize use of the name applied for if:

(1) The other person who has or uses the name or who has reserved or registered the name consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying limited liability company; or

(2) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this State."

SECTION 85. G.S. 57C-7-10(b) reads as rewritten:

"(b) Whenever a foreign limited liability company authorized to transact business in this State 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 foreign limited liability company 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 the Secretary of State or with any clerk ~~having charge of the limited liability company department of the Secretary of State's office,~~ authorized by the Secretary of State to accept service of process, 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 in this subsection, the Secretary of State shall immediately mail one of the copies thereof, by registered or certified mail, return receipt requested, to the foreign limited liability company at its principal office ~~shown in its application for certificate of authority or amended certificate of authority or at the address indicated in the latest communication received by the Secretary of State from the foreign 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 foreign limited liability company at its registered office.

Service on a foreign 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 86. G.S. 57C-7-11(b) reads as rewritten:

"(b) A foreign limited liability company authorized to transact business in this State may apply for a certificate of withdrawal 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 and the name of the state or country under whose law it is ~~organized;~~ formed;

(2) That it is not transacting business in this State and that it surrenders its authority to transact business in this State;

(3) That the foreign limited liability company revokes the authority of its registered agent to accept service of process and consents that service of process in any action or proceeding based upon any cause of action arising in this State, or arising out of business transacted in this State, during the time the foreign limited liability company was authorized to transact business in this State, may thereafter be made on such foreign limited liability company by service thereof on the Secretary of State;

(4) A mailing address to which the Secretary of State may mail a copy of any process served on ~~him~~ the Secretary of State under subdivision (3) of this subsection; and

(5) A commitment to ~~notify~~ file with the Secretary of State ~~in the future~~ a statement of any subsequent change in its mailing address."

SECTION 87. G.S. 57C-7-11(d) reads as rewritten:

"(d) After the withdrawal of the foreign limited liability company is effective, service of process on the Secretary of State in accordance with ~~subdivision (b)(3)~~ subsection (b) of this section ~~is service on the foreign limited liability company.~~ shall be made by delivering to and leaving with the Secretary of State, or any clerk authorized by the Secretary of State to accept service of process, duplicate copies of that process and the fee required by G.S. 57C-1-22(b). Upon receipt of ~~process,~~ process in the manner provided in this subsection, the Secretary of State shall mail a copy of the process by registered or certified mail, return receipt requested, to the foreign limited liability company at the mailing address ~~set forth under~~ designated pursuant to subsection (b) of this section."

SECTION 88. G.S. 57C-7-12(a) reads as rewritten:

"(a) Whenever a foreign limited liability company authorized to transact business in this State ceases its separate existence as a result of a statutory merger, consolidation, or conversion permitted by the laws of the state or country under which it was ~~organized,~~ formed, or converts into another type of entity as permitted by those laws, the surviving or resulting entity shall apply for a certificate of withdrawal for the foreign limited liability company by delivering to the Secretary of State for filing a copy of the articles of merger, consolidation, or conversion or a certificate reciting the facts of the merger, consolidation, or conversion, duly authenticated by the Secretary of State or

other official having custody of limited liability company records in the state or country under the laws of which the foreign limited liability company was ~~organized.~~ formed. If the surviving or resulting entity is not authorized to transact business in this State, the articles or certificate must be accompanied by an application which must set forth:

(1) The name of the foreign limited liability company authorized to transact business in this State, the type of entity and name of the surviving or resulting entity, and a statement that the surviving or resulting entity is not authorized to transact business in this State;

(2) A statement that the surviving or resulting entity consents that service of process based upon any cause of action arising in this State, or arising out of business transacted in this State, during the time the foreign limited liability company was authorized to transact business in this State, may thereafter be made by service thereof on the Secretary of State;

(3) A mailing address to which the Secretary of State may mail a copy of any process served on ~~him~~ the Secretary of State under subdivision (a)(2) of this section; and

(4) A commitment to file with the Secretary of State a statement of any subsequent change in its ~~subsequent~~ mailing address."

SECTION 89. G.S. 57C-7-12 is amended by adding a new subsection to read:

"(c) After the withdrawal of the foreign limited liability company is effective, service of process on the Secretary of State in accordance with subsection (a) of this section shall be made by delivering to and leaving with the Secretary of State, or any clerk authorized by the Secretary of State to accept service of process, duplicate copies of process and the fee required by G.S. 57C-1-22(b). Upon receipt of process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving or resulting entity at the mailing address designated pursuant to subsection (a) of this section."

SECTION 90. G.S. 57C-8-01(b) reads as rewritten:

"(b) The complaint shall allege with particularity the efforts, if any, made by the plaintiff to obtain the action the plaintiff desires from the ~~managers or comparable~~ managers, directors, or other applicable authority and the reasons for the plaintiff's failure to obtain the action, or for not making the effort. Whether or not a demand for action was made, if the limited liability company commences an investigation of the charges made in the demand or complaint, the court may stay any proceeding until the investigation is completed."

SECTION 91. G.S. 57C-8-01(c) reads as rewritten:

"(c) Upon motion of the limited liability company, the court may appoint a committee composed of two or more disinterested ~~managers~~ managers, directors, or other disinterested persons, acceptable to the limited liability company, to determine

whether it is in the best interest of the limited liability company to pursue a particular legal right or remedy. The committee shall report its findings to the court. After considering the report and any other relevant evidence, the court shall determine whether the proceeding should be continued or not."

SECTION 92. The heading of Part 1 of Article 9A of Chapter 57C of the General Statutes reads as rewritten:

"Part 1. ~~Conversions.~~ Conversion to Limited Liability Company."

SECTION 93. G.S. 57C-9A-01 reads as rewritten:

"**§ 57C-9A-01. Conversion.**

~~(a) A domestic limited liability company may convert to a domestic limited partnership pursuant to Part 10A of Article 5 of Chapter 59 of the General Statutes.~~

~~(b) A foreign limited liability company, a domestic or foreign limited partnership as defined in G.S. 59-102, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State (including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this State) may convert to a domestic limited liability company if:~~

~~(1) The converting business entity complies with the requirements of this Part; and~~

~~(2) If the converting business entity is a foreign limited liability company, a foreign limited partnership, or other partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by a law other than the laws of this State, the conversion is permitted by the laws of the state or country governing the organization and internal affairs of the converting business entity and the converting business entity complies with those laws.~~

A business entity other than a domestic limited liability company may convert to a domestic limited liability company if:

(1) The conversion is permitted by the laws of the state or country governing the organization and internal affairs of the converting business entity; and

(2) The converting business entity complies with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section."

SECTION 94. G.S. 57C-9A-02 reads as rewritten:

"**§ 57C-9A-02. Plan of conversion.**

(a) The ~~holders of the interests in the~~ converting business entity shall approve a written plan of conversion containing:

(1) The name of the resulting domestic limited liability company into which the converting business entity shall convert;

(1a) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs;

(2) The terms and conditions of the conversion; and

(3) The manner and basis for converting the interests in the converting business entity into interests, obligations, or securities of the resulting domestic limited liability company or into cash or other property in whole or in part.

The plan of conversion may ~~also~~ contain other provisions relating to the conversion.

(b) ~~In the case of a domestic limited partnership or other partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by the laws of this State, the plan of conversion must be approved in the manner provided for the approval of such a conversion in a written partnership agreement that is binding on all the partners or, if there is no such provision, by the unanimous consent of all the partners. In the case of a foreign limited liability company, a foreign limited partnership, or other partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by a law other than the laws of this State, the~~ The plan of conversion must be approved in accordance with the laws of the state or country governing the organization and internal affairs of the converting business entity.

(c) After a plan of conversion has been approved as provided in subsection (b) of this section, but before articles of organization for the resulting domestic limited liability company become effective, the plan of conversion may be amended or abandoned to the extent ~~provided in the plan of conversion.~~permitted by the laws that govern the organization and internal affairs of the converting business entity."

SECTION 95. G.S. 57C-9A-03 reads as rewritten:

"**§ 57C-9A-03. Filing of articles of organization by converting business entity.**

(a) After a plan of conversion has been approved by the converting business entity as provided in G.S. 57C-9A-02, the converting business entity shall deliver articles of organization to the Secretary of State for filing. In addition to the matters required or permitted by G.S. 57C-2-21, the articles of organization shall ~~state:~~ contain articles of conversion stating:

(1) That the domestic limited liability company is being formed pursuant to a conversion of another business entity;

(2) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs; and

(3) That a plan of conversion has been approved by the converting business entity as required by law.

If the plan of conversion is abandoned after the articles of organization have been filed with the Secretary of State but before the articles of organization become effective, the converting business entity ~~promptly~~ shall deliver to the Secretary of State for filing prior to the time the articles of organization become effective an amendment to the

articles of organization ~~reflecting the abandonment of the plan of conversion.~~ withdrawing the articles of organization.

(b) The conversion takes effect when the articles of organization become effective.

~~(c) The converting business entity shall furnish a copy of the plan of conversion, on request and without cost, to any member or partner (whether general or limited) of the converting business entity.~~

(d) Certificates of conversion shall also be registered as provided in G.S. 47-18.1."

SECTION 96. Article 9A of Chapter 57C of the General Statutes is amended by adding a new Part to read:

"Part 1A. Conversion of Limited Liability Company.

"**§ 57C-9A-10. Conversion.**

A domestic limited liability company may convert to a different business entity if:

(1) The conversion is permitted by the laws of the state or country governing the organization and internal affairs of such other business entity; and

(2) The converting domestic limited liability company complies with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section.

"**§ 57C-9A-11. Plan of conversion.**

(a) The converting domestic limited liability company shall approve a written plan of conversion containing:

(1) The name of the converting domestic limited liability company;

(2) The name of the resulting business entity into which the domestic limited liability company shall convert, its type of business entity, and the state or country whose laws govern its organization and internal affairs;

(3) The terms and conditions of the conversion; and

(4) The manner and basis for converting the interests in the domestic limited liability company into interests, obligations, or securities of the resulting business entity or into cash or other property in whole or in part.

The plan of conversion may contain other provisions relating to the conversion.

(b) The plan of conversion shall be approved by the domestic limited liability company in the manner provided for the approval of such conversion in its articles of organization or a written operating agreement or, if there is no such provision, by the unanimous consent of its members. If any member of the converting domestic limited liability company has or will have personal liability for any existing or future obligation of the resulting business entity solely as a result of holding an interest in the resulting business entity, then in addition to the requirements of the preceding sentence, approval of the plan of conversion by the domestic limited liability company shall require the

consent of that member. The converting domestic limited liability company shall provide a copy of the plan of conversion to each member of the converting domestic limited liability company at the time provided in its articles of organization or a written operating agreement or, if there is no such provision, prior to its approval of the plan of conversion.

(c) After a plan of conversion has been approved by a domestic limited liability company but before the articles of conversion become effective, the plan of conversion (i) may be amended as provided in the plan of conversion or (ii) may be abandoned, subject to any contractual rights, as provided in the plan of conversion, articles of organization, or written operating agreement or, if not so provided, as determined by the managers of the domestic limited liability company in accordance with G.S. 57C-3-20(b).

"**§ 57C-9A-12. Articles of conversion.**

(a) After a plan of conversion has been approved by the converting domestic limited liability company as provided in G.S. 57C-9A-11, the converting domestic limited liability company shall deliver articles of conversion to the Secretary of State for filing. The articles of conversion shall state:

(1) The name of the converting domestic limited liability company;

(2) The name of the resulting business entity, its type of business entity, the state or country whose laws govern its organization and internal affairs, and, if the resulting business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address; and

(3) That a plan of conversion has been approved by the domestic limited liability company as required by law.

If the domestic limited liability company is converting to a business entity whose formation or whose status as a registered limited liability partnership, as defined in G.S. 59-32, or limited liability limited partnership, as defined in G.S. 59-102, requires the filing of a document with the Secretary of State, then the articles of conversion shall be included as part of that document instead of separately filing the articles of conversion.

If the plan of conversion is abandoned after the articles of conversion have been filed with the Secretary of State but before the articles of conversion become effective, the converting domestic limited liability company shall deliver to the Secretary of State for filing prior to the time the articles of conversion become effective an amendment of the articles of conversion withdrawing the articles of conversion.

(b) The conversion takes effect when the articles of conversion become effective.

(c) Certificates of conversion shall also be registered as provided in G.S. 47-18.1.

"**§ 57C-9A-13. Effects of conversion.**

(a) When the conversion takes effect:

(1) The converting domestic limited liability company ceases its prior form of organization and continues in existence as the resulting business entity;

(2) The title to all real estate and other property owned by the converting domestic limited liability company continues vested in the resulting business entity without reversion or impairment;

(3) All liabilities of the converting domestic limited liability company continue as liabilities of the resulting business entity;

(4) A proceeding pending by or against the converting domestic limited liability company may be continued as if the conversion did not occur; and

(5) The interests in the converting domestic limited liability company that are to be converted into interests, obligations, or securities of the resulting business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of interests in the converting domestic limited liability company are entitled only to the rights provided in the plan of conversion.

The conversion shall not affect the liability or absence of liability of any holder of an interest in the converting domestic limited liability company for any acts, omissions, or obligations of the converting domestic limited liability company made or incurred prior to the effectiveness of the conversion. The cessation of the existence of the converting domestic limited liability company in its form of organization as a domestic limited liability company in the conversion shall not constitute a dissolution or termination of the converting domestic limited liability company.

(b) If the resulting business entity is not a domestic corporation or a domestic limited partnership when the conversion takes effect, the resulting business entity is deemed:

(1) To agree that it may be served with process in this State for enforcement of (i) any obligation of the converting domestic limited liability company and (ii) any obligation of the resulting business entity arising from the conversion; and

(2) To have appointed the Secretary of State as its agent for service of process in any such proceeding. 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 the process and the fee required by G.S. 57C-1-22(b). Upon receipt of service of process on behalf of a resulting business 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 resulting business entity. If the resulting business entity is authorized to transact business or conduct affairs in this State, the

address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the resulting business entity is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 57C-9A-12(a)(2)."

SECTION 97. G.S. 57C-9A-21(b) reads as rewritten:

"(b) In the case of a merging domestic limited liability company, the plan of merger must be approved in the manner provided in its articles of organization or a written operating agreement for approval of a merger with the type of business entity contemplated in the plan of merger, or, if there is no provision, by the unanimous consent of its members. If any member of a merging domestic limited liability company will have personal liability for any existing or future obligation of the surviving business entity solely as a result of holding an interest in the surviving business entity, then in addition to the requirements of the preceding sentence, approval of the plan of merger by the domestic limited liability company shall require the consent of each such member. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of the merging business entity."

SECTION 98. G.S. 57C-9A-22(a) reads as rewritten:

"(a) After a plan of merger has been approved by each merging domestic limited liability company and each other merging business entity as provided in G.S. 57C-9A-21, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

(1) The plan of merger;

(2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

(3) The name ~~and address~~ of the surviving business ~~entity;~~ entity and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address;

(4) A statement that the plan of merger has been approved by each merging business entity in the manner required by law; and

(5) The effective date and time of the merger if it is not to be effective at the time of filing of the articles of merger.

If the plan of merger is amended or abandoned after the articles of merger have been filed but before the articles of merger become effective, the surviving business entity ~~promptly~~ shall deliver to the Secretary of State for filing prior to the time the articles of

merger become effective an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger."

SECTION 99. 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~~ partnership, when the merger takes ~~effect,~~ 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) To have appointed the Secretary of State as its registered agent for service of process in any such proceeding. 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 and the fee required by G.S. 57C-1-22(b). Upon receipt of service of process on behalf of a surviving business 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. If the surviving business entity is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the surviving business entity is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to ~~subdivision (3) of subsection (d) of this section.~~ G.S. 57C-9A-22(a)(3)."

SECTION 100. G.S. 57C-10-02 reads as rewritten:

"**§ 57C-10-02. Applicability of provisions to foreign and interstate commerce.**

The provisions of this Chapter shall apply to determine the rights and obligations of a limited liability company ~~organized~~ formed hereunder in commerce with foreign nations and among the several states, except as prohibited by law."

SECTION 101. G.S. 57C-10-06 reads as rewritten:

"**§ 57C-10-06. Income taxation.**

A limited liability company, a foreign limited liability company authorized to transact business in this State, and a member of one of these companies are subject to taxation under Article 4 of Chapter 105 of the General Statutes in accordance with their classification for federal income tax purposes. Accordingly, if a limited liability company or a foreign limited liability company authorized to transact business in this State is classified for federal income tax purposes as a ~~corporation, the company is~~ C corporation, as defined in G.S. 105-131(b)(2), or an S corporation, as defined in G.S. 105-131(b)(8), the company and its members are subject to tax under Article 4 of Chapter 105 of the General Statutes to the same extent as a ~~corporation.~~ C corporation or an S corporation, as the case may be, and its shareholders. If a limited liability company or a foreign limited liability company authorized to transact business in this State is classified for federal income tax purposes as a partnership, the company and its members are subject to tax under Article 4 of Chapter 105 of the General Statutes to the same extent as a partnership and its members. If a limited liability company or a foreign limited liability company authorized to transact business in this State is classified for federal income tax purposes as other than a corporation or a partnership, the company and its members are subject to tax under Article 4 of Chapter 105 of the General Statutes in a manner consistent with that classification. This section does not require a limited liability company or a foreign limited liability company to obtain an administrative ruling from the Internal Revenue Service on its classification under the Internal Revenue Code."

SECTION 102. G.S. 57C-10-07 reads as rewritten:

"**§ 57C-10-07. Intent.**

It is the intent of the General Assembly that the legal existence of limited liability companies ~~organized~~ formed under this Chapter be recognized outside the boundaries of this State and that, subject to any reasonable requirement of registration, a domestic limited liability company transacting business outside this State be granted full faith and credit under Section 1 of Article IV of the Constitution of the United States."

PART IV. AMENDMENTS TO THE LAW GOVERNING PARTNERSHIPS.

SECTION 103. G.S. 59-32 reads as rewritten:

"**§ 59-32. Definition of terms.**

As used in this Chapter, except as otherwise defined in Article 5 of this Chapter for purposes of that Article, unless the context otherwise requires:

(01) 'Act' means the North Carolina Uniform Partnership Act and refers to all provisions therein.

(1) 'Bankrupt' means bankrupt under the Federal Bankruptcy Act or insolvent under any State insolvent act.

(2) 'Business' means every trade, occupation, or profession.

(3) 'Conveyance' means every assignment, lease, mortgage, or encumbrance.

(4) 'Court' means every court and judge having jurisdiction in the case.

(4a) 'Domestic corporation' has the same meaning as in G.S. 55-1-40.

(4b) 'Domestic limited liability company' has the same meaning as in G.S. 57C-1-03.

(4c) 'Domestic limited partnership' has the same meaning as in G.S. 59-102.

(4d) 'Domestic nonprofit corporation' means a corporation as defined in G.S. 55A-1-40.

(4e) 'Foreign corporation' has the same meaning as in G.S. 55-1-40.

(4f) 'Foreign limited liability company' has the same meaning as in G.S. 57C-1-03.

~~(4a)~~(4g) 'Foreign limited liability partnership' means a partnership that (i) is formed under laws other than the laws of this State, and (ii) has the status of a limited liability partnership or registered limited liability partnership under those laws.

(4h) 'Foreign limited partnership' has the same meaning as in G.S. 59-102.

(4i) 'Foreign nonprofit corporation' means a foreign corporation as defined in G.S. 55A-1-40 that is a nonprofit corporation as defined in G.S. 55A-1-40.

(5) 'Person' means individuals, partnerships, corporations, limited liability companies, and other associations.

(5a) 'Principal office' means the office (in or out of this State) where the principal executive offices of a registered limited liability partnership or a foreign limited liability partnership are located, as designated in its most recent annual report filed with the Secretary of State or, if no annual report has yet been filed, in its application for registration as a registered limited liability partnership or foreign limited liability partnership.

(6) 'Real property' means land and any interest or estate in land.

(7) 'Registered limited liability partnership' means a partnership that is registered under G.S. 59-84.2 and complies with G.S. 59-84.3."

SECTION 104. Part 1 of Article 2 of Chapter 59 of the General Statutes is amended by adding a new section to read:

"**§ 59-35.1. Filing of documents.**

(a) To be entitled to filing by the Secretary of State, a document submitted pursuant to this Act shall meet all of the following requirements:

(1) The document shall contain the information required by this Act. It may contain other information as well.

(2) The document shall be typewritten or printed.

(3) The document shall be in the English language.

(4) A document submitted by a partnership other than a domestic or foreign limited partnership shall be executed by a general partner of the partnership. A document submitted by any other type of entity other than a partnership shall be executed by a person authorized to

execute documents (i) pursuant to G.S. 55-1-20(f) if the entity is a domestic or foreign corporation, (ii) pursuant to G.S. 55A-1-20(f) if the entity is a domestic or foreign nonprofit corporation, (iii) pursuant to G.S. 57C-1-20(f) if the entity is a domestic or foreign limited liability company, or (iv) pursuant to G.S. 59-204 if the entity is a domestic or foreign limited partnership.

(5) The person executing the document shall sign it and state beneath or opposite the person's signature the person's name and the capacity in which the person signs. Any signature on the document may be a facsimile. The document may, but need not, contain an acknowledgment, verification, or proof.

(6) The document shall be delivered to the office of the Secretary of State for filing and shall be accompanied by one exact or conformed copy and by the required filing fee.

(b) A partnership may correct a document filed by the Secretary of State pursuant to this Act if the document (i) contains a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively executed, attested, sealed, verified, or acknowledged.

A document is corrected by:

(1) Preparing articles of correction that (i) describe the document, including its filing date, or have attached to them a copy of the document, (ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective, and (iii) correct the incorrect statement or defective execution; and

(2) Delivering the articles of correction to the Secretary of State for filing, accompanied by one exact or conformed copy and the required filing fee.

Articles of correction are effective on the effective date of the document that is corrected except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

(c) The Secretary of State may adopt and furnish on request forms for:

(1) An application for registration as a registered limited liability partnership;

(2) Cancellation of registration as a registered limited liability partnership;

(3) Application for registration as a foreign limited liability partnership; and

(4) Cancellation of registration as a foreign limited liability partnership.

If the Secretary of State so requires, use of these forms is mandatory.

(d) The Secretary of State may adopt and furnish on request forms for other documents required or permitted to be filed by this Act, but their use is not mandatory.

(e) The Secretary of State shall collect the following fees when the documents described in this subsection are submitted by a partnership to the Secretary of State for filing:

	Document	Fee
(1)	Registered limited liability partnership's or foreign limited liability partnership's statement of change of registered agent or registered office or both	$5.00
(2)	Agent's statement of change of registered office for each affected registered limited liability partnership or foreign limited liability partnership	5.00
(3)	Agent's statement of resignation	No Fee
(4)	Designation of registered agent or registered office or both	5.00
(5)	Articles of conversion (other than articles of conversion included as part of another document)	50.00
(6)	Articles of merger	50.00
(7)	Application for registration as a registered limited liability partnership	125.00
(8)	Certificate of amendment of registration as a registered limited liability partnership	25.00
(9)	Cancellation of registration as a registered limited liability partnership	25.00
(10)	Application for registration as a foreign limited liability partnership	125.00
(11)	Certificate of amendment of registration as a foreign limited liability partnership	25.00
(12)	Cancellation of registration as a foreign limited liability partnership	25.00
(13)	Application for certificate of withdrawal by reason of merger, consolidation, or conversion	10.00
(14)	Annual report	200.00
(15)	Articles of correction	10.00
(16)	Any other document required or permitted to be filed pursuant to this Act	10.00
(17)	Advisory review of a document	200.00

(f) The Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary of State under this Act. The party to the proceeding

causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

(g) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of a document filed pursuant to this Act:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) Five dollars ($5.00) for the certificate.

(h) The Secretary of State shall guarantee the expedited filing of a document upon receipt of the document in proper form and the payment of the required filing fee. The Secretary of State may collect the following additional fees for the expedited filing of a document received in good form:

(1) Two hundred dollars ($200.00) for the filing by the end of the same business day of a document received by 12:00 noon Eastern Standard Time; and

(2) One hundred dollars ($100.00) for the filing of a document within 24 hours after receipt, excluding weekends and holidays.

The Secretary of State shall not collect the fees allowed in this subsection unless the person submitting the document for filing requests an expedited filing and is informed by the Secretary of State of the fees prior to the filing of the document.

(i) Upon request, the Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Act. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this subsection and filings under subsection (h) of this section. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing.

(j) Except as provided in this subsection and in subsection (b) of this section, a document accepted for filing is effective:

(1) At the time of filing on the date it is filed, as evidenced by the Secretary of State's date and time endorsement on the original document; or

(2) At the time specified in the document as its effective time on the date it is filed.

A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at 11:59:59 P.M. on that date. A delayed effective date for a document shall not be later than the 90th day after the date it is filed.

The fact that a document has become effective under this subsection does not determine its validity or invalidity or the correctness or incorrectness of the information contained in the document.

(k) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of this Act, the Secretary of State shall file it. Documents filed with the Secretary of State pursuant to this Act may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this Act, or under any predecessor act, by photographic, microfilm, optical disk media, or other means of reproduction and may destroy the originals of those documents reproduced.

The Secretary of State files a document by stamping or otherwise endorsing 'Filed', together with the Secretary of State's name and official title and the date and time of filing, on both the original and the document copy. After filing a document, the Secretary of State shall deliver the document copy to the submitting business entity or its representative.

If the Secretary of State refuses to file a document, the Secretary of State shall return it to the submitting business entity or its representative within five days after the document was received, together with a brief, written explanation of the reason for refusal. The Secretary of State may correct apparent errors and omissions on a document submitted for filing if authorized to make the corrections by the person submitting the document for filing. Prior to making the correction, the Secretary shall confirm the authorization to make the corrections according to procedures adopted by rule.

The Secretary of State's duty is to review and file documents that satisfy the requirements of this Act. The Secretary of State's filing or refusing to file a document does not:

(1) Affect the validity or invalidity of the document in whole or in part;

(2) Relate to the correctness or incorrectness of information contained in the document; or

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

(l) If the Secretary of State refuses to file a document delivered to the Secretary of State's office for filing, the person tendering the document for filing may, within 30 days after the refusal, appeal the refusal to the Superior Court of Wake County. The appeal is commenced by filing a petition with the court and with the Secretary of State requesting the court to compel the Secretary of State to file the document. The petition shall have attached to it the document to be filed and the Secretary of State's explanation for the refusal to file. The appeal to the Superior Court is not governed by Chapter 150B of the General Statutes, the Administrative Procedure Act, and the court shall determine, based upon what is appropriate under the circumstances, any further notice and opportunity to be heard.

Upon consideration of the petition and any response made by the Secretary of State, the court may, prior to entering final judgment, order the Secretary of State to file the document or take other action the court considers appropriate.

The court's final decision may be appealed as in other civil proceedings.

(m) A certificate attached to a copy of a document filed by the Secretary of State, bearing the Secretary of State's signature, which may be in facsimile, and the seal of office and certifying that the copy is a true copy of the document, is conclusive evidence that the original document is on file with the Secretary of State. A photographic, microfilm, optical disk media, or other reproduced copy of a document filed pursuant to this Act or any predecessor act, when certified by the Secretary, shall be considered an original for all purposes and is admissible in evidence in like manner as an original.

(n) A person commits an offense if the person signs a document the person knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing. An offense under this subsection is a Class 1 misdemeanor.

(o) Whenever title to real property in this State held by a partnership is vested by operation of law in another entity upon merger, consolidation, or conversion of the partnership, a certificate reciting the merger, consolidation, or conversion shall be recorded in the office of the register of deeds of the county where the property is located, or if the property is located in more than one county, then in each county where any portion of the property is located.

The Secretary of State shall adopt uniform certificates to be furnished for registration in accordance with this subsection. In the case of a partnership formed under a law other than the laws of this State, a similar certificate by any competent authority of the jurisdiction of organization may be registered in accordance with this subsection.

The certificate required by this subsection shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgment, probate, or approval by any other officer shall be required. The former name of the partnership holding title to the real property before the merger, consolidation, or conversion shall appear in the 'Grantor' index, and the name of the other entity holding title to the real property by virtue of the merger, consolidation, or conversion shall appear in the 'Grantee' index."

SECTION 105.(a) Chapter 59 of the General Statutes is amended by recodifying Part 7 of Article 2 as a separate new Article to read:

"Article 2A.

"Conversion and Merger."

SECTION 105.(b) G.S. 59-73.2, 59-73.3, 59-73.4, 59-73.5, and 59-73.6 are recodified as G.S. 59-73.20, 59-73.30, 59-73.31, 59-73.32, and 59-73.33, respectively, in Article 2A of Chapter 59 of the General Statutes, as enacted by this act.

SECTION 105.(c) G.S. 59-73.7 is repealed.

SECTION 106. Article 2A of Chapter 59 of the General Statutes, as enacted by this act, is amended by adding a new Part to read as follows and to include current G.S. 59-73.1 in Part 1:

"Part 1. General Provisions."

SECTION 107. G.S. 59-73.1 reads as rewritten:

"**§ 59-73.1. Definitions.**

As used in this ~~Part~~ Article:

(1) "Business entity" means a domestic corporation ~~as defined in G.S. 55-1-40~~ (including a professional corporation as defined in G.S. 55B-2), a foreign corporation ~~as defined in G.S. 55-1-40~~ (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit ~~corporation~~ corporation, ~~as defined in G.S. 55A-1-40,~~ a domestic or foreign limited liability ~~company as defined in G.S. 57C-1-03,~~ company, a domestic or foreign limited ~~partnership~~ partnership, ~~as defined in G.S. 59-102,~~ a domestic partnership, or any other ~~partnership as defined in G.S. 59-36 formed under a law other than the laws of this State (including a limited liability partnership).~~partnership.

(2) "Domestic partnership" means a partnership as defined in G.S. 59-36 that is formed under the laws of this State, including a registered limited liability ~~partnership~~ partnership, ~~as defined in G.S. 59-32,~~ but excluding a domestic limited ~~partnership as defined in G.S. 59-102.~~partnership.

(3) "Partnership" means a partnership as defined in G.S. 59-36 whether or not formed under the laws of this State including a registered limited liability partnership and ~~any other~~ a foreign limited liability ~~partnership formed under a law other than the laws of this State~~ partnership, but excluding a domestic limited partnership as defined in G.S. 59-102 and a foreign limited ~~partnership as defined in G.S. 59-102.~~ partnership."

SECTION 108. Article 2A of Chapter 59 of the General Statutes, as enacted by this act, is amended by adding a new Part to read:

"Part 2. Conversion to Domestic Partnership.

"**§ 59-73.10. Conversion.**

A business entity other than a domestic partnership may convert to a domestic partnership if:

(1) The conversion is permitted by the laws of the state or country governing the organization and internal affairs of the converting business entity; and

(2) The converting business entity complies with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section.

"**§ 59-73.11. Plan of conversion.**

(a) The converting business entity shall approve a written plan of conversion containing:

(1) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the resulting domestic partnership into which the converting business entity shall convert;

(3) The terms and conditions of the conversion; and

(4) The manner and basis for converting the interests in the converting business entity into interests, obligations, or securities of the resulting domestic partnership or into cash or other property in whole or in part.

The plan of conversion may contain other provisions relating to the conversion.

(b) The plan of conversion shall be approved in accordance with the laws of the state or country governing the organization and internal affairs of the converting business entity.

(c) After a plan of conversion has been approved as provided in subsection (b) of this section but before the articles of conversion to domestic partnership for the resulting domestic partnership become effective, the plan of conversion may be amended or abandoned to the extent permitted by the laws that govern the organization and internal affairs of the converting business entity.

"**§ 59-73.12. Filing of articles of conversion by converting business entity.**

(a) After a plan of conversion has been approved by the converting business entity as provided in G.S. 59-73.11, the converting business entity shall deliver articles of conversion to the Secretary of State for filing. The articles of conversion shall state:

(1) That the domestic partnership is being formed pursuant to a conversion of another business entity;

(2) The name of the resulting domestic partnership, a designation of its mailing address, and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address;

(3) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs; and

(4) That a plan of conversion has been approved by the converting business entity in the manner required by law.

If the resulting domestic partnership is to be a registered limited liability partnership when the conversion takes effect, then instead of separately filing the articles of conversion, the articles of conversion shall be included as part of the application for registration filed pursuant to G.S. 59-84.2 in addition to the matters otherwise required or permitted by law.

If the plan of conversion is abandoned after the articles of conversion have been filed with the Secretary of State but before the articles of conversion become effective,

the converting business entity shall deliver to the Secretary of State for filing prior to the time the articles of conversion become effective an amendment to the articles of conversion withdrawing the articles of conversion to domestic partnership.

(b) The conversion takes effect when the articles of conversion become effective.

(c) Certificates of conversion shall also be registered as provided in G.S. 47-18.1.

"**§ 59-73.13. Effects of conversion.**

(a) When the conversion takes effect:

(1) The converting business entity ceases its prior form of organization and continues in existence as the resulting domestic partnership;

(2) The title to all real estate and other property owned by the converting business entity continues vested in the resulting domestic partnership without reversion or impairment;

(3) All liabilities of the converting business entity continue as liabilities of the resulting domestic partnership;

(4) A proceeding pending by or against the converting business entity may be continued as if the conversion did not occur; and

(5) The interests in the converting business entity that are to be converted into interests, obligations, or securities of the resulting domestic partnership or into the right to receive cash or other property are thereupon so converted, and the former holders of interests in the converting business entity are entitled only to the rights provided in the plan of conversion.

The conversion shall not affect the liability or absence of liability of any holder of an interest in the converting business entity for any acts, omissions, or obligations of the converting business entity made or incurred prior to the effectiveness of the conversion. The cessation of the existence of the converting business entity in its prior form of organization in the conversion shall not constitute a dissolution or termination of the converting business entity.

(b) When the conversion takes effect, the resulting domestic partnership is deemed:

(1) To agree that it may be served with process in this State for enforcement of (i) any obligation of the converting business entity and (ii) any obligation of the resulting domestic partnership arising from the conversion; and

(2) To have appointed the Secretary of State as its agent for service of process in any such proceeding. 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 the process and the fee required by G.S. 59-35.1(f). Upon receipt of service of process on behalf of a resulting domestic partnership 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 resulting domestic partnership. If the resulting domestic partnership is a registered limited liability partnership, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the resulting domestic partnership is not a registered limited liability partnership, the address for mailing shall be the mailing address designated pursuant to G.S. 59-73.12(a)(2)."

SECTION 109. Article 2A of Chapter 59 of the General Statutes, as enacted by this act, is amended by adding a new Part to read as follows and to include G.S. 59-73.20, as recodified in Section 105 of this act, as the first section in Part 3:

"Part 3. Conversion of Domestic Partnership."

SECTION 110. G.S. 59-73.20, as recodified in Section 105 of this act, reads as rewritten:

"**§ 59-73.20. Conversion of domestic partnership.**

A domestic partnership may convert to a ~~domestic limited liability company pursuant to Part 1 of Article 9A of Chapter 57C of the General Statutes, or to a domestic limited partnership pursuant to Part 10A of Article 5 of Chapter 59 of the General Statutes.~~ different business entity if:

(1) The conversion is permitted by the laws of the state or country governing the organization and internal affairs of such other type of business entity; and

(2) The converting domestic partnership complies with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section."

SECTION 111. Part 3 of Article 2A of Chapter 59 of the General Statutes, as created by Section 109 of this act, is amended by adding the following new sections to read:

"**§ 59-73.21. Plan of conversion.**

(a) The converting domestic partnership shall approve a written plan of conversion containing:

(1) The name of the converting domestic partnership;

(2) The name of the resulting business entity into which the domestic partnership shall convert, its type of business entity, and the state or country whose laws govern its organization and internal affairs;

(3) The terms and conditions of the conversion; and

(4) The manner and basis for converting the interests in the domestic partnership into interests, obligations, or securities of the resulting business entity or into cash or other property in whole or in part.

The plan of conversion may contain other provisions relating to the conversion.

(b) The plan of conversion shall be approved by the domestic partnership in the manner provided for the approval of the conversion in a written partnership agreement or, if there is no such provision, by the unanimous consent of its partners. If any partner of the converting domestic partnership has or will have personal liability for any existing or future obligation of the resulting business entity solely as a result of holding an interest in the resulting business entity, then in addition to the requirements of the preceding sentence, approval of the plan of conversion by the domestic partnership shall require the consent of that partner. The converting domestic partnership shall provide a copy of the plan of conversion to each partner of the converting domestic partnership at the time provided in a written partnership agreement or, if there is no such provision, prior to its approval of the plan of conversion.

(c) After a plan of conversion has been approved by a domestic partnership but before the articles of conversion become effective, the plan of conversion (i) may be amended as provided in the plan of conversion or (ii) may be abandoned, subject to any contractual rights, as provided in the plan of conversion or written partnership agreement or, if not so provided, as determined in the manner necessary for approval of the plan of conversion.

"**§ 59-73.22. Articles of conversion.**

(a) After a plan of conversion has been approved by the converting domestic partnership as provided in G.S. 59-73.21, the converting domestic partnership shall deliver articles of conversion to the Secretary of State for filing. The articles of conversion shall state:

(1) The name of the converting domestic partnership;

(2) The name of the resulting business entity, its type of business entity, the state or country whose laws govern its organization and internal affairs, and, if the resulting business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address; and

(3) That a plan of conversion has been approved by the domestic partnership as required by law.

If the domestic partnership is converting to a business entity whose formation or whose status as a registered limited liability partnership or limited liability limited partnership, as defined in G.S. 59-102, requires the filing of a document with the Secretary of State, then the articles of conversion shall be included as part of that document instead of separately filing the articles of conversion.

If the plan of conversion is abandoned after the articles of conversion have been filed with the Secretary of State but before the articles of conversion become effective, the converting domestic partnership shall deliver to the Secretary of State for filing prior to the time the articles of conversion become effective an amendment of the articles of conversion withdrawing the articles of conversion.

(b) The conversion takes effect when the articles of conversion become effective.

(c) Certificates of conversion shall also be registered as provided in G.S. 47-18.1.

"**§ 59-73.23. Effects of conversion.**

(a) When the conversion takes effect:

(1) The converting domestic partnership ceases its prior form of organization and continues in existence as the resulting business entity;

(2) The title to all real estate and other property owned by the converting domestic partnership continues vested in the resulting business entity without reversion or impairment;

(3) All liabilities of the converting domestic partnership continue as liabilities of the resulting business entity;

(4) A proceeding pending by or against the converting domestic partnership may be continued as if the conversion did not occur; and

(5) The interests in the converting domestic partnership that are to be converted into interests, obligations, or securities of the resulting business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of interests in the converting domestic partnership are entitled only to the rights provided in the plan of conversion.

The conversion shall not affect the liability or absence of liability of any holder of an interest in the converting domestic partnership for any acts, omissions, or obligations of the converting domestic partnership made or incurred prior to the effectiveness of the conversion. The cessation of the existence of the converting domestic partnership in its form of organization as a domestic partnership in the conversion shall not constitute a dissolution or termination of the converting domestic partnership.

(b) If the resulting business entity is not a domestic corporation, a domestic limited partnership, or a domestic limited liability company, when the conversion takes effect the resulting business entity is deemed:

(1) To agree that it may be served with process in this State for enforcement of (i) any obligation of the converting domestic partnership and (ii) any obligation of the resulting business entity arising from the conversion; and

(2) To have appointed the Secretary of State as its agent for service of process in any such proceeding. 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 the process and the fee required by G.S. 59-35.1(f). Upon receipt of service of process on behalf of a resulting business 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 resulting business entity. If the resulting business entity is authorized to transact business or conduct affairs in this State, the address for

mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the resulting business entity is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 59-73.12(a)(2)."

SECTION 112. Article 2A of Chapter 59 of the General Statutes, as enacted by this act, is amended by adding a new Part to read as follows and to include G.S. 59-73.30, 59-73.31, 59-73.32, 59-73.33, each as recodified in Section 105 of this act, in Part 4:

"Part 4. Merger."

SECTION 113. G.S. 59-73.31(b), as recodified by Section 105 of this act, reads as rewritten:

"(b) In the case of a merging domestic partnership, the plan of merger must be approved in the manner provided in a written partnership agreement that is binding on all the partners for approval of a merger with the type of business entity contemplated in the plan of merger or, if there is no provision, by the unanimous consent of its partners. If any partner of a merging domestic partnership has or will have personal liability for any existing or future obligation of the surviving business entity solely as a result of holding an interest in the surviving business entity, then in addition to the requirements of the preceding sentence, approval of the plan of merger by the domestic partnership shall require the consent of that partner. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of such merging business entity."

SECTION 114. G.S. 59-73.32(a), as recodified by Section 105 of this act, reads as rewritten:

"(a) After a plan of merger has been approved by each merging domestic partnership and each other merging business entity as provided in ~~G.S. 59-73.4;~~ G.S. 59-73.31, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

(1) The plan of merger;

(2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

(3) The name ~~and address~~ of the surviving business ~~entity;~~ entity and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address;

(4) A statement that the plan of merger has been approved by each merging business entity in the manner required by law; and

(5) The effective date and time of the merger if it is not to be effective at the time of filing of the articles of merger.

If the plan of merger is amended or abandoned after the articles of merger have been filed, but before the articles of merger become effective, the surviving business entity ~~promptly~~ shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger."

SECTION 115. G.S. 59-73.33(b), as recodified by Section 105 of this act, 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~~ partnership, when the merger takes ~~effect,~~ 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) To have appointed the Secretary of State as its registered agent for service of process in any such proceeding. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of ~~State~~ State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of such process and the ~~fees~~ fee required by ~~G.S. 59-73.7(e).~~ G.S. 59-35.1(f). Upon receipt of service of process on behalf of a surviving business 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. If the surviving business entity is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the surviving business entity is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated

pursuant to ~~subdivision (3) of subsection (d) of this section.~~ G.S. 59-73.32(a)(3)."

SECTION 116. G.S. 59-77 reads as rewritten:

"**§ 59-77. When personal representative may take inventory; receiver.**

If the surviving partner should neglect or refuse to have such inventory made, the personal representative of the deceased partner may have the same made in accordance with the provisions of G.S. 59-76. Should any surviving partner fail to take such an inventory or refuse to allow the personal representative of the deceased partner's estate to do so, such personal representative of the deceased partner's estate may forthwith apply to a court of competent jurisdiction for the appointment of a receiver for such partnership, who shall thereupon proceed to wind up the same and dispose of the assets thereof in accordance with law."

SECTION 117. G.S. 59-84.1 reads as rewritten:

"**§ 59-84.1. Partnership to comply with "assumed name" ~~statute.~~ statute; income taxation.**

(a) Every partnership other than a limited partnership shall comply with, and be subject to, the provisions of Articles 14 and 15 of Chapter 66 of the General Statutes in all cases in which the same are applicable.

(b) A partnership, including a registered limited liability partnership and a foreign limited liability partnership, and a partner of one of these partnerships are subject to taxation under Article 4 of Chapter 105 of the General Statutes in accordance with their classification for federal income tax purposes. Accordingly, if any such partnership is classified for federal income tax purposes as a C corporation as defined in G.S. 105-131(b)(2) or an S corporation as defined in G.S. 105-131(b)(8), the partnership and its partners are subject to tax under Article 4 of Chapter 105 of the General Statutes to the same extent as a C corporation or an S corporation, as the case may be, and its shareholders. If any such partnership is classified for federal income tax purposes as a partnership, the partnership and its partners are subject to tax under Article 4 of Chapter 105 of the General Statutes accordingly. If any such partnership is classified for federal income tax purposes as other than a corporation or a partnership, the partnership and its partners are subject to tax under Article 4 of Chapter 105 of the General Statutes in a manner consistent with that classification. This section does not require a partnership, including any registered limited liability partnership or foreign limited liability partnership authorized to transact business in this State, to obtain an administrative ruling from the Internal Revenue Service on its classification under the Internal Revenue Code."

SECTION 118. G.S. 59-84.2 reads as rewritten:

"**§ 59-84.2. Registered limited liability partnerships.**

(a) ~~To become a registered limited liability partnership, a partnership must file~~ A partnership whose internal affairs are governed by the laws of this State, other than a limited partnership, may become a registered limited liability partnership by filing with the Secretary of State an application ~~stating:~~ stating all of the following:

(1) The name of the partnership.
(2) The street ~~address~~ address, and the mailing address if different from the street address, of its principal ~~office.~~ office and the county in which the principal office is located.
(3) The name and street address, and the mailing address if different from the street address, ~~for~~ of the partnership's registered agent and registered office for service of process.
(4) The county in this State in which the registered office is located.
~~(5) A brief statement of the business in which the partnership engages.~~
~~(6) A deferred effective date, if any.~~
(7) The fiscal year end of the partnership.

(a1) The terms and conditions on which a partnership becomes a limited liability partnership must be approved ~~by the vote necessary~~ in the manner provided in ~~to amend~~ the partnership ~~agreement except,~~ agreement; provided, however, if the partnership agreement does not contain any such provision, the terms and conditions shall be approved (i) in the case of a partnership having a partnership agreement that expressly considers obligations to contribute to the partnership, ~~the vote~~ in the manner necessary to amend those ~~provisions.~~ provisions, or (ii) in any other case, in the manner necessary to amend the partnership agreement.

~~(b) An application for registration as a registered limited liability partnership must be executed by one or more partners.~~

~~(c) An application for registration as a registered limited liability partnership must be accompanied by a fee of one hundred twenty-five dollars ($125.00).~~

~~(d) The Secretary of State shall register a partnership that submits a completed application with the required fee.~~

~~(e) A registration is effective on the later of the date the registration is filed or the date specified in the application for registration, unless it is voluntarily withdrawn by filing with the Secretary of State a written withdrawal notice executed by one or more of the partners, or is revoked pursuant to G.S. 59-84.4(f).~~

~~(f) The Secretary of State may provide forms for applications for registration.~~

(f1) A partnership becomes a registered limited liability partnership when its application for registration becomes effective.

(g) The status of a registered limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the application for registration.

(h) A partnership shall promptly amend its registration to reflect any change in the information contained in its application for registration, other than changes in its registered agent, registered office, or principal office. A registration is amended by filing a certificate of amendment ~~thereto in the office of~~ with the Secretary of State. The certificate of amendment shall set ~~forth the following:~~forth:

(1) The name of the ~~partnership.~~partnership as reflected on the application for registration.

(2) The date of filing of the application for registration.

(3) The amendment to the application for registration.

(i) Each registered limited liability partnership shall continuously maintain in this State:

(1) A registered office that may be the same as any of its places of business; and

(2) ~~The~~ A registered agent ~~of a registered limited liability partnership for service of process must~~ who shall be (i) an individual who is a resident of this State and whose business office is identical with the registered office; (ii) a domestic corporation, nonprofit corporation, or limited liability company whose business office is identical with the registered office; or (iii) a foreign corporation, nonprofit corporation, or limited liability company authorized to transact business or conduct affairs in this State whose business office is identical with the registered office. The sole duty of the registered agent to the registered limited liability partnership is to forward to the registered limited liability partnership at its last known address any notice, process, or demand that is served on the registered agent.

(j) A partnership may cancel its registration by filing a certificate of cancellation with the Secretary of State. The certificate of cancellation shall set forth:

(1) The name of the partnership as reflected on the application for registration;

(2) The date of filing of the application for registration;

(3) A mailing address to which the Secretary of State may mail a copy of any process served on the Secretary of State under this subsection;

(4) A commitment to file with the Secretary of State a statement of any subsequent change in its mailing address; and

(5) The effective date and time of cancellation if it is not to be effective at the time of filing the certificate.

Cancellation of registration terminates the authority of the partnership's registered agent to accept service of process, notice, or demand, and appoints the Secretary of State as agent to accept service on behalf of the partnership with respect to any action or proceeding based upon any cause of action arising in this State, or arising out of business transacted in this State, during the time the partnership was registered as a registered limited liability partnership. Service on the Secretary of State of any process shall be made by delivering to and leaving with the Secretary of State, or any clerk authorized by the Secretary of State to accept service of process, duplicate copies of such process and the fee required by G.S. 59-35.1(f). Upon receipt of process in the manner provided 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 partnership at the mailing address designated pursuant to this subsection.

(k) A registered limited liability partnership may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(1) The name of the registered limited liability partnership;

(2) The street address, and the mailing address if different from the street address, of the registered limited liability partnership's current registered office and the county in which it is located;

(3) If the address of the registered limited liability partnership's registered office is to be changed, the street address, and the mailing address if different from the street address, of the new registered office and the county in which it is located;

(4) The name of its current registered agent;

(5) If the current registered agent is to be changed, the name of the new registered agent and the new registered agent's written consent (either on the statement or attached to it) to the appointment; and

(6) That after the change or changes are made, the addresses of its registered office and the business office of its registered agent will be identical.

If a registered agent changes the address of the registered agent's business office, the registered agent may change the address of the registered office of any registered limited liability partnership for which the agent is the registered agent by notifying the registered limited liability partnership in writing of the change and signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement that complies with the requirements of this subsection and recites that the registered limited liability partnership has been notified of the change.

A registered limited liability partnership may change its registered office or registered agent by including in its annual report required by G.S. 59-84.4 the information and any written consent required by this subsection.

(l) The following provisions shall apply for the resignation of a registered agent:

(1) A registered agent may resign his agency appointment by signing and filing with the Secretary of State the signed original and two exact or conformed copies of a statement of resignation which may include a statement that the registered office is also discontinued. The statement must include or be accompanied by a certification from the registered agent that the agent has mailed or delivered to the registered limited liability partnership at its last known address written notice of the agent's resignation. Such certification shall include the name and title of the partner notified, if any, and the address to which the notice was mailed or delivered.

(2) After filing the statement, the Secretary of State shall mail one copy to the registered office (if not discontinued) and the other copy to the registered limited liability partnership at its principal office.

(3) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

(m) The registered agent of a registered limited liability partnership is an agent of the registered limited liability partnership for service of process, notice, or demand required or permitted by law to be served on the registered limited liability partnership.

(n) Whenever a registered limited liability partnership 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 registered limited liability partnership 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 authorized by the Secretary of State to accept service of process, duplicate copies of the process, notice, or demand and the fee required by G.S. 59-35.1(f). In the event any such process, notice, or demand is served on the Secretary of State in the manner provided in this subsection, the Secretary of State shall immediately mail one of the copies thereof, by registered or certified mail, return receipt requested, to the registered limited liability partnership at its principal office or, if there is no mailing address for the principal office on file, to the registered limited liability partnership at its registered office. Service on a registered limited liability partnership under this subsection shall be effective for all purposes from and after the date of the service on the Secretary of State.

(o) The Secretary of State shall keep a record of all processes, notices, and demands served upon the Secretary of State under this section and shall record therein the time of such service and the Secretary of State's action with reference thereto.

(p) Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a registered limited liability partnership in any other manner now or hereafter permitted by law."

SECTION 119. G.S. 59-84.4(c) reads as rewritten:

"(c) The annual report shall be delivered to the Secretary of State by the fifteenth day of the fourth month following the close of the registered or foreign limited liability partnership's fiscal year. ~~The annual report must be accompanied by a fee of two hundred dollars ($200.00).~~"

SECTION 120. G.S. 59-91 reads as rewritten:

"**§ 59-91. Statement of foreign registration.**

(a) Before transacting business in this State, a foreign limited liability partnership must file an application for registration as a foreign limited liability partnership. The application must contain:

(1) The name of the foreign limited liability partnership that satisfies the requirements of the State or other jurisdiction under whose law it is formed and ends with the words "registered limited liability

partnership" or "limited liability partnership" or the abbreviation "R.L.L.P.", "L.L.P.", "RLLP", or "LLP".

(2) The street ~~address~~ address, and the mailing address if different from the street address, of the partnership's principal ~~office.~~ office, and the county in which the principal office is located.

(3) The name and street address, and the mailing address if different from the street address, for the partnership's registered agent and registered office for service of process, and the county in which the registered office is located.

~~(4) A brief statement of the business in which the partnership is engaged.~~

~~(5) A deferred effective date, if any.~~

(6) The fiscal year end of the partnership.

The foreign limited liability partnership shall deliver with the completed application a certificate of existence, or a document with similar import, duly authenticated by the ~~secretary of state~~ Secretary of State or other official having custody of the records of registered limited liability partnerships in the state or country under whose law it is registered.

~~(b) The registered agent of a foreign limited liability partnership for service of process must be (i) an individual who is a resident of this State and whose business office is identical with the registered office; (ii) a domestic corporation, nonprofit corporation, or limited liability company whose business office is identical with the registered office; or (iii) a foreign corporation, nonprofit corporation, or limited liability company authorized to transact business in this State whose business office is identical with the registered office. The sole duty of the registered agent to the foreign limited liability partnership is to forward to the foreign limited liability partnership at its last known address any notice, process, or demand that is served on the registered agent.~~

~~(c) An application for registration as a foreign limited liability partnership must be accompanied by a fee of one hundred twenty-five dollars ($125.00).~~

~~(d) The Secretary of State shall register a partnership that submits a completed application for registration as a foreign limited liability partnership with the required fee.~~

~~(e) The status of a partnership as a foreign limited liability partnership is effective on the later of the date the registration is filed or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is voluntarily withdrawn by filing with the Secretary of State a written withdrawal notice executed by one or more partners or revoked pursuant to G.S. 59-84.4(f).~~

~~(f) 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.~~

~~(g) An application for registration as a foreign limited liability partnership must be executed by one or more partners.~~

(h) A foreign limited liability partnership authorized to transact business in this State shall be subject to the provisions of G.S. 59-84.4 regarding annual reports and revocation of registration.

(i) A foreign limited liability partnership becomes registered as a foreign limited liability partnership when its application for registration becomes effective.

(j) A foreign limited liability partnership shall promptly amend its registration to reflect any change in the information contained in its application for registration, other than changes in its registered agent, registered office, or principal office. A registration is amended by filing a certificate of amendment with the Secretary of State. The certificate of amendment shall set forth:

(1) The name of the foreign limited liability partnership under which it is registered in this State;

(2) The date of filing of the application for registration; and

(3) The amendment to the application for registration.

(k) A foreign limited liability partnership may cancel its registration by filing a certificate of cancellation with the Secretary of State. The certificate of cancellation shall set forth:

(1) The name of the foreign limited liability partnership under which it is registered in this State;

(2) The date of filing of the application for registration;

(3) A mailing address to which the Secretary of State may mail a copy of any process served on the Secretary of State under this subsection;

(4) A commitment to file with the Secretary of State a statement of any subsequent change in its mailing address; and

(5) The effective date and time of cancellation if it is not to be effective at the time of filing the certificate.

Cancellation of registration terminates the authority of the foreign limited liability partnership's registered agent to accept service of process, notice, or demand and appoints the Secretary of State as agent to accept such service on behalf of the foreign limited liability partnership with respect to any action or proceeding based upon any cause of action arising in this State, or arising out of business transacted in this State, during the time the foreign limited liability partnership was registered 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, and the fee required by G.S. 59-35.1(f). Upon receipt of process in the manner herein provided, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the foreign limited liability partnership at the mailing address designated pursuant to this subsection.

(l) Each foreign limited liability partnership registered in this State must continuously maintain in this State:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent who shall be (i) an individual who is a resident of this State and whose business office is identical with the registered office; (ii) a domestic corporation, nonprofit corporation, or limited liability company whose business office is identical with the registered office; or (iii) a foreign corporation, nonprofit corporation, or limited liability company authorized to transact business or conduct affairs in this State whose business office is identical with the registered office.

The sole duty of the registered agent to the foreign limited liability partnership is to forward to the foreign limited liability partnership at its last known address any notice, process, or demand that is served on the registered agent.

(m) A foreign limited liability partnership may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(1) The name of the foreign limited liability partnership;

(2) The street address, and the mailing address if different from the street address, of the foreign limited liability partnership's current registered office and the county in which it is located;

(3) If the address of the foreign limited liability partnership's registered office is to be changed, the street address, and the mailing address if different from the street address, of the new registered office and the county in which it is located;

(4) The name of its current registered agent;

(5) If the current registered agent is to be changed, the name of the new registered agent and the new registered agent's written consent (either on the statement or attached to it) to the appointment; and

(6) That after the change or changes are made, the addresses of its registered office and the business office of its registered agent will be identical.

If a registered agent changes the address of the registered agent's business office, the registered agent may change the address of the registered office of any foreign limited liability partnership for which he is the registered agent by notifying the foreign limited liability partnership in writing of the change and signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement that complies with the requirements of this subsection and recites that the foreign limited liability partnership has been notified of the change.

A foreign limited liability partnership may change its registered office or registered agent by including in its annual report required by G.S. 59-84.4 the information and any written consent required by this subsection.

(n) The following provisions shall apply for the resignation of a registered agent:

(1) A registered agent may resign the agent's appointment by signing and filing with the Secretary of State the signed original and two exact or conformed copies of a statement of resignation which may include a statement that the registered office is also discontinued. The statement must include or be accompanied by a certification from the registered agent that the agent has mailed or delivered to the foreign limited liability partnership at its last known address written notice of the agent's resignation. Such certification shall include the name and title of the partner notified, if any, and the address to which the notice was mailed or delivered.

(2) After filing the statement, the Secretary of State shall mail one copy to the registered office (if not discontinued) and the other copy to the foreign limited liability partnership at its principal office.

(3) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

(o) The registered agent of a foreign limited liability partnership registered in the State is an agent of the foreign limited liability partnership for service of process, notice, or demand required or permitted by law to be served on the foreign limited liability partnership.

(p) Whenever a foreign limited liability partnership registered in this State 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 foreign limited liability partnership 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 the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process, notice, or demand and the fee required by G.S. 59-35.1(f). In the event any process, notice, or demand is served on the Secretary of State in the manner provided in this subsection, the Secretary of State shall immediately mail one of the copies thereof, by registered or certified mail, return receipt requested, to the foreign limited liability partnership at its principal office or, if there is no mailing address for the principal office on file, to the foreign limited liability partnership at its registered office. Service on a foreign limited liability partnership under this subsection shall be effective for all purposes from and after the date of the service on the Secretary of State.

(q) The Secretary of State shall keep a record of all processes, notices, and demands served upon the Secretary of State under this section and shall record therein the time of service and the Secretary of State's action with reference thereto.

(r) Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a foreign limited liability partnership in any other manner now or hereafter permitted by law.

(s) Whenever a foreign limited liability partnership authorized to transact business in this State ceases its separate existence as a result of a statutory merger or consolidation permitted by the laws of the state or country under which it was organized, or converts into another type of entity as permitted by those laws, the surviving or resulting entity shall apply for a certificate of withdrawal for the foreign limited liability partnership by delivering to the Secretary of State for filing a copy of the articles of merger, consolidation, or conversion or a certificate reciting the facts of the merger, consolidation, or conversion, duly authenticated by the Secretary of State or other official having custody of limited liability partnership records in the state or country under the laws of which the foreign limited liability partnership was organized. If the surviving or resulting entity is not authorized to transact business in this State, the articles or certificate must be accompanied by an application which must set forth:

(1) The name of the foreign liability limited partnership authorized to transact business in this State, the type of entity and name of the surviving or resulting entity, and a statement that the surviving or resulting entity is not authorized to transact business in this State;

(2) A statement that the surviving or resulting entity consents that service of process based on any cause of action arising in this State, or arising out of business transacted in this State, during the time the foreign limited liability partnership was authorized to transact business in this State, may thereafter be made by service thereof on the Secretary of State;

(3) A mailing address to which the Secretary of State may mail a copy of any process served upon the Secretary under subdivision (2) of this subsection; and

(4) A commitment to file with the Secretary of State a statement of any subsequent change in its mailing address.

(t) If the Secretary of State finds that the articles or certificate and the application for withdrawal, if required, conform to law, the Secretary of State shall:

(1) Endorse on the articles or certificate and the application for withdrawal, if required, the word "filed" and the hour, day, month, and year of filing thereof;

(2) File the articles or certificate and the application, if required;

(3) Issue a certificate of withdrawal; and

(4) Send to the surviving or resulting entity or its representative the certificate of withdrawal, together with the exact or conformed copy of the application, if required, affixed thereto.

(u) After the withdrawal of the foreign limited liability partnership is effective, service of process on the Secretary of State in accordance with subsection (t) of this

section 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 and the fee required by G.S. 59-35.1(f). Upon receipt of process in the manner herein provided, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving or resulting entity at the mailing address designated pursuant to subsection (t) of this section."

SECTION 121. G.S. 59-102 reads as rewritten:

"**§ 59-102. Definitions.**

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

(1) 'Business' means any lawful trade, investment, or other purpose or activity, whether or not the trade, investment, purpose, or activity is carried on for profit.

(1a) 'Business entity' means a domestic corporation ~~as defined in G.S. 55-1-40 (including, without limitation,~~ (including a professional corporation as defined in G.S. 55B-2), a foreign corporation ~~as defined in G.S. 55-1-40 (including, without limitation,~~ (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit ~~corporation as defined in G.S. 55A-1-40,~~ corporation, a domestic ~~limited liability company as defined in G.S. 57C-1-03, a~~ or foreign limited liability ~~company as defined in G.S. 57C-1-03,~~ company, a domestic limited partnership, a foreign limited partnership, a registered limited liability partnership, a foreign limited liability partnership, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this ~~State (including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this State).~~ State.

(1b) 'Certificate of limited partnership' means the certificate referred to in G.S. 59-201, and the certificate as amended.

(2) 'Conformed copy' shall include a photostatic or other photographic copy of the original document.

(3) 'Contribution' means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

(3a) 'Domestic corporation' has the same meaning as in G.S. 55-1-40 and includes a professional corporation as defined in G.S. 55B-2.

(3b) 'Domestic limited liability company' has the same meaning as in G.S. 57C-1-03.

(3c) 'Domestic nonprofit corporation' means a corporation as defined in G.S. 55A-1-40.

(4) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in G.S. 59-402.

(4a) 'Foreign corporation' has the same meaning as in G.S. 55-1-40 and includes a foreign professional corporation as defined in G.S. 55B-16.

(4b) 'Foreign limited liability company' has the same meaning as in G.S. 57C-1-03.

(5) 'Foreign limited partnership' means a partnership formed under the laws of any state, province, country, or other jurisdiction other than this State and having as partners one or more general partners and one or more limited ~~partners.~~ partners, and includes, for all purposes of the laws of the State of North Carolina, a limited partnership having the status of a limited liability limited partnership under the laws of its jurisdiction of formation.

(5a) 'Foreign nonprofit corporation' means a foreign corporation as defined in G.S. 55A-1-40 that is a nonprofit corporation as defined in G.S. 55A-1-40.

(6) 'General partner' means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.

(6a) 'Limited liability limited partnership' and 'registered limited liability limited partnership' mean a limited partnership that is registered under and complies with G.S. 59-210.

(7) 'Limited partner' means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

(8) 'Limited partnership' and 'domestic limited partnership' mean a partnership formed by two or more persons under the laws of this State and having one or more general partners and one or more limited ~~partners.~~ partners, and includes, for all purposes of the laws of the State of North Carolina, a registered limited liability limited partnership.

(9) 'Partner' means a limited or general partner.

(10) 'Partnership agreement' means any valid agreement of the partners as to the affairs of a limited partnership, the conduct of its business, and the responsibilities and rights of its partners. The term 'partnership agreement' includes any written or oral agreement, whether or not the agreement is set forth in a document referred to by the partners as a 'partnership agreement', and includes any amendment agreed upon by the partners unanimously or in accordance with the terms of the agreement. The term also includes any agreement of the partners to waive or revise the terms of the partnership agreement in one or more

specific instances and not necessarily on an ongoing or permanent basis.

(11) 'Partnership interest' means a partner's share of the allocations of income, gain, loss, deduction or credit of a limited partnership and the right to receive distributions of cash or other partnership assets.

(12) 'Person' means a natural person, domestic or foreign partnership, domestic or foreign limited ~~partnership (domestic or foreign),~~partnership, domestic or foreign limited liability company, trust, estate, unincorporated association, ~~or corporation.~~ domestic or foreign corporation, or another entity.

(13) 'State' means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico."

SECTION 122. G.S. 59-103 reads as rewritten:

"**§ 59-103. Name.**

(a) The name of the limited partnership shall contain ~~without abbreviation~~ the words ~~"limited partnership";~~ 'limited partnership' or have the abbreviated 'L.P.' or 'LP' as the last letters of its name, except that in the case of a limited liability limited partnership, its name shall comply with the provisions of G.S. 59-210(a)(1).

(b) The limited partnership name shall not contain the name of a limited partner unless (i) it is also the name of a general partner or the corporate name of a corporate general partner, or (ii) the business of the limited partnership has been carried on under that name before the admission of that limited ~~partner;~~partner.

(c) The limited partnership name shall not contain any word or phrase ~~which~~ that is likely to mislead the ~~public or which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its certificate of limited partnership;~~public."

SECTION 123. G.S. 59-105 reads as rewritten:

"**§ 59-105. Registered office and registered agent.**

(a) Each limited partnership shall have and continuously maintain in this State:

(1) A registered office that may be the same as any of its places of business;

(2) A registered agent, who shall be (i) an individual resident of this State whose business office is identical with such registered office; (ii) a domestic corporation, nonprofit corporation, or limited liability company whose business office is identical with such registered office; or (iii) a foreign corporation, nonprofit corporation, or limited liability company authorized to transact business or conduct affairs in this State, whose business office is identical with such registered office.

The sole duty of the registered agent to the limited partnership is to forward to the limited partnership at its last known address any notice, process, or demand that is served on the registered agent.

(b) Limited partnerships formed prior to October 1, 1986, shall file a certificate of limited partnership with the Office of the Secretary of State pursuant to G.S. 59-201(a) designating the address of the registered office of the limited partnership and the identity of the registered agent at such address.

(b1) Any process, notice or demand, which is required or permitted by law to be served upon a limited partnership, may be served upon the duly appointed registered agent of the limited partnership. Such service upon the registered agent is deemed to have been made on the limited partnership itself.

(b2) A limited partnership may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(1) The name of the limited partnership;

(2) The street address, and the mailing address if different from the street address, of the limited partnership's current registered office and the county in which it is located;

(3) If the address of the limited partnership's registered office is to be changed, the street address, and the mailing address if different from the street address, of the new registered office and the county in which it is located;

(4) The name of its current registered agent;

(5) If the current registered agent is to be changed, the name of the new registered agent and the new registered agent's written consent (either on the statement or attached to it) to the appointment; and

(6) That after the change or changes are made, the addresses of its registered office and the business office of its registered agent will be identical.

(b3) If a registered agent changes the address of the agent's business office, the agent may change the address of the registered office of any limited partnership for which the agent is the registered agent by notifying the limited partnership in writing of the change and signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (b2) of this section and that recites that the limited partnership has been notified of the change.

(c) Whenever a limited partnership 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 limited partnership 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 the Secretary of State, or with any clerk ~~having charge of the limited partnership department of his office,~~ authorized by the Secretary of State to accept service of process, duplicate copies of ~~such~~ the process, ~~notice~~ notice, or ~~demand.~~ demand and the fee required by G.S. 59-1106(b). In the event any ~~such~~ process, ~~notice~~ notice, or demand is served on the Secretary of State, ~~he~~ the Secretary of State shall immediately cause one of the copies thereof to be forwarded by registered or

certified mail, addressed to the limited partnership at its registered office. ~~Any such~~ Service on a limited partnership ~~so served~~ under this subsection shall be ~~in court~~ effective for all purposes from and after the date of such service on the Secretary of State.

(d) The Secretary of State shall keep a record of all processes, ~~notices~~ notices, and demands served upon ~~him~~ the Secretary of State under this ~~section,~~ section and shall record therein the time of such service and ~~his~~ the Secretary of State's action with reference thereto.

(e) Nothing herein contained shall limit or affect the right to serve any process, ~~notice~~ notice, or demand required or permitted by law to be served upon a limited partnership in any other manner now or hereafter permitted by law.

(f) The following provisions shall apply for the resignation of a registered agent:

(1) A registered agent may resign the agent's appointment by signing and filing with the Secretary of State the signed original and two exact or conformed copies of a statement of resignation which may include a statement that the registered office is also discontinued. The statement shall include or be accompanied by a certification from the registered agent that the agent has mailed or delivered to the limited partnership at its last known address written notice of the agent's resignation. The certification shall include the name and title of the partner notified, if any, and the address to which the notice was mailed or delivered.

(2) After filing the statement, the Secretary of State shall mail one copy to the registered office, if not discontinued, and the other copy to the limited partnership at the address certified in the statement of resignation.

(3) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed."

SECTION 124. G.S. 59-201(a)(3) reads as rewritten:

"(3) ~~The~~ If the limited partnership is to dissolve by a specific date, the latest date upon which the limited partnership is to dissolve. If no date for dissolution is specified, there shall be no limit on the duration of the limited partnership."

SECTION 124A. G.S. 59-201 is amended by adding a new subsection to read:

"(e) If the limited partnership is to be a limited liability partnership at its formation, then instead of separately filing the application for registration as a limited liability limited partnership, the application for registration shall be included as part of the certificate of limited partnership."

SECTION 125. G.S. 59-204(a) reads as rewritten:

"(a) Each certificate required by this Article to be filed in the office of the Secretary of State shall be executed in the following manner:

(1) An original certificate of limited partnership must be signed by all general partners;

(2) A certificate of amendment must be signed by at least one general partner and by each other partner designated in the certificate as a new general partner; and

(3) A certificate of cancellation must be signed by all general partners.

Any other document submitted by a domestic or foreign limited partnership for filing pursuant to this or any other Chapter must be signed by at least one general partner. Any document submitted by a business entity other than a domestic or foreign limited partnership must be executed by a person authorized to execute documents (i) pursuant to G.S. 55-1-20(f) if the business entity is a domestic or foreign corporation, (ii) pursuant to G.S. 55A-1-20(f) if the business entity is a domestic or foreign nonprofit corporation, (iii) pursuant to G.S. 57C-1-20(f) if the business entity is a domestic or foreign limited liability company, or (iv) pursuant to G.S. ~~59-73.7(a)(4)~~ 59-35.1(a)(4) if the business entity is a partnership as defined in G.S. 59-36, whether or not formed under the laws of this State, other than a domestic or foreign limited partnership."

SECTION 126. G.S. 59-206 is amended by adding the following new subsections to read:

"(d) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of this Article, the Secretary of State shall file it. Documents filed with the Secretary of State pursuant to this Article may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this Article, or under any predecessor act, by photographic, microfilm, optical disk media, or other means of reproduction and may destroy the originals of those documents reproduced.

(e) If the Secretary of State refuses to file a document, the Secretary of State shall return it to the person submitting the document for filing within five days after the document was received, together with a brief, written explanation of the reason for refusal.

(f) The Secretary of State's duty is to review and file documents that satisfy the requirements of this Article. The Secretary of State's filing or refusing to file a document does not:

(1) Affect the validity or invalidity of the document in whole or part;

(2) Relate to the correctness or incorrectness of information contained in the document; or

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

(g) A person commits an offense if the person signs a document the person knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing. An offense under this subsection is a Class 1 misdemeanor."

SECTION 127. Part 2 of Article 5 of Chapter 59 of the General Statutes is amended by adding the following new sections to read:

"**§ 59-209. Certificate of existence.**

(a) Anyone may apply to the Secretary of State to furnish a certificate of existence for a domestic limited partnership or a certificate of authorization for a foreign limited partnership.

(b) A certificate of existence or authorization sets forth:

(1) The domestic limited partnership's name or the foreign limited partnership's name used in this State;

(2) That (i) the domestic limited partnership has filed a certificate of limited partnership under the law of this State, the effective date of the filing, and the period of the domestic limited partnership's duration, or (ii) the foreign limited partnership is authorized to transact business in this State;

(3) If the limited partnership has registered as a limited liability limited partnership, that the registration has not been withdrawn or revoked for failure to comply with the provisions of this Chapter;

(4) That a certificate of cancellation has not been filed; and

(5) Other facts of record in the office of the Secretary of State that may be requested by the applicant.

(c) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Secretary of State may be relied upon as conclusive evidence that the domestic limited partnership has filed a certificate of limited partnership and has not filed a certificate of cancellation or that the foreign limited partnership is authorized to transact business in this State.

"**§ 59-210. Limited liability limited partnerships.**

(a) To become a limited liability limited partnership, a limited partnership shall file with the Secretary of State an application stating:

(1) The name of the limited liability limited partnership, which shall contain the words 'registered limited liability limited partnership' or 'limited liability limited partnership' or the abbreviation 'L.L.L.P.', 'R.L.L.L.P.', 'LLLP', or 'RLLLP' as the last words or letters of its name.

(2) The street address, and mailing address if different from the street address, of its principal office, and the county in which the principal office is located.

(3) The fiscal year end of the limited liability limited partnership.

(b) The terms and conditions on which a limited partnership becomes a limited liability limited partnership shall be approved in the manner provided in the partnership agreement; provided, however, if the partnership agreement does not contain any such provision, the terms and conditions must be approved (i) in the case of a limited partnership having a partnership agreement that expressly considers obligations to

contribute to the partnership, in the manner necessary to amend those provisions, or (ii) in any other case, in the manner necessary to amend the partnership agreement.

(c) A limited partnership becomes a limited liability limited partnership when its application for registration becomes effective.

(d) The status of a limited liability limited partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the application for registration.

(e) A limited liability limited partnership shall promptly amend its registration to reflect any change in the information contained in its application for registration, other than changes which are required to be reflected in an amendment to its certificate of limited partnership or in an annual report. A registration is amended by filing a certificate of amendment with the Secretary of State. The certificate of amendment shall set forth:

(1) The name of the limited liability limited partnership as reflected on the application for registration;

(2) The date of filing of the application for registration; and

(3) The amendment to the application for registration.

(f) A limited liability limited partnership may cancel its registration by filing a certificate of cancellation with the Secretary of State. The certificate of cancellation shall set forth:

(1) The name of the limited liability limited partnership as reflected on the application for registration;

(2) The date of filing of the application for registration;

(3) A mailing address to which the Secretary of State may mail a copy of any process served on the Secretary of State under this subsection;

(4) A commitment to file with the Secretary of State a statement of any subsequent change in its mailing address; and

(5) The effective date and time of cancellation if it is not to be effective at the time of filing the certificate.

(g) Each limited liability limited partnership shall continuously maintain in this State a registered office and agent in accordance with G.S. 59-105.

(h) A limited liability limited partnership shall be subject to the provisions of G.S. 59-84.4(f) regarding annual reports and revocation of registration as if it were a registered limited liability partnership."

SECTION 128. G.S. 59-402(6) reads as rewritten:

"(6) In the case of a general partner who is a natural person,

a. ~~His~~ The general partner's death; or

b. The entry ~~or~~ of an order by a court of competent jurisdiction adjudicating ~~him~~ the general partner incompetent to manage his or her person or ~~his estate;~~ property;".

SECTION 129. G.S. 59-402(9) reads as rewritten:

"(9) In the case of a general partner that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter; ~~or~~".

SECTION 130. G.S. 59-402(10) reads as rewritten:

"(10) Unless otherwise provided in the partnership agreement, or with the consent of all partners, in ~~In~~ the case of a general partner that is an estate, the distribution by the fiduciary of the estate's entire interest in the ~~partnership.~~partnership;".

SECTION 131. G.S. 59-402 is amended by adding the following new subdivisions to read:

"(11) In the case of a general partner that is a limited liability company, the dissolution and commencement of winding up of the limited liability company; or

(12) In the case of a general partner that is not a natural person, trust, separate partnership, corporation, estate, or limited liability company, the termination of the general partner."

SECTION 132. G.S. 59-403(b) reads as rewritten:

"(b) Except as provided in this Article, a general partner of a limited partnership that is not a limited liability limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other ~~partners.~~ partners, and a general partner of a limited liability limited partnership has the liabilities of, and has the limitation on liability afforded to, a partner in a registered limited liability partnership under the North Carolina Uniform Partnership Act to persons other than the partnership and the other partners. Except as provided in this Article or in the partnership agreement, a general partner of a limited partnership that is not a limited liability limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other ~~partners.~~ partners, and a general partner of a limited liability limited partnership has the liabilities of, and has the limitation on liability afforded to, a partner in a registered limited liability partnership under the North Carolina Uniform Partnership Act to the partnership and to the other partners."

SECTION 133. G.S. 59-403 is amended by adding a new subsection to read:

"(c) Unless otherwise provided in the partnership agreement, a general partner of a limited partnership has the power and authority to delegate to one or more other persons the general partner's rights and powers to manage and control the business and affairs of the limited partnership, including to delegate to agents, officers, and employees of the general partner or the limited partnership, and to delegate by a management agreement or another agreement with, or otherwise to, other persons. Unless otherwise provided in the partnership agreement, a delegation by a general partner of a limited partnership shall not cause the general partner to cease to be a general partner of the limited partnership, and shall not reduce or absolve the general

partner of the general partner's duties or obligations to the limited partnership or its other partners."

SECTION 134. G.S. 59-902 reads as rewritten:

"**§ 59-902. Registration.**

(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 street address, ~~including county and city or town, and street and number, if any,~~ and the mailing address if different from the street address, of the principal office of the foreign limited partnership;

(5) The street address, ~~including county and city or town, and street and number, if any,~~ and the mailing address if different from the street address, of the ~~proposed~~ registered office of the foreign limited partnership in this State, the county in which the registered office is located, 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; and

(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.~~ effective date and time of the registration if it is not to be effective at the time of filing of the application.

(b) Without excluding other activities which ~~may~~ shall not constitute transacting business in this State, a foreign limited partnership shall not be considered to be transacting business in this State, for the purpose of this Article, by reason of carrying on in this State any one or more of the following activities:

(1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;

(2) Holding meetings of its partners or carrying on other activities concerning its internal affairs;

(3) Maintaining bank accounts or borrowing money in this State, with or without security, even if such borrowings are repeated and continuous transactions;

(4) Maintaining offices or agencies for the transfer, exchange, and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities;

(5) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this State before becoming binding contracts;

(6) Making or investing in loans with or without security including servicing of mortgages or deeds of trust through independent agencies within the State, the conducting of foreclosure proceedings and ~~sale,~~ sales, the acquiring of property at foreclosure sale and the management and rental of such property for a reasonable time while liquidating its investment, provided no office or agency therefor is maintained in this State;

(7) Taking security for or collecting debts due to it or enforcing any rights in property securing the same;

(8) Transacting business in interstate commerce; and

(9) Conducting an isolated transaction completed within a period of six months and not in the course of a number of repeated transactions of like nature.

(b1) Each foreign limited partnership authorized to transact business in this State shall continuously maintain in this State:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent, who shall be (i) an individual who resides in this State and whose business office is identical with the registered office; (ii) a domestic corporation, nonprofit corporation, or limited liability company whose business office is identical with the registered office, or (iii) a foreign corporation, nonprofit corporation, or limited liability company authorized to transact business or conduct affairs in this State whose business office is identical with the registered office.

The sole duty of the registered agent to the foreign limited partnership is to forward to the foreign limited partnership at its last known address any notice, process, or demand that is served on the registered agent.

(b2) A foreign limited partnership authorized to transact business in this State may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(1) Its name;

(2) The street address, and the mailing address if different from the street address, of its current registered office, and the county in which it is located;

(3) If the address of its registered office is to be changed, the street address, and the mailing address if different from the street address, of the new registered office, and the county in which it is located;

(4) The name of its current registered agent;

(5) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and

(6) That after the change or changes are made, the addresses of its registered office and the business office of its registered agent will be identical.

If a registered agent changes the address of his business office, the registered agent may change the address of the registered office of any foreign limited partnership for which he is the registered agent by notifying the foreign limited partnership in writing of the change and signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement of change that complies with the requirements of this subsection and recites that the foreign limited partnership has been notified of the change.

(b3) The following provisions shall apply for the resignation of a registered agent:

(1) A registered agent may resign his agency appointment by signing and filing with the Secretary of State the signed original and two exact or conformed copies of a statement of resignation which may include a statement that the registered office is also discontinued. The statement shall include or be accompanied by a certification from the registered

agent that the agent has mailed or delivered to the foreign limited partnership at its last known address written notice of the agent's resignation. Such certification shall include the name and title of the partner notified, if any, and the address to which the notice was mailed or delivered.

(2) After filing the statement, the Secretary of State shall mail one copy to the registered office, if not discontinued, and the other copy to the foreign limited partnership at the address certified in the statement of resignation.

(3) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

(b4) The registered agent of a foreign limited partnership authorized to transact business in this State is an agent of the foreign limited partnership for service of process, notice, or demand required or permitted by law to be served on the foreign limited partnership.

(c) Whenever a foreign limited partnership 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 foreign limited partnership 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 limited partnership department of his office,~~ authorized by the Secretary of State to accept service of process, duplicate copies of ~~such~~ the process, notice or ~~demand.~~ demand and the fee required by G.S. 59-1106(b). In the event any such process, notice or demand is served on the Secretary of State, ~~he~~ the Secretary of State shall immediately cause one of the copies thereof to be forwarded by registered or certified ~~mail, addressed~~ mail to the foreign limited partnership at its registered office. ~~Any such~~ Service on a foreign limited partnership ~~so served~~ under this subsection shall be ~~in court~~ effective for all purposes from and after the date of ~~such~~ the service on the Secretary of State.

(d) The Secretary of State shall keep a record of all processes, notices and demands served upon ~~him~~ the Secretary of State under this section, and shall record therein the time of such service and ~~his~~ the Secretary of State's action with reference thereto.

(e) Nothing herein contained shall limit or affect the right to serve any process notice or demand required or permitted by law to be served upon a foreign limited partnership in any other manner now or hereafter permitted by law."

SECTION 135. G.S. 59-904 reads as rewritten:

"**§ 59-904. Name.**

A foreign limited partnership may register with the Secretary of State under any name (whether or not it is the name under which it is registered in its state of

organization) that includes without abbreviation the words 'limited partnership' or has the abbreviation 'L.P.', 'LP', 'R.L.L.L.P.', 'RLLLP', 'L.L.L.P.', or 'LLLP' as the last letters of its name and that could be registered and used as its name under G.S. 59-103 by a domestic limited partnership."

SECTION 136. G.S. 59-909(a) reads as rewritten:

"(a) Whenever a foreign limited partnership authorized to transact business in this State ceases its separate existence as a result of a statutory merger or consolidation permitted by the laws of the state or country under which it was organized, or converts into another type of entity as permitted by those laws, the surviving or resulting entity shall apply for a certificate of withdrawal for the foreign limited partnership by delivering to the Secretary of State for filing a copy of the articles of merger, consolidation, or conversion or a certificate reciting the facts of the merger, consolidation, or conversion, duly authenticated by the Secretary of State or other official having custody of limited partnership records in the state or country under the laws of which the foreign limited partnership was organized. If the surviving or resulting entity is not authorized to transact business in this State, the articles or certificate must be accompanied by an application which must set forth:

(1) The name of the foreign limited partnership authorized to transact business in this State, the type of entity and name of the surviving or resulting entity, and a statement that the surviving or resulting entity is not authorized to transact business in this State;

(2) A statement that the surviving or resulting entity consents that service of process based on any cause of action arising in this State, or arising out of business transacted in this State, during the time the foreign limited partnership was authorized to transact business in this State, may thereafter be made by service thereof on the Secretary of State;

(3) A mailing address to which the Secretary of State may mail a copy of any process served upon the Secretary under subdivision (a)(2) of this section; and

(4) A commitment to ~~notify~~ file with the Secretary of State ~~in the future~~ a statement of any subsequent change in its mailing address."

SECTION 137. G.S. 59-909 is amended by adding a new subsection to read:

"(c) After the withdrawal of the foreign limited partnership is effective, service of process on the Secretary of State in accordance with subsection (a) of this section shall be made by delivering to and leaving with the Secretary of State or any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 59-1106(b). Upon receipt of process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving or resulting entity at the mailing address designated pursuant to subsection (a) of this section."

SECTION 138. The heading of Part 10A of Chapter 59 of the General Statutes reads as rewritten:

"Part 10A. Conversion ~~and Merger.~~ to Limited Partnership."

SECTION 139. G.S. 59-1050 reads as rewritten:

"**§ 59-1050. ~~Conversions.~~ Conversion.**

~~(a) A domestic limited partnership may convert to a domestic limited liability company pursuant to Part 1 of Article 9A of Chapter 57C of the General Statutes.~~

~~(b) A domestic limited liability company as defined in G.S. 57C-1-03, a foreign limited liability company as defined in G.S. 57C-1-03, a foreign limited partnership, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State, including a registered limited liability partnership as defined in G.S. 59-32, and any other limited liability partnership formed under a law other than the laws of this State, but excluding a domestic limited partnership, may convert to a domestic limited partnership if:~~

~~(1) Such converting business entity complies with the requirements of G.S. 59-1051 and G.S. 59-1052; and~~

~~(2) If the converting business entity is a foreign limited liability company, a foreign limited partnership, or other partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by a law other than the laws of this State, the conversion is permitted by laws of the state or country governing the organization and internal affairs of the converting business entity, and the converting business entity complies with the laws.~~

A business entity other than a domestic limited partnership may convert to a domestic limited partnership if:

(1) The conversion is permitted by the laws of the state or country governing the organization and internal affairs of the converting business entity; and

(2) The converting business entity complies with the requirements of this part and, to the extent applicable, the laws referred to in subdivision (1) of this section."

SECTION 140. G.S. 59-1051 reads as rewritten:

"**§ 59-1051. Plan of conversion.**

(a) The ~~holders of the interests in the~~ converting business entity shall approve a written plan of conversion containing:

(1) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs;

~~(1)~~(2) The name of the resulting domestic limited partnership into which the converting business entity shall convert;

~~(2)~~(3) The terms and conditions of the conversion; and

~~(3)~~(4) The manner and basis for converting the interests in the converting business entity into interests, obligations, or securities of the resulting domestic limited partnership or into cash or other property in whole or in part.

The plan of conversion may contain other provisions relating to the conversion.

(b) ~~In the case of a domestic limited liability company, the plan of conversion must be approved in the manner provided for approval of such a conversion in its articles of organization or a written operating agreement or, if there is no such provision, by the unanimous consent of its members. In the case of a partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by the laws of this State, the plan of conversion must be approved in the manner provided for the approval of such a conversion in a written partnership agreement that is binding on all the partners or, if there is no such provision, by the unanimous consent of all the partners. In the case of a foreign limited liability company, a foreign limited partnership, or other partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by a law other than the laws of this State, the~~ The plan of conversion ~~must~~ shall be approved in accordance with the laws of the state or country governing the organization and internal affairs of the converting business entity.

(c) After a plan of conversion has been approved as provided in subsection (b) of this section, but before a certificate of limited partnership for the resulting domestic limited ~~liability company~~ partnership becomes effective, the plan of conversion may be amended or abandoned to the extent ~~provided in the plan of conversion.~~ permitted by the laws that govern the organization and internal affairs of the converting business entity."

SECTION 141. G.S. 59-1052 reads as rewritten:

"**§ 59-1052. Filing of certificate of limited partnership by converting business entity.**

(a) After a plan of conversion has been approved by the converting business entity as provided in G.S. 59-1051, the converting business entity shall deliver a certificate of limited partnership to the Secretary of State for filing. In addition to the matters required or permitted by G.S. 59-201, the certificate of limited partnership shall ~~state:~~ contain articles of conversion stating:

(1) That the domestic limited partnership is being formed pursuant to a conversion of another business entity;

(2) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs; and

(3) That a plan of conversion has been approved by the converting business entity in the manner required by law.

If the plan of conversion is abandoned after the certificate of limited partnership has been filed with the Secretary of State but before the certificate of limited partnership becomes effective, the converting business entity ~~promptly~~ shall deliver to the Secretary

of State for filing prior to the time the articles of organization become effective an amendment to the certificate of limited partnership ~~reflecting the abandonment of the plan of conversion.~~ withdrawing the certificate of limited partnership.

(b) The conversion takes effect when the certificate of limited partnership becomes effective.

(c) ~~The converting business entity shall furnish a copy of the plan of conversion, on request and without cost, to any member or partner (whether general or limited) of the converting business entity.~~

(d) Certificates of conversion shall also be registered as provided in G.S. 47-18.1."

SECTION 142. Article 5 of Chapter 59 of the General Statutes is amended by adding a new Part to read:

"Part 10B. Conversion of Limited Partnership.

"**§ 59-1054. Conversion.**

A domestic limited partnership may convert to a different business entity if:

(1) The conversion is permitted by the laws of the state or country governing the organization and internal affairs of such other business entity; and

(2) The converting domestic limited partnership complies with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section.

"**§ 59-1055. Plan of conversion.**

(a) The converting domestic limited partnership shall approve a written plan of conversion containing:

(1) The name of the converting domestic limited partnership;

(2) The name of the resulting business entity into which the domestic limited partnership shall convert, its type of business entity, and the state or country whose laws govern its organization and internal affairs;

(3) The terms and conditions of the conversion; and

(4) The manner and basis for converting the interests in the domestic limited partnership into interests, obligations, or securities of the resulting business entity or into cash or other property in whole or in part.

The plan of conversion may contain other provisions relating to the conversion.

(b) The plan of conversion shall be approved by the domestic limited partnership in the manner provided for the approval of the conversion in a written partnership agreement or, if there is no provision, by the unanimous consent of its partners. If any partner of the converting domestic limited partnership will have personal liability for any existing or future obligation of the resulting business entity solely as a result of holding an interest in the resulting business entity, then in addition to the requirements of the preceding sentence, approval of the plan of conversion by the domestic limited

partnership shall require the consent of each such partner. The converting domestic limited partnership shall provide a copy of the plan of conversion to each partner of the converting domestic limited partnership at the time provided in a written partnership agreement or, if there is no such provision, prior to its approval of the plan of conversion.

(c) After a plan of conversion has been approved by a domestic limited partnership but before the articles of conversion become effective, the plan of conversion (i) may be amended as provided in the plan of conversion, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of conversion or written partnership agreement or, if not so provided, as determined by the general partners of the domestic limited partnership in accordance in G.S. 59-403.

"**§ 59-1056. Articles of conversion.**

(a) After a plan of conversion has been approved by the converting domestic limited partnership as provided in G.S. 59-1055, the converting domestic limited partnership shall deliver articles of conversion to the Secretary of State for filing. The articles of conversion shall state:

(1) The name of the converting domestic limited partnership;

(2) The name of the resulting business entity, its type of business entity, the state or country whose laws govern its organization and internal affairs, and, if the resulting business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address; and

(3) That a plan of conversion has been approved by the domestic limited partnership as required by law.

If the domestic limited partnership is converting to a business entity whose formation or whose status as a registered limited liability partnership, as defined in G.S. 59-32, or limited liability limited partnership requires the filing of a document with the Secretary of State, then the articles of conversion shall be included as part of that document instead of separately filing the articles of conversion.

If the plan of conversion is abandoned after the articles of conversion have been filed with the Secretary of State but before the articles of conversion become effective, the converting domestic limited partnership shall deliver to the Secretary of State for filing prior to the time the articles of conversion become effective an amendment of the articles of conversion withdrawing the articles of conversion.

(b) The conversion takes effect when the articles of conversion become effective.

(c) Certificates of conversion shall also be registered as provided in G.S. 47-18.1.

"**§ 59-1057. Effects of conversion.**

(a) When the conversion takes effect:

(1) The converting domestic limited partnership ceases its prior form of organization and continues in existence as the resulting business entity;

(2) The title to all real estate and other property owned by the converting domestic limited partnership continues vested in the resulting business entity without reversion or impairment;

(3) All liabilities of the converting domestic limited partnership continue as liabilities of the resulting business entity;

(4) A proceeding pending by or against the converting domestic limited partnership may be continued as if the conversion did not occur; and

(5) The interests in the converting domestic limited partnership that are to be converted into interests, obligations, or securities of the resulting business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of interests in the converting domestic limited partnership are entitled only to the rights provided in the plan of conversion.

The conversion shall not affect the liability or absence of liability of any holder of an interest in the converting domestic limited partnership for any acts, omissions, or obligations of the converting domestic limited partnership made or incurred prior to the effectiveness of the conversion. The cessation of the existence of the converting domestic limited partnership in its form of organization as a domestic limited partnership in the conversion shall not constitute a dissolution or termination of the converting domestic limited partnership.

(b) If the resulting business entity is not a domestic corporation or a domestic limited liability company, when the conversion takes effect the resulting business entity is deemed:

(1) To agree that it may be served with process in this State for enforcement of (i) any obligation of the converting domestic limited partnership, and (ii) any obligation of the resulting business entity arising from the conversion; and

(2) To have appointed the Secretary of State as its agent for service of process in any such proceeding. 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 the process and the fee required by G.S. 59-1106(b). Upon receipt of service of process on behalf of a resulting business 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 resulting business entity. If the resulting business entity is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the resulting business entity is not authorized to

transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 59-1056(a)(2)."

SECTION 143. Article 5 of Chapter 59 of the General Statutes is amended by adding a new Part with the heading set forth below and containing G.S. 59-1054, 59-1055, 59-1056, and 59-1057 recodified as G.S. 59-1070, 59-1071, 59-1072, and 59-1073, respectively.

"Part 10C. Merger."

SECTION 144. G.S. 59-1070, as recodified by Section 143 of this act, reads as rewritten:

"**§ 59-1070. Merger.**

A domestic limited partnership may merge with one or more other domestic limited partnerships or other business entities if:

(1) The merger is permitted by the laws of the state or country governing the organization and internal affairs of each other merging business entity; and

(2) Each merging domestic limited partnership and each other merging business entity comply with the requirements of G.S. ~~59-1055~~59-1071 and G.S. ~~59-1056~~59-1072, and, to the extent applicable, the laws referred to in subdivision (1) of this section."

SECTION 145. G.S. 59-1071(b), as recodified by Section 143 of this act, reads as rewritten:

"(b) In the case of a merging domestic limited partnership, the plan of merger must be approved in the manner provided in a written partnership agreement that is binding on all the partners for approval of a merger with the type of business entity contemplated in the plan of merger, or, if there is no provision, by the unanimous consent of its partners. If any partner of a merging domestic limited partnership has or will have personal liability for any existing or future obligation of the surviving business entity solely as a result of holding an interest in the surviving business entity, then in addition to the requirements of the preceding sentence, approval of the plan of merger by the domestic limited partnership shall require the consent of that partner. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of the merging business entity."

SECTION 146. G.S. 59-1072(a), as recodified by Section 143 of this act, reads as rewritten:

"(a) After a plan of merger has been approved by each merging domestic limited partnership and each other merging business entity as provided in G.S. ~~59-1055,~~ 59-1071, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

(1) The plan of merger;

(2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

(3) The name ~~and address~~ of the surviving business ~~entity;~~ entity and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address;

(4) A statement that the plan of merger has been approved by each merging business entity in the manner required by law; and

(5) The effective date and time of the merger if it is not to be effective at the time of filing of the articles of merger.

If the plan of merger is amended or abandoned after the articles of merger have been filed but before the articles of merger become effective, the surviving business entity promptly shall deliver to the Secretary of State for filing an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger."

SECTION 147. G.S. 59-1073(b), as recodified by Section 143 of this act, 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~~ To have appointed the Secretary of State as its ~~registered~~ agent for service of process in any such proceeding. ~~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~~ State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of ~~such process.~~ the process and the fee required by G.S. 59-1106(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.~~ entity. If the surviving business entity is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the surviving business entity is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 59-1072(a)(3)."

SECTION 148. G.S. 59-1105 is repealed.

SECTION 149. G.S. 59-1106 reads as rewritten:

"**§ 59-1106. Filing, service, and copying ~~Fees;~~ fees; expedited filings.**

(a) The Secretary of State shall collect the following fees ~~and remit them to the State Treasurer for the use of the State.~~ when the documents described in this subsection are delivered to the Secretary of State for filing:

	Document	Fee
(1)	~~For filing a certificate~~ Certificate of limited ~~partnership (G.S. 59-201)~~ partnership, which does not include an application for registration as a limited liability limited partnership	$50.00
(1a)	Certificate of limited partnership, which includes an application for registration as a limited liability limited partnership	125.00
(2)	~~For filing a certificate~~ Certificate of amendment ~~(G.S. 59-202; 59-905)~~	25.00
(3)	~~For filing a certificate~~ Certificate of cancellation ~~(G.S. 59-203; 59-906)~~	25.00
(4)	~~For filing an application~~ Application for reservation of name ~~(G.S. 59-104(a))~~	10.00
(5)	~~For filing a~~ Notice of transfer of name ~~(G.S. 59-104(d))~~	10.00
(5a)	Limited partnership's or foreign limited partnership's statement of change of registered agent or registered office or both	5.00
(5b)	Agent's statement of change of registered office for each affected	

	partnership	5.00
(5c)	Agent's statement of resignation	No Fee
(5d)	Designation of registered agent or registered office or both	5.00
(6)	~~For filing an application~~ Application for registration as foreign limited partnership ~~(G.S. 59-502)~~	50.00
~~(7)~~	~~For preparing and furnishing a copy of any document, instrument or paper filed or recorded relating to a limited partnership (G.S. 59-206(c))~~	
	~~For each page~~	~~1.00~~
	~~For affixing the certificate and official seal Thereto~~	~~5.00~~
~~(8)~~	~~For comparing a copy furnished to him of any document instrument or paper filed or recorded relating to a limited partnership.~~	
	~~For each page~~	~~1.00~~
(9)	~~For filing any~~ Any other document ~~not herein specifically provided for~~required or permitted to be filed by this Article	10.00
~~(10)~~	~~For the expedited filing by the end of the same business day of a document received in good order by 12:00 noon Eastern Standard Time~~	~~200.00 additional fee~~
~~(11)~~	~~For the expedited filing of a document received in good order within 24 hours after receipt, excluding weekends and holidays additional fee~~	~~100.00~~
(12)	Advisory review of a document	~~200.00.~~ 200.00
(13)	Certificate of amendment of registration as foreign limited partnership	25.00
(14)	Cancellation of registration as foreign limited partnership	25.00
(15)	Application for certificate of withdrawal by reason of merger, consolidation, or conversion	10.00
(16)	Articles of merger	50.00
(17)	Articles of conversion (other than articles of conversion included as part of another document)	50.00
(18)	Application for registration as a limited liability limited partnership (other than an application included in the certificate of	

limited partnership)		125.00
(19)	Certificate of amendment of registration as a limited liability limited partnership	25.00
(20)	Certificate of cancellation of registration as a limited liability limited partnership	25.00
(21)	Annual report for a limited liability limited partnership	200.00.

(b) The Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary under this Article. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign limited partnership:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) Five dollars ($5.00) for the certificate.

(d) The Secretary of State shall guarantee the expedited filing of a document upon receipt of the document in proper form and the payment of the required filing fee. The Secretary of State may collect the following additional fees for the expedited filing of a document received in good form:

(1) Two hundred dollars ($200.00) for the filing by the end of the same business day of a document received by 12:00 noon Eastern Standard Time; and

(2) One hundred dollars ($100.00) for the filing of a document within 24 hours after receipt, excluding weekends and holidays.

The Secretary of State shall not collect the fees allowed in ~~subdivisions (10) and (11) of~~ this ~~section~~ subsection unless the person submitting the document for filing requests an expedited filing and is informed by the Secretary of State of the fees prior to the filing of the document. ~~Upon receipt of a document in proper form and payment of the required filing fee, the Secretary of State shall guarantee the expedited filing of the document.~~"

SECTION 150. Part 11 of Article 5 of Chapter 59 of the General Statutes is amended by adding a new section to read:

"**§ 59-1107. Income taxation.**

A limited partnership, a foreign limited partnership authorized to transact business in this State, and a partner of one of these partnerships are subject to taxation under Article 4 of Chapter 105 of the General Statutes in accordance with their classification for federal income tax purposes. Accordingly, if a limited partnership or a foreign limited partnership authorized to transact business in this State is classified for federal income tax purposes as a C corporation as defined in G.S. 105-131(b)(2) or a S corporation as defined in G.S. 105-131(b)(8), the partnership and its partners are subject to tax under

Article 4 of Chapter 105 of the General Statutes to the same extent as a C corporation or an S corporation, as the case may be, and its shareholders. If a limited partnership or a foreign limited partnership authorized to transact business in this State is classified for federal income tax purposes as a partnership, the partnership and its partners are subject to tax under Article 4 of Chapter 105 of the General Statutes accordingly. If a limited partnership or a foreign limited partnership authorized to transact business in this State is classified for federal income tax purposes as other than a corporation or a partnership, the partnership and its partners are subject to tax under Article 4 of Chapter 105 of the General Statutes in a manner consistent with that classification. This section does not require a limited partnership or a foreign limited partnership to obtain an administrative ruling from the Internal Revenue Service on its classification under the Internal Revenue Code."

PART V. AMENDMENTS TO CHAPTER 105.

SECTION 151. 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~~ trust, or other person where no gain or loss arises on the transfer of the motor vehicle under section 351 or section 721 of the Code, or because the transfer is treated under the Code as being to an entity that is not a separate entity from its owner or whose separate existence is otherwise disregarded, or to a partnership, limited liability company, or corporation by merger, conversion, or consolidation in accordance with applicable law."

SECTION 152. G.S. 105-230(b) reads as rewritten:

"(b) Any act performed or attempted to be performed during the period of suspension is invalid and of no ~~effect.~~ effect, unless the Secretary of State reinstates the corporation or limited liability company pursuant to G.S. 105-232."

SECTION 153. G.S. 105-232(a) reads as rewritten:

"(a) Any corporation or limited liability company whose articles of incorporation, articles of organization, or certificate of authority to do business in this State has been suspended by the Secretary of State under G.S. 105-230, that complies with all the requirements of this Subchapter and pays all State taxes, fees, or penalties due from it (which total amount due may be computed, for years prior and subsequent to the suspension, in the same manner as if the suspension had not taken place), and pays to the Secretary of Revenue a fee of twenty-five dollars ($25.00) to cover the cost of reinstatement, is entitled to exercise again its rights, privileges, and franchises in this State. The Secretary of Revenue shall notify the Secretary of State of this compliance and the Secretary of State shall reinstate the corporation or limited liability company by

appropriate entry upon the records of the ~~Office of~~ office of the Secretary of State. Upon entry of reinstatement, it relates back to and takes effect as of the date of the suspension by the Secretary of State, and the corporation or limited liability company resumes carrying on its business as if the suspension had never occurred, subject to the rights of any person who reasonably relied to that person's prejudice on the suspension. The Secretary of State shall immediately notify by mail the corporation or limited liabiiity company of the reinstatement."

PART VI. MISCELLANEOUS PROVISIONS.

SECTION 154.(a) The Revisor of Statutes shall cause to be printed all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

SECTION 154.(b) Nothing in this act shall supersede the provisions of Articles 10 or 65 of Chapter 58 of the General Statutes, and this act does not create an alternate means for an entity governed by Article 65 of Chapter 58 of the General Statutes to convert to a different business form.

PART VII. EFFECTIVE DATE.

SECTION 155.(a) Section 59 of this act becomes effective September 1, 2001. The remainder of this act becomes effective January 1, 2002.

SECTION 155.(b) The amendment to G.S. 105-232 set forth in Section 153 of this act is intended to be retroactive. Accordingly, any act performed or attempted to be performed during the period of suspension of any corporation or limited liability company reinstated pursuant to G.S. 105-232(a) prior to January 1, 2002, shall not be deemed to be invalid and of no effect under G.S. 105-230, subject to the rights of any person who reasonably relied to that person's prejudice on the suspension.

VISITOR REGISTRATION SHEET

J. II — 7/24/01

Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Cook	Wyrick Robbins - Raleigh NC
Mark Davidson	Brooks Pierce - Greensboro NC
Michelle Frazier	NC Bar Assoc
Robert Wilson	Secretary of State's Office
[illegible]	Secretary of State
Marlene Dawkins	Secretary of State
John McHugh	GOV OFFICE
Katie Mills	Intern
Dirk Taylor	NCACC
STEVE KEENE	NCMS
HUGH TILSON	NLHA
DAVID BARNES	Poyner + Spruill LLP
Jack P. Hawke	
[illegible]	DSI
Vance Kimbrell	NCCA
Robert Webb III	D.O.J. intern
Floyd Lewis	General Statutes Commission
P. Bryan Hall	"
Meredith Mishoe	
[illegible]	NCAWA
Charles Grower	NCATL
Christopher Capel	Smith Anderson Law Firm

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

July 31, 2001

The House Committee on JUDICIARY II met at 10:00 a.m. on Tuesday, July 31, 2001, in Room 421 of the Legislative Office Building. The following members were present: Chairman Baddour, Representatives Culpepper, Decker, Gulley, Hall, Jeffus, Justus, Miller, Sherrill, Weiss.

The Visitor Registration Sheet is attached as a part of the record of the Minutes and related handouts are listed as ATTACHMENTS for the record.

Chairman Baddour presided and called the meeting to order. He recognized the Pages who were assigned to serve the Committee. The following bill was considered:

SB 790 Good Funds Settlement Act Revisions. Chairman Baddour recognized Senator Hartsell, bill sponsor, to explain the bill. Representative Hall moved that the Proposed Committee Substitute be considered for adoption. Motion carried. Mr. John Beard, from the North Carolina Bar Association and Lawyers Mutual, was recognized to speak on the bill. Mr. David Shearon, Real Property Council, was recognized to speak on the bill. McNeil Chestnut was also recognized to speak on the bill. No vote was taken.

The meeting adjourned at 10:50 a.m.

Representative Philip A. Baddour
Presiding Chairman

Julie R. Allen
Committee Assistant

ATTACHMENTS:

HOUSE JUDICIARY II COMMITTEE
AGENDA

Tuesday, July 31, 2001

10:00 A.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF

Robin Johnson
Esther Manheimer
Jeff Hudson
Julie Allen (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDERED:

SB 790 Good Funds Settlement Act Revisions – Sen. Hartsell

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

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SENATE BILL 790
PROPOSED HOUSE COMMITTEE SUBSTITUTE S790-CSRH-53 [v.1]

7/18/2001 12:14:11 PM

Short Title: Good Funds Settlement Act Revisions. (Public)

Sponsors:

Referred to:

April 3, 2001

A BILL TO BE ENTITLED

AN ACT TO REVISE THE GOOD FUNDS SETTLEMENT ACT TO REPEAL THE AUTHORITY OF A SETTLEMENT AGENT TO DISBURSE SETTLEMENT PROCEEDS IN RELIANCE ON A DEPOSIT IN THE FORM OF A CHECK DRAWN ON THE ACCOUNT OF OR ISSUED BY A LENDER WHICH IS APPROVED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AS EITHER A SUPERVISED OR NONSUPERVISED MORTGAGEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 45A-4 reads as rewritten:

"**§ 45A-4. Duty of settlement agent.**

The settlement agent shall cause recordation of the deed, if any, the deed of trust or mortgage, or other loan documents required to be recorded at settlement. The settlement agent shall not disburse any of the closing funds prior to the recordation of any deeds or loan documents required to be filed by the lender, if applicable, and verification that the closing funds used to fund disbursement are deposited in the settlement agent's trust or escrow account in one or more forms prescribed by this Chapter. Unless otherwise provided in this Chapter, a settlement agent shall not cause a disbursement of settlement proceeds unless those settlement proceeds are collected funds. Notwithstanding that a deposit made by a settlement agent to its trust or escrow account does not constitute collected funds, the settlement agent may cause a disbursement of settlement proceeds from its trust or escrow account in reliance on that deposit if the deposit is in one or more of the following forms:

(1) A certified check;

(2) A check issued by the ~~State of North Carolina,~~ State, the United States, ~~or~~ a political subdivision of the ~~State of North Carolina or the United States;~~State, or an agency or instrumentality of the United States, including an agricultural credit association;

(3) A cashier's check, teller's check, or official bank check drawn on or issued by a financial institution insured by the Federal Deposit Insurance Corporation or a comparable agency of the federal or state government;

(4) A check drawn on the trust account of an attorney licensed to practice in the State of North Carolina;

(5) A check or checks drawn on the trust or escrow account of a real estate broker licensed under Chapter 93A of the General Statutes;

(6) A personal or commercial check or checks in an aggregate amount not exceeding five thousand dollars ($5,000) per closing if the settlement agent making the deposit has reasonable and prudent grounds to believe that the deposit will be irrevocably credited to the settlement agent's trust or escrow ~~account;~~account.

~~(7) A check drawn on the account of or issued by a lender which is approved by the United States Department of Housing and Urban Development as either a supervised or nonsupervised mortgagee as defined in 24 C.F.R. section 202.2.~~"

SECTION 2. G.S. 45A-5 reads as rewritten:

"**§ 45A-5. Duty of lender, purchaser, or seller.**

The lender, purchaser, or seller shall, at or before closing, deliver closing funds, including the gross or net loan funds, if applicable, to the settlement agent either in the form of collected funds or in the form of a negotiable instrument described in G.S. 45A-4(1) through ~~(7),~~ (6), provided that the lender, purchaser, or seller, as applicable, shall cause that negotiable instrument to be honored upon presentment for payment to the bank or other depository institution upon which the instrument is drawn. However, in the case of a refinancing, or any other loan where a right of rescission applies, the lender shall, no later than the business day after the expiration of the rescission period required under the federal Truth-in-Lending Act, 15 U.S.C. § 1601, et seq., cause disbursement of loan funds to the settlement agent in one or more of the forms prescribed by provisions in this Chapter."

SECTION 3. This act becomes effective October 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

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SENATE BILL 790

Short Title:	Good Funds Settlement Act Revisions.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary I.	

April 3, 2001

A BILL TO BE ENTITLED

AN ACT TO REVISE THE GOOD FUNDS SETTLEMENT ACT TO REPEAL THE AUTHORITY OF A SETTLEMENT AGENT TO DISBURSE SETTLEMENT PROCEEDS IN RELIANCE ON A DEPOSIT IN THE FORM OF A CHECK DRAWN ON THE ACCOUNT OF OR ISSUED BY A LENDER WHICH IS APPROVED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AS EITHER A SUPERVISED OR NONSUPERVISED MORTAGEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 45A-4 reads as rewritten:

"**§ 45A-4. Duty of settlement agent.**

The settlement agent shall cause recordation of the deed, if any, the deed of trust or mortgage, or other loan documents required to be recorded at settlement. The settlement agent shall not disburse any of the closing funds prior to the recordation of any deeds or loan documents required to be filed by the lender, if applicable, and verification that the closing funds used to fund disbursement are deposited in the settlement agent's trust or escrow account in one or more forms prescribed by this Chapter. Unless otherwise provided in this Chapter, a settlement agent shall not cause a disbursement of settlement proceeds unless those settlement proceeds are collected funds. Notwithstanding that a deposit made by a settlement agent to its trust or escrow account does not constitute collected funds, the settlement agent may cause a disbursement of settlement proceeds from its trust or escrow account in reliance on that deposit if the deposit is in one or more of the following forms:

(1) A certified check;

(2) A check issued by the State of North Carolina, the United States, or a political subdivision of the State of North Carolina or the United States;

(3) A cashier's check, teller's check, or official bank check drawn on or issued by a financial institution insured by the Federal Deposit Insurance Corporation or a comparable agency of the federal or state government;

(4) A check drawn on the trust account of an attorney licensed to practice in the State of North Carolina;

(5) A check or checks drawn on the trust or escrow account of a real estate broker licensed under Chapter 93A of the General Statutes;

(6) A personal or commercial check or checks in an aggregate amount not exceeding five thousand dollars ($5,000) per closing if the settlement agent making the deposit has reasonable and prudent grounds to believe that the deposit will be irrevocably credited to the settlement agent's trust or escrow account;

~~(7) A check drawn on the account of or issued by a lender which is approved by the United States Department of Housing and Urban Development as either a supervised or nonsupervised mortgagee as defined in 24 C.F.R. section 202.2.~~"

SECTION 2. G.S. 45A-5 reads as rewritten:

"**§ 45A-5. Duty of lender, purchaser, or seller.**

The lender, purchaser, or seller shall, at or before closing, deliver closing funds, including the gross or net loan funds, if applicable, to the settlement agent either in the form of collected funds or in the form of a negotiable instrument described in G.S. 45A-4(1) through ~~(7),~~ (6), provided that the lender, purchaser, or seller, as applicable, shall cause that negotiable instrument to be honored upon presentment for payment to the bank or other depository institution upon which the instrument is drawn. However, in the case of a refinancing, or any other loan where a right of rescission applies, the lender shall, no later than the business day after the expiration of the rescission period required under the federal Truth-in-Lending Act, 15 U.S.C. § 1601, et seq., cause disbursement of loan funds to the settlement agent in one or more of the forms prescribed by provisions in this Chapter."

SECTION 3. This act becomes effective October 1, 2001.

SENATE BILL 790:
Good Funds Settlement Act Revisions.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Hartsell
Date:	July 19, 2001	**Summary by:**	Robin Johnson*
Version:	S790-CSRH-53[V.1]		Committee Counsel

The PCS would clarify that a settlement agent may disburse funds in reliance on a deposit of a check issued by a federal agricultural credit association.

SUMMARY: Senate Bill 790 would repeal the authority of a settlement agent, in a real estate transaction, to disburse funds in reliance on a deposit in the form of a check from a lender approved as a supervised or nonsupervised mortgagee by the United States Department of Housing and Urban Development.

CURRENT LAW: Currently, G.S. 45A-4 sets out the duties of settlement agents, or those persons responsible for conducting settlement and disbursement of settlement proceeds, in real estate transactions involving one- to four-family residential dwellings and lots restricted to residential use.

Generally, when settlement funds are deposited in the settlement agent's trust or escrow account, they must be in the form of "collected funds" before they may be disbursed by the agent. "Collected funds" are defined in the Chapter as funds that have been deposited and irrevocably credited to a settlement agent's account.

However, G.S. 45A-4 allows the settlement agent to disburse funds, even when they are not "collected funds", in reliance on a deposit when it is in one of the following forms:

- Certified check.
- Check issued by the State, a political subdivision of the State, or the United States.
- Cashier's check, teller's check, or official bank check, insured by FDIC or comparable agency.
- Check drawn on the trust account of a licensed attorney.
- Check drawn on the trust account of a licensed real estate broker.
- Personal or commercial checks not exceeding $5000 per closing when the agent has reasonable grounds to believe that the deposit will be irrevocably credited to the account.
- Check drawn on the account of a lender approved as a supervised or nonsupervised mortgagee by the United States Department of Housing and Urban Development.

Federal law defines agricultural credit associations as federally chartered corporate bodies and instrumentalities of the United States organized to engage in an agricultural credit business. They have substantial investment and loan authority, and operate under the regulatory jurisdiction of the Federal Farm Credit Bureau in their district. A recent Attorney General's advisory opinion found that the term "political subdivisions of the United States", as used in the Good Funds Settlement Act, is ambiguous as to whether it includes these associations.

BILL ANALYSIS: Senate Bill 790 would:

- Repeal the settlement agent's authority to disburse funds that are not "collected funds" in reliance on a deposit in the form of a check drawn on the account of a lender approved as a supervised or nonsupervised mortgagee by the United States Department of Housing and Urban Development.
- Clarify the meaning of a "political subdivision of the United States" by changing that term to "an agency or instrumentality of the United States, including an agricultural credit association."

EFFECTIVE DATE: The act would become effective October 1, 2001.

S790-SMRH-001 * *Ms. Wendy Graf, Counsel to Senate Judiciary I substantially contributed to this summary.*

§ 45A-3. Definitions.

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

(1) "Bank" means a financial institution, including but not limited to a national bank, state chartered bank, savings bank, or credit union that is insured by the Federal Deposit Insurance Corporation or a comparable agency of the federal or state government.

(2) "Borrower" means the maker of the promissory note evidencing the loan to be delivered at the closing.

(3) "Cashier's check" means a check that is drawn on a bank, is signed by an officer or employee of the bank on behalf of the bank as drawer, is a direct obligation of the bank, and is provided to a customer of the bank or acquired from the bank for remittance purposes.

(4) "Certified check" means a check with respect to which the drawee bank certifies by signature on the check of an officer or other authorized employee of the bank that (i) the signature of the drawer on the check is genuine and the bank has set aside funds that are equal to the amount of the check and will be used to pay the check or (ii) the bank will pay the check upon presentment.

(5) "Closing" means the time agreed upon by the purchaser, seller, and lender (if applicable), when the execution and delivery of the documents necessary to consummate the transaction contemplated by the parties to the contract occurs, and includes a loan closing.

(6) "Closing funds" means the gross or net proceeds of the real estate transaction, including any loan funds, to be disbursed by the settlement agent as part of the disbursement of settlement proceeds on behalf of the parties.

(7) "Collected funds" means funds deposited and irrevocably credited to a settlement agent's account used to fund the disbursement of settlement proceeds which account is a trust account, escrow account, or an account held by a company or its subsidiary which is licensed and supervised by the North Carolina Commissioner of Banks.

(8) "Disbursement of settlement proceeds" means the payment of all closing funds from the transaction by the settlement agent to the persons or entities entitled to that payment.

(9) "Lender" means any person or entity engaged in making or originating loans secured by mortgages or deeds of trust on real estate.

(10) "Loan closing" means the time agreed upon by the borrower and lender, as applicable, when the execution and delivery of loan documents by the borrower occurs.

(11) "Loan documents" means the note evidencing the debt due to the lender, the deed of trust or mortgage to secure that debt to the lender, and any other documents required by the lender to be executed by the borrower as part of the loan closing transaction.

(12) "Loan funds" means the gross or net proceeds of the loan to be disbursed by the settlement agent as part of the disbursement of settlement proceeds on behalf of the borrower and lender.

(13) "Party" or "parties" means the seller, purchaser, borrower, lender, and settlement agent, as applicable to the subject transaction.

(14) "Settlement" means the time when the settlement agent has received the duly executed deed, deed of trust or mortgage, and other loan documents and funds required to carry out the terms of the contracts between the parties.

(15) "Settlement agent" means the person or persons responsible for conducting the settlement and disbursement of the settlement proceeds, and includes any individual, corporation, partnership, or other entity conducting the settlement and disbursement of the closing funds.

(16) "Teller's check" means a check provided to a customer of a bank or acquired from a bank for remittance purposes, that is drawn by the bank, and drawn on another bank or payable through or at a bank. (1995 (Reg. Sess., 1996), c. 714, s. 1.)

VISITOR REGISTRATION SHEET

J II Rep Barbour 07/31/01

Name of Committee Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tim Minton	NC Home Builders Assn
Michelle Frazier	NC Bar Assoc.
David R. Shearon	Attorney Real Property Council NCBA
John Beard	NCBA Association & Lawyers Mutual
Harold Webb	NCADA
Katie Mills	Culpepper's Intern
McNeil Chestnut	Asst. A.G. For the Comm. Ins.
Margaret Westbrook	Kennedy Covington
[illegible]	Moore & Van Allen
Paul Stock	NC Bankers Assn.

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

August 7, 2001

The House Committee on JUDICIARY II met at 10:00 a.m. on Tuesday, August 7, 2001, in Room 421 of the Legislative Office Building. The following members were present: Chairman Baddour, Vice Chairman Phil Haire, Representatives Culpepper, Decker, Gulley, Hall, Jeffus, Justus, Miller, Sherrill, Weiss.

The Visitor Registration Sheet is attached as a part of the record of the Minutes and related handouts are listed as ATTACHMENTS for the record.

Chairman Baddour presided and called the meeting to order. He recognized the Pages who were assigned to serve the Committee. The following bills were considered:

SB 241 Health Insurance Termination Notice. Chairman Baddour recognized Senator Dalton, bill sponsor, to explain the bill. Representative Sherrill moved that the Proposed Committee Substitute be considered for adoption. Motion carried. Mr. Bill Hale, from the Department of Insurance, was recognized to speak on the bill. Chairman Baddour displaced the bill.

SB 119 District Court Elections Nonpartisan. Chairman Baddour recognized Senator Dalton, bill sponsor, to speak on the bill. Representative Jeffus moved to hear the Proposed Committee Substitute before the committee. Motion passed. Chairman Baddour recognized the Honorable Robert Rader, District Court Judge, to speak on the bill on behalf of the North Carolina Association of District Court Judges. The Honorable Ann Marie Calabria, District Court Judge, was recognized to speak on the importance of this bill. Mr. Stan Sprague, Court Watch of North Carolina, was recognized to speak on bill. The Honorable Tom Jarrell, was recognized to speak in favor of the bill. The Honorable A. Robinson Hassell, District Court Judge, was recognized to speak in favor of the bill. Mr. Dick Taylor and Ms. Stella Boswell, North Carolina Academy of Trial Lawyers, were recognized to speak on bill. No votes were taken.

The meeting adjourned at 10:55 a.m.

Phil Baddour
Representative Philip A. Baddour
Presiding Chairman

Julie R. Allen
Julie R. Allen
Committee Assistant

Jacquelyn A. Hamby
Jacquelyn A. Hamby
Transcribing Committee Assistant

ATTACHMENTS

HOUSE JUDICIARY II COMMITTEE AGENDA

Tuesday, August 7, 2001

10:00 A.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF

Robin Johnson
Esther Manheimer
Jeff Hudson
Julie Allen (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDERED:

SB 119 District Court Elections Nonpartisan – Sen. Dalton

SB 241 Health Insurance Termination Notice – Sen. Dalton

SB 790 Good Funds Settlement Act Revisions – Sen. Hartsell

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

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SENATE BILL 241

Insurance and Consumer Protection Committee Substitute Adopted 4/10/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S241-CSSB-42 [v.7]

6/18/2001 3:51:56 PM

Short Title: Health Insurance Termination Notice. (Public)

Sponsors:

Referred to:

February 26, 2001

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LAW MAKING IT A FELONY FOR AN INSURANCE FIDUCIARY TO CAUSE TERMINATION OF GROUP HEALTH OR LIFE INSURANCE COVERAGE BY NONPAYMENT OF PREMIUM WITHOUT GIVING NOTICE TO MEMBERS OF THE GROUP.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-50-40 reads as rewritten:

"**§ 58-50-40. Willful failure to pay group insurance premiums; willful termination of a group health plan; notice to persons insured; penalty; restitution; examination of insurance transactions.**

(a) As used in this section and in ~~G.S. 58-50-45, the term "group health insurance" means: (1) any policy described in G.S. 58-51-75, 58-51-80, or 58-51-90; (2) any group insurance certificate or group subscriber contract issued by a hospital service corporation pursuant to Articles 65 and 66 of this Chapter; (3) any health care plan provided or arranged by a health maintenance organization pursuant to Article 67 of this Chapter; or (4) any multiple employer welfare arrangement as defined in G.S. 58-49-30(a).As used in this section and in G.S. 58-50-45, the term "insurance fiduciary" means any person, employer, principal, agent, trustee, or third party administrator, who is responsible for the payment of group health or group life insurance premiums. As used in this section and in G.S. 58-50-45, "premiums" includes contributions to a multiple employer welfare arrangement.~~G.S.58-50-45:

(1) 'Group health insurance' means any policy described in G.S. 58-51-75, G.S. 58-51-80, or G.S. 58-51-90; any group insurance certificate or group subscriber contract issued by a service corporation pursuant to Articles 65 and 66 of this Chapter; any health care plan provided or arranged by a health maintenance organization pursuant to Article 67 of this Chapter; or any multiple employer welfare arrangement as defined in G.S. 58-49-30(a).

(2) 'Group health plan' means a single employer self-insured group health plan as defined in section 607(1) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1167(1), as amended.

(3) 'Insurance fiduciary' means any person, employer, principal, agent, trustee, or third party administrator, who is responsible for the payment of group health or group life insurance premiums or has the authority or ability to terminate a group health plan.

(4) 'Premiums' includes contributions to a group health plan or to a multiple employer welfare arrangement.

(b) No insurance fiduciary shall:

(1) Cause the cancellation or nonrenewal of group health or group life insurance and the consequential loss of the coverages of the persons insured by willfully failing to pay such premiums in accordance with the terms of a group health or group life insurance contract; or, in the case of a group health plan to which there are no premiums contributed, willfully terminate the plan; and

(2) Willfully fail to deliver, at least 45 days before the termination of ~~such insurance,~~ the group health or group life insurance or group health plan, to all persons covered by the group policy or group health plan a written notice of the insurance fiduciary's intention to stop payment of ~~premiums.~~premiums or terminate the group health plan.

(c) Any insurance fiduciary who violates subsection (b) of this section shall be guilty of a Class H felony.

(e) Upon conviction under subsection (c) of this section the court shall order the insurance fiduciary to make full restitution to persons insured who incurred expenses that would have been covered by the group health insurance or group health plan or full restitution to beneficiaries of the group life insurance for death benefits that would have been paid if the coverage had not been terminated.

(f) Insurance fiduciaries subject to this section shall be subject to the provisions of G.S. 58-2-200 with respect only to transactions involving group health or life insurance.

(g) In the notice required by subsection (b) of this section, the insurance fiduciary shall also notify those persons of their rights to health insurance conversion policies under Article 53 of this Chapter and their rights ~~under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA).~~ to purchase individual policies under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, as amended, and Article 68 of this Chapter.

(h) In the event of the insolvency of an employer or insurance fiduciary who has violated this section, any person specified in subsection (e) of this section shall have a lien upon the assets of the employer or insurance fiduciary for the expenses or benefits specified in subsection (e) of this section. With respect to personal property within the estate of the insolvent employer or insurance fiduciary, the lien shall have priority over unperfected security interests.

(i) Upon the termination of a group health insurance contract by the insurer, the insurer shall notify every subscriber and certificate holder under the contract of the termination of the contract along with the certification required to be provided under G.S. 58-68-30(e)."

SECTION 2. G.S. 58-50-45 reads as rewritten:

"**§ 58-50-45. Group health or life insurers to notify insurance fiduciaries of obligations.**

(a) ~~On and after January 1, 1986, upon~~ Upon the issuance or renewal of any policy, contract, certificate, or evidence of coverage of group health or life insurance, the insurer, corporation, or health maintenance organization shall give written notice to the insurance fiduciary of the provisions of G.S. 58-50-40.

(b) The notice required by subsection (a) of this section shall be printed in 10 point type and shall read as follows:

'UNDER NORTH CAROLINA GENERAL STATUTE SECTION 58-50-40, NO PERSON, EMPLOYER, PRINCIPAL, AGENT, TRUSTEE, OR THIRD PARTY ADMINISTRATOR, WHO IS RESPONSIBLE FOR THE PAYMENT OF GROUP HEALTH OR LIFE INSURANCE OR GROUP HEALTH ~~CARE~~ PLAN PREMIUMS, SHALL: (1) CAUSE THE CANCELLATION OR NONRENEWAL OF GROUP HEALTH OR LIFE INSURANCE, HOSPITAL, MEDICAL, OR DENTAL SERVICE CORPORATION PLAN, MULTIPLE EMPLOYER WELFARE ARRANGEMENT, OR GROUP HEALTH ~~CARE~~ PLAN COVERAGES AND THE CONSEQUENTIAL LOSS OF THE COVERAGES OF THE PERSONS INSURED, BY WILLFULLY FAILING TO PAY ~~SUCH~~ THOSE PREMIUMS IN ACCORDANCE WITH THE TERMS OF THE INSURANCE OR PLAN CONTRACT, AND (2) WILLFULLY FAIL TO DELIVER, AT LEAST 45 DAYS ~~PRIOR TO~~ BEFORE THE TERMINATION OF ~~SUCH~~ THOSE COVERAGES, TO ALL PERSONS COVERED BY THE GROUP POLICY A WRITTEN NOTICE OF THE PERSON'S INTENTION TO STOP PAYMENT OF PREMIUMS. THIS WRITTEN NOTICE MUST ALSO CONTAIN A NOTICE TO ALL PERSONS COVERED BY THE GROUP POLICY OF THEIR RIGHTS TO HEALTH INSURANCE CONVERSION POLICIES UNDER ARTICLE 53 OF CHAPTER 58 OF THE GENERAL STATUTES ~~CHAPTER 58~~ AND THEIR RIGHTS TO PURCHASE INDIVIDUAL POLICIES UNDER THE FEDERAL ~~CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT (COBRA).~~ HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT AND UNDER ARTICLE 68 OF CHAPTER 58 OF THE GENERAL STATUTES. VIOLATION OF THIS LAW IS A FELONY. ANY PERSON VIOLATING THIS LAW IS ALSO SUBJECT TO A COURT ORDER REQUIRING THE PERSON TO COMPENSATE PERSONS INSURED FOR EXPENSES OR LOSSES INCURRED AS A RESULT OF THE TERMINATION OF THE INSURANCE.'"

SECTION 3. If any section or provision of this act is declared unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the validity of the act as a whole or any part other than the part declared to be unconstitutional, preempted, or otherwise invalid.

SECTION 4. This act becomes effective December 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 2

SENATE BILL 241

Insurance and Consumer Protection Committee Substitute Adopted 4/10/01

Short Title: Health Insurance Termination Notice. (Public)

Sponsors:

Referred to:

February 26, 2001

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LAW MAKING IT A FELONY FOR AN INSURANCE FIDUCIARY TO CAUSE TERMINATION OF GROUP HEALTH OR LIFE INSURANCE COVERAGE BY NONPAYMENT OF PREMIUM WITHOUT GIVING NOTICE TO MEMBERS OF THE GROUP.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-50-40 reads as rewritten:

"**§ 58-50-40. Willful failure to pay group insurance premiums; notice to persons insured; penalty; restitution; examination of insurance transactions.**

(a) As used in this section and in G.S. 58-50-45, the term "group health insurance" means: (1) any policy described in G.S. 58-51-75, 58-51-80, or 58-51-90; (2) any group insurance certificate or group subscriber contract issued by a ~~hospital~~ service corporation pursuant to Articles 65 and 66 of this Chapter; (3) any health care plan provided or arranged by a health maintenance organization pursuant to Article 67 of this Chapter; ~~or~~ (4) any multiple employer welfare arrangement as defined in ~~G.S. 58-49-30(a).~~ G.S. 58-49-30(a); or (5) a group health plan, as defined in section 607(1) of the Employee Retirement Income Security Act of 1974.

As used in this section and in G.S. 58-50-45, the term "insurance fiduciary" means any person, employer, principal, agent, trustee, or third party administrator, who is responsible for the payment of group health or group life insurance premiums. As used in this section and in G.S. 58-50-45, "premiums" includes contributions to a group health plan or to a multiple employer welfare arrangement.

(b) No insurance fiduciary shall:

(1) Cause the cancellation or nonrenewal of group health or group life insurance and the consequential loss of the coverages of the persons insured by willfully failing to pay such premiums in accordance with the terms of a group health or group life insurance contract; and

(2) Willfully fail to deliver, at least 45 days before the termination of such insurance, to all persons covered by the group policy a written notice of the insurance fiduciary's intention to stop payment of premiums.

(c) Any insurance fiduciary who violates subsection (b) of this section shall be guilty of a Class ~~H~~ G felony.

(e) Upon conviction under subsection (c) of this section the court shall order the insurance fiduciary to make full restitution to persons insured who incurred expenses that would have been covered by the group health insurance or full restitution to beneficiaries of the group life insurance for death benefits that would have been paid if the coverage had not been terminated.

(f) Insurance fiduciaries subject to this section shall be subject to the provisions of G.S. 58-2-200 with respect only to transactions involving group health or life insurance.

(g) In the notice required by subsection (b) of this section, the insurance fiduciary shall also notify those persons of their rights to health insurance conversion policies under Article 53 of this Chapter and their rights ~~under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA).~~ to purchase individual policies under the federal Health Insurance Portability and Accountability Act (HIPAA) and Article 68 of this Chapter.

(h) In the event of the insolvency of an employer or insurance fiduciary who has violated this section, any person specified in subsection (e) of this section shall have a lien upon the assets of the employer or insurance fiduciary for the expenses or benefits specified in subsection (e) of this section. With respect to personal property within the estate of the insolvent employer or insurance fiduciary, the lien shall have priority over unperfected security interests.

(i) Upon the termination of a group health insurance contract by the insurer, the insurer shall notify every subscriber and certificate holder under the contract of the termination of the contract along with the certification required to be provided under G.S. 58-68-30(e)."

SECTION 2. G.S. 58-50-45 reads as rewritten:

"**§ 58-50-45. Group health or life insurers to notify insurance fiduciaries of obligations.**

(a) ~~On and after January 1, 1986, upon~~ Upon the issuance or renewal of any policy, contract, certificate, or evidence of coverage of group health or life insurance, the insurer, corporation, or health maintenance organization shall give written notice to the insurance fiduciary of the provisions of G.S. 58-50-40.

(b) The notice required by subsection (a) of this section shall be printed in 10 point type and shall read as follows:

"UNDER NORTH CAROLINA GENERAL STATUTE SECTION 58-50-40, NO PERSON, EMPLOYER, PRINCIPAL, AGENT, TRUSTEE, OR THIRD PARTY ADMINISTRATOR, WHO IS RESPONSIBLE FOR THE PAYMENT OF GROUP HEALTH OR LIFE INSURANCE OR GROUP HEALTH ~~CARE~~ PLAN PREMIUMS, SHALL: (1) CAUSE THE CANCELLATION OR NONRENEWAL OF GROUP

HEALTH OR LIFE INSURANCE, HOSPITAL, MEDICAL, OR DENTAL SERVICE CORPORATION PLAN, MULTIPLE EMPLOYER WELFARE ARRANGEMENT, OR GROUP HEALTH ~~CARE~~ PLAN COVERAGES AND THE CONSEQUENTIAL LOSS OF THE COVERAGES OF THE PERSONS INSURED, BY WILLFULLY FAILING TO PAY ~~SUCH~~ THOSE PREMIUMS IN ACCORDANCE WITH THE TERMS OF THE INSURANCE OR PLAN CONTRACT, AND (2) WILLFULLY FAIL TO DELIVER, AT LEAST 45 DAYS ~~PRIOR TO~~ BEFORE THE TERMINATION OF ~~SUCH~~ THOSE COVERAGES, TO ALL PERSONS COVERED BY THE GROUP POLICY A WRITTEN NOTICE OF THE PERSON'S INTENTION TO STOP PAYMENT OF PREMIUMS. THIS WRITTEN NOTICE MUST ALSO CONTAIN A NOTICE TO ALL PERSONS COVERED BY THE GROUP POLICY OF THEIR RIGHTS TO HEALTH INSURANCE CONVERSION POLICIES UNDER ARTICLE 53 OF CHAPTER 58 OF THE GENERAL STATUTES ~~CHAPTER 58~~ AND THEIR RIGHTS TO PURCHASE INDIVIDUAL POLICIES UNDER THE FEDERAL ~~CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT (COBRA).~~ HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT AND UNDER ARTICLE 68 OF CHAPTER 58 OF THE GENERAL STATUTES. VIOLATION OF THIS LAW IS A FELONY. ANY PERSON VIOLATING THIS LAW IS ALSO SUBJECT TO A COURT ORDER REQUIRING THE PERSON TO COMPENSATE PERSONS INSURED FOR EXPENSES OR LOSSES INCURRED AS A RESULT OF THE TERMINATION OF THE INSURANCE."

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

SENATE BILL 241:
Health Insurance Termination Notice

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Dalton
Date:	August 7, 2001	**Summary by:**	Jeff Hudson
Version:	Proposed Committee Substitute S241-CSSB-42 [v.3]		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 241 (PCS) would make group health plans that are currently regulated only by the federal Employee Retirement Income Security Act of 1974 (ERISA) subject to the provisions of G.S. 58-50-40. The PCS would also require insurers to personally notify every subscriber or certificate holder upon termination of the group health insurance contract at the same time the insurer provides information on obtaining continuing insurance coverage under the federal Health Insurance Portability and Accountability Act (HIPAA). The act would become effective December 1, 2001.***

BILL ANALYSIS

Section 1 would:

- Add group health plans as defined in Section 609(l) of the Employee Retirement Income Security Act of 1974 (ERISA) to the types of plans that are currently subject to the provisions of G.S. 58-50-40. Section 609(l) defines "group health plan" to mean an employee welfare benefit plan providing medical care to participants or beneficiaries directly or through insurance, reimbursement, or otherwise. G.S. 58-50-40 makes it a class H penalty for an insurance fiduciary to cause the cancellation of group health or life insurance by willfully failing to pay the insurance premiums and willfully failing to deliver to the persons covered by the insurance notice of intention to stop payment of premiums at least 45 days before the termination of the insurance. G.S. 58-50-40 also provides that if an insurance fiduciary is convicted under the statute, the court will order the insurance fiduciary to make full restitution to the persons who would have been covered by the insurance and such persons will have a lien upon the assets of the employer or insurance fiduciary. **Note:** ERISA may preempt State regulation of group health plans currently covered by ERISA.
- Update G.S. 58-50-40 by deleting the reference to the Consolidated Omnibus Budget Reconciliation Act (COBRA) and replacing it with a reference to the Health Insurance Portability and Accountability Act (HIPAA) and Article 68 of Chapter 58 of the General Statutes.
- Add a new subsection to G.S 58-50-40 to require an insurer underwriting the group insurance to notify every subscriber or certificate holder personally upon termination of the contract when the insurer provides the subscriber or certificate holder their written certification of creditable coverage for purposes of obtaining continuing coverage that is otherwise required under the federal and State law.

Section 2 would make conforming changes.

Section 3 is a severability clause.

Section 4 would make the act effective December 1, 2001.

Note: Linda Attarian, Research Division, contributed to the preparation of this summary.

S241-SMSB-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 119
PROPOSED HOUSE COMMITTEE SUBSTITUTE S119-CSRH-55 [v.1]

8/7/2001 9:46:44 AM

Short Title: District Court Elections Nonpartisan. (Public)

Sponsors:

Referred to:

February 12, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR NONPARTISAN ELECTION OF DISTRICT COURT JUDGES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 25 of Chapter 163 of the General Statutes reads as rewritten:

"SUBCHAPTER X. ELECTION OF SUPERIOR AND DISTRICT COURT JUDGES.

"ARTICLE 25.

"NOMINATION AND ELECTION OF SUPERIOR AND DISTRICT COURT JUDGES.

"**§ 163-321. Applicability.**

The nomination and election of superior and district court judges of the General Court of Justice shall be as provided by this Article.

"**§ 163-322. Nonpartisan primary election method.**

(a) General. – Except as provided in G.S. 163-329. there shall be a primary to narrow the field of candidates to two candidates for each position to be filled if, when the filing period closes, there are more than two candidates for a single office or the number of candidates for a group of offices exceeds twice the number of positions to be filled. If only one or two candidates file for a single office, no primary shall be held for that office and the candidates shall be declared nominated. If the number of candidates for a group of offices does not exceed twice the number of positions to be filled, no primary shall be held for those offices and the candidates shall be declared nominated.

(b) Determination of Nominees. – In the primary, the two candidates for a single office receiving the highest number of votes, and those candidates for a group of offices receiving the highest number of votes, equal to twice the number of positions to be filled, shall be declared nominated. If two or more candidates receiving the highest number of votes each receive the same number of votes, the State Board of Elections shall determine their relative ranking by lot, and shall declare the nominees accordingly.

The canvass of the primary shall be held on the same date as the primary canvass fixed under G.S. 163-188. The canvass shall be conducted in accordance with Article 16 of this Chapter.

(c) Determination of Election Winners. – In the election, the names of those candidates declared nominated without a primary and those candidates nominated in the primary shall be placed on the ballot. The candidate for a single office receiving the highest number of votes shall be elected. Those candidates for a group of offices receiving the highest number of votes, equal in number to the number of positions to be filled, shall be elected. If two candidates receiving the highest number of votes each received the same number of votes, the State Board of Elections shall determine the winner by lot.

"**§ 163-323. Notice of candidacy.**

(a) Form of Notice. – Each person offering to be a candidate for election shall do so by filing a notice of candidacy with the State Board of Elections in the following form, inserting the words in parentheses when appropriate:

"Date _____:

I hereby file notice that I am a candidate for election to the office of_____ in the regular election to be held _____, _____.

Signed _____:

(Name of Candidate)

Witness: _____".

The notice of candidacy shall be either signed in the presence of the chairman or secretary of the State Board of Elections, or signed and acknowledged before an officer authorized to take acknowledgments who shall certify the notice under seal. An acknowledged and certified notice may be mailed to the State Board of Elections. In signing a notice of candidacy, the candidate shall use only the candidate's legal name and, in his discretion, any nickname by which commonly known. A candidate may also, in lieu of that candidate's first name and legal middle initial or middle name, if any, sign that candidate's nickname, provided the candidate appends to the notice of candidacy an affidavit that the candidate has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way the candidate's name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate himself shall be invalid.

(b) Time for Filing Notice of Candidacy. – Candidates seeking election to the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the election:

Judges of the superior courts.

Judges of the district courts.

(c) Withdrawal of Notice of Candidacy. – Any person who has filed a notice of candidacy for an office shall have the right to withdraw it at any time prior to the date on which the right to file for that office expires under the terms of subsection (b) of this section.

(d) Certificate That Candidate Is Registered Voter. – Candidates shall file along with their notice a certificate signed by the chairman of the board of elections or the supervisor of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, and if the candidacy is for superior court judge and the county contains more than one superior court district, stating the superior court district of which the person is a resident. In issuing such certificate, the chairman or supervisor shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline, the State Board of Elections shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections shall prescribe the form for such certificate, and distribute it to each county board of elections no later than the last Monday in December of each odd-numbered year.

(e) Candidacy for More Than One Office Prohibited. – No person may file a notice of candidacy for more than one office or group of offices described in subsection (b) of this section, or for an office or group of offices described in subsection (b) of this section and an office described in G.S. 163-106(c), for any one election. If a person has filed a notice of candidacy with a board of elections under this section or under G.S. 163-106(c) for one office or group of offices, then a notice of candidacy may not later be filed for any other office or group of offices under this section when the election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (c) of this section.

(f) Notice of Candidacy for Certain Offices to Indicate Vacancy. – In any election in which there are two or more vacancies for the office of district court judge to be filled by nominations, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks election. Votes cast for a candidate shall be effective only for his election to the vacancy for which the candidate has given notice of candidacy as provided in this subsection.

A person seeking election for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which the person seeks nomination.

(g) No person may file a notice of candidacy for superior court judge unless that person is at the time of filing the notice of candidacy a resident of the judicial district as it will exist at the time the person would take office if elected. No person may be nominated as a superior court judge under G.S. 163-114 unless that person is at the time of nomination a resident of the judicial district as it will exist at the time the person

would take office if elected. This subsection implements Article IV Section 9(1) of the North Carolina Constitution which requires regular Superior Court Judges to reside in the district for which elected.

"**§ 163-324. Filing fees required of candidates; refunds.**

(a) Fee Schedule. – At the time of filing a notice of candidacy under this Article, each candidate shall pay to the State Board of Elections a filing fee for the office he seeks in the amount of one percent (1%) of the annual salary of the office sought.

(b) Refund of Fees. – If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section withdraws his notice of candidacy within the period prescribed in G.S. 163-323(c), he shall be entitled to have the fee he paid refunded. The chairman of the State Board of Elections shall cause a warrant to be drawn on the State Treasurer for the refund payment.

If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section dies prior to the date of the election, the personal representative of the estate shall be entitled to have the fee refunded if application is made to the board of elections to which the fee was paid no later than one year after the date of death, and refund shall be made in the same manner as in withdrawal of notice of candidacy.

"**§ 163-325. Petition in lieu of payment of filing fee.**

(a) General. – Any qualified voter who seeks election under this Article may, in lieu of payment of any filing fee required for the office he seeks, file a written petition requesting him to be a candidate for a specified office with the State Board of Elections.

(b) Requirements of Petition; Deadline for Filing. – If the candidate is seeking the office of superior or district court judge, that individual shall file a written petition with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for. The board of elections shall verify the names on the petition, and if the petition and notice of candidacy are found to be sufficient, the candidate's name shall be printed on the appropriate ballot. Petitions must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms.

"**§ 163-326. Certification of notices of candidacy.**

(a) Names of Candidates Sent to Secretary of State. – Within three days after the time for filing notices of candidacy with the State Board of Elections under the provisions of G.S. 163-323(b) has expired, the chairman or secretary of that Board shall certify to the Secretary of State the name and address of each person who has filed with the State Board of Elections, indicating in each instance the office sought.

(b) Notification of Local Boards. – No later than 10 days after the time for filing notices of candidacy under the provisions of G.S. 163-323(b) has expired, the chairman of the State Board of Elections shall certify to the chairman of the county board of elections in each county in the appropriate district the names of candidates for

nomination to the offices of superior and district court judge who have filed the required notice and paid the required filing fee or presented the required petition to the State Board of Elections, so that their names may be printed on the official judicial ballot for superior and district court.

(c) Receipt of Notification by County Board. – Within two days after receipt of each of the letters of certification from the chairman of the State Board of Elections required by subsection (b) of this section, each county elections board chairman shall acknowledge receipt by letter addressed to the chairman of the State Board of Elections.

"**§ 163-327. Vacancies of candidates or elected officers.**

(a) Death or Disqualification of Candidate Before Primary. – If a candidate for nomination in a primary dies or becomes disqualified before the primary but after the ballots have been printed, the State Board of Elections shall determine whether or not there is time to reprint the ballots. If the Board determines that there is not enough time to reprint the ballots, the deceased or disqualified candidate's name shall remain on the ballots. If that candidate receives enough votes for nomination, such votes shall be disregarded and the candidate receiving the next highest number of votes below the number necessary for nomination shall be declared nominated. If the death or disqualification of the candidate leaves only two candidates for each office to be filled, the nonpartisan primary shall not be held and all candidates shall be declared nominees.

(b) Death, Disqualification, or Resignation of Official After Election. – If a person elected to the office of superior or district court judge dies, becomes disqualified, or resigns on or after election day and before he has qualified by taking the oath of office, the office shall be deemed vacant and shall be filled as provided by law.

"**§ 163-328. Failure of candidates to file; death or other disqualification of a candidate before election.**

(a) Insufficient Number of Candidates. – If when the filing period expires, candidates have not filed for an office to be filled under this Article, the State Board of Elections shall extend the filing period for five days for any such offices.

(b) Death or Other Disqualification of Candidate; Reopening Filing. – If there is no primary because only one or two candidates have filed for a single office, or the number of candidates filed for a group of offices does not exceed twice the number of positions to be filled, and thereafter a candidate dies or otherwise becomes disqualified before the election and before the ballots are printed, the State Board of Elections shall, upon notification of the death or other disqualification, immediately reopen the filing period for an additional five days during which time additional candidates shall be permitted to file for election. If the ballots have been printed at the time the State Board of Elections receives notice of the candidate's death or other disqualification, the Board shall determine whether there will be sufficient time to reprint them before the election if the filing period is reopened for three days. If the Board determines that there will be sufficient time to reprint the ballots, it shall reopen the filing period for three days to allow other candidates to file for election, and such election shall be conducted on the plurality basis.

(c) Vacancy Caused by Nominated Candidate; Ballots Not Reprinted. – If the ballots have been printed at the time the State Board of Elections receives notice of a candidate's death, other disqualification, or resignation, and if the Board determines that there is not enough time to reprint the ballots before the election if the filing period is reopened for three days, then regardless of the number of candidates remaining for the office or group of offices, the ballots shall not be reprinted and the name of the vacated candidate shall remain on the ballots. If a vacated candidate should poll the highest number of votes in the election for a single office or enough votes to be elected to one of a group of offices, the State Board of Elections shall declare the office vacant and it shall be filled in the manner provided by law.

"**§ 163-329. Elections to fill vacancy created after primary filing period to use plurality method.**

(a) General. – If a vacancy is created in the office of judge of superior court after the filing period for the primary opens but more than 60 days before the general election, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted without a primary using the plurality method as provided in subsection (b) of this section. If a vacancy is created in the office of judge of superior court before the filing period for the primary opens, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted in accordance with G.S. 163-322.

(b) Plurality Election Rules. – Elections under this section shall be conducted using the following rules:

(1) The filing period shall be prescribed by the State Board of Elections, but in no event may it be less than five working days. If a vacancy occurs in a second office in the same superior court district after the first filing period established under the section has closed, the State Board of Elections shall reopen filing for a period of not less than five working days for the office of superior court judge. All persons filing in either filing period shall run as a group and the election results shall be determined by subdivision (3) of this subsection.

(2) When more than one person is seeking election to a single office, the candidate who receives the highest number of votes shall be declared elected.

(3) When more persons are seeking election to two or more offices (constituting a group) than there are offices to be filled, those candidates receiving the highest number of votes, equal in number to the number of offices to be filled, shall be declared elected.

(4) If two or more candidates receiving the highest number of votes each receive the same number of votes, the board of elections shall determine the winner by lot.

(5) Except as provided in this section, the provisions of this Article apply to elections conducted under this section.

"**§ 163-330. Voting in primary.**

Any person who will become qualified by age or residence to register and vote in the general election for which the primary is held, even though not so qualified by the date of the primary, shall be entitled to register for the primary and general election prior to the primary and then to vote in the primary after being registered. Such person may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6(c) prior to the primary.

"**§ 163-331. Date of primary.**

The primary shall be held on the same date as established for primary elections under G.S. 163-1(b).

"**§ 163-332. Ballots.**

(a) General. – In elections there shall be official ballots. The ballots shall be printed to conform to the requirement of G.S. 163-140(c) and to show the name of each person who has filed notice of candidacy, and the office for which each aspirant is a candidate.

Only those who have filed the required notice of candidacy with the proper board of elections, and who have paid the required filing fee or qualified by petition, shall have their names printed on the official primary ballots. Only those candidates properly nominated shall have their names appear on the official general election ballots.

(b) Ballots to be Furnished by County Board of Elections. – It shall be the duty of the county board of elections to print official ballots for the following offices to be voted for in the primary:

Superior court judge.

District court judge.

In printing ballots, the county board of elections shall be governed by instructions of the State Board of Elections with regard to width, color, kind of paper, form, and size of type.

Three days before the election, the chairman of the county board of elections shall distribute official ballots to the chief judge of each precinct in his county, and the chief judge shall give a receipt for the ballots received. On the day of the primary, it shall be the chief judge's duty to have all the ballots so delivered available for use at the precinct voting place.

"**§ 163-333. Canvass.**

The county board of elections shall, in addition to the requirements contained in G.S. 163-175, canvass the results in judicial primaries and elections, the number of legal votes cast in each precinct for each candidate, the name of each person voted for, and the total number of votes cast in the county for each person for each different office.

"**§ 163-334. Counting of ballots.**

Counting of ballots in primaries and elections held under this Article shall be under the same rules as for counting of ballots in nonpartisan municipal elections under Article 24 of this Chapter.

"**§ 163-335. Other rules.**

Except as provided by this Article, the conduct of elections shall be governed by Subchapter VI of this Chapter."

SECTION 2.(a) G.S. 7A-142 reads as rewritten:

"**§ 7A-142. Vacancies in office.**

A vacancy in the office of district judge shall be filled for the unexpired term by appointment of the Governor from nominations submitted by the bar of the judicial district as defined in G.S. 84-19, except that in judicial District 9, when vacancies occur in District Court District 9 or 9B, only those members who reside in the district court district shall participate in the selection of the nominees. If the district court district is comprised of counties in more than one judicial district, the nominees shall be submitted jointly by the bars of those judicial districts, but only those members who reside in the district court district shall participate in the selection of the nominees. If the district court judge was elected as the nominee of a political party, then the district bar shall submit to the Governor the names of three persons who are residents of the district court district who are duly authorized to practice law in the district and who are members of the same political party as the vacating judge; provided that if there are not three persons who are available, the bar shall submit the names of two persons who meet the qualifications of this sentence. If the district court judge was not elected as the nominee of a political party, then the district bar shall submit to the Governor the names of three persons who are residents of the district court district and who are duly authorized to practice law in the district; provided that if there are not three persons who are available, the bar shall submit the names of two persons who meet the qualifications of this sentence. Within 60 days after the district bar submits nominations for a vacancy, the Governor shall appoint to fill the vacancy. If the Governor fails to appoint a district bar nominee within 60 days, then the district bar nominee who received the highest number of votes from the district bar shall fill the vacancy. If the district bar fails to submit nominations within 30 days from the date the vacancy occurs, the Governor may appoint to fill the vacancy without waiting for nominations."

SECTION 2.(b) Effective on the first Monday in December of 2002, G.S. 7A-142, as amended by subsection (a) of this section, reads as rewritten:

"**§ 7A-142. Vacancies in office.**

A vacancy in the office of district judge shall be filled for the unexpired term by appointment of the Governor from nominations submitted by the bar of the judicial district as defined in G.S. 84-19, except that in judicial District 9, when vacancies occur in District Court District 9 or 9B, only those members who reside in the district court district shall participate in the selection of the nominees. If the district court district is comprised of counties in more than one judicial district, the nominees shall be submitted jointly by the bars of those judicial districts, but only those members who reside in the district court district shall participate in the selection of the nominees. ~~If the district court judge was elected as the nominee of a political party, then the district bar shall submit to the Governor the names of three persons who are residents of the district court district who are duly authorized to practice law in the district and who are members of~~

~~the same political party as the vacating judge; provided that if there are not three persons who are available, the bar shall submit the names of two persons who meet the qualifications of this sentence.~~ If the district court judge was not elected as the nominee of a political party, then the district bar shall submit to the Governor the names of three persons who are residents of the district court district and who are duly authorized to practice law in the district; provided that if there are not three persons who are available, the bar shall submit the names of two persons who meet the qualifications of this sentence. Within 60 days after the district bar submits nominations for a vacancy, the Governor shall appoint to fill the vacancy. If the Governor fails to appoint a district bar nominee within 60 days, then the district bar nominee who received the highest number of votes from the district bar shall fill the vacancy. If the district bar fails to submit nominations within 30 days from the date the vacancy occurs, the Governor may appoint to fill the vacancy without waiting for nominations."

SECTION 3. G.S. 163-106 reads as rewritten:

"**§ 163-106. Notices of candidacy; pledge; with whom filed; date for filing; withdrawal.**

(a) Notice and Pledge. – No one shall be voted for in a primary election unless he shall have filed a notice of candidacy with the appropriate board of elections, State or county, as required by this section. To this end every candidate for selection as the nominee of a political party shall file with and place in the possession of the board of elections specified in subsection (c) of this section, a notice and pledge in the following form:

"Date_____

I hereby file notice as a candidate for nomination as _____ in the _____ party primary election to be held on_____, _____. I affiliate with the _____ party, (and I certify that I am now registered on the registration records of the precinct in which I reside as an affiliate of the _____ party.)

I pledge that if I am defeated in the primary, I will not run for any office as a write-in candidate in the next general election.

Signed _____

Name of candidate

Witness:

_____

_____

(Title of witness)"

Each candidate shall sign his notice of candidacy in the presence of the chairman or secretary of the board of elections, State or county, with which he files. In the alternative, a candidate may have his signature on the notice of candidacy acknowledged and certified to by an officer authorized to take acknowledgments and administer oaths, in which case the candidate may mail his notice of candidacy to the appropriate board of elections.

In signing his notice of candidacy the candidate shall use only his legal name and, in his discretion, any nickname by which he is commonly known. A candidate may also, in lieu of his legal first name and legal middle initial or middle name (if any) sign his nickname, provided that he appends to the notice of candidacy an affidavit that he has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way his name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate himself shall be invalid.

Prior to the date on which candidates may commence filing, the State Board of Elections shall print and furnish, at State expense, to each county board of elections a sufficient number of the notice of candidacy forms prescribed by this subsection for use by candidates required to file with county boards of elections.

(b) Eligibility to File. – No person shall be permitted to file as a candidate in a primary if, at the time he offers to file notice of candidacy, he is registered on the appropriate registration book or record as an affiliate of a political party other than that in whose primary he is attempting to file. No person who has changed his political party affiliation or who has changed from unaffiliated status to party affiliation as permitted in G.S. 163-82.17, shall be permitted to file as a candidate in the primary of the party to which he changed unless he has been affiliated with the political party in which he seeks to be a candidate for at least 90 days prior to the filing date for the office for which he desires to file his notice of candidacy.

A person registered as "unaffiliated" shall be ineligible to file as a candidate in a party primary election.

(c) Time for Filing Notice of Candidacy. – Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

Governor
Lieutenant Governor
All State executive officers
Justices of the Supreme Court, Judges of the Court of Appeals
~~Judges of the district courts~~
United States Senators
Members of the House of Representatives of the United States
District attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

State Senators
Members of the State House of Representatives

All county offices.

(d) Notice of Candidacy for Certain Offices to Indicate Vacancy. – In any primary in which there are two or more vacancies for Chief Justice and associate justices of the Supreme Court, two or more vacancies for judge of the Court of Appeals, or two vacancies for United States Senator from North ~~Carolina or two or more vacancies for the office of district court judge to be filled by nominations,~~ Carolina, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks nomination. Votes cast for a candidate shall be effective only for his nomination to the vacancy for which he has given notice of candidacy as provided in this subsection.

~~A person seeking party nomination for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which he seeks nomination.~~

(e) Withdrawal of Notice of Candidacy. – Any person who has filed notice of candidacy for an office shall have the right to withdraw it at any time prior to the date on which the right to file for that office expires under the terms of subsection (c) of this section. If a candidate does not withdraw before the filing deadline, except as provided in G.S. 163-112, his name shall be printed on the primary ballot, any votes for him shall be counted, and he shall not be refunded his filing fee.

(f) Candidates required to file their notice of candidacy with the State Board of Elections under subsection (c) of this section shall file along with their notice a certificate signed by the chairman of the board of elections or the director of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, stating the party with which the person is affiliated, and that the person has not changed his affiliation from another party or from unaffiliated within three months prior to the filing deadline under subsection (c) of this section. In issuing such certificate, the chairman or director shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline the State Board of Elections shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections shall prescribe the form for such certificate, and distribute it to each county board of elections no later than the last Monday in December of each odd-numbered year.

(g) When any candidate files a notice of candidacy with a county board of elections under subsection (c) of this section or under G.S. 163-291(2), the chairman or director of elections shall, immediately upon receipt of the notice of candidacy, inspect the registration records of the county, and cancel the notice of candidacy of any person who is not eligible under subsection (c) of this section. The Board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled under this subsection by mail or by having the notice served on him by the sheriff.

(h) No person may file a notice of candidacy for more than one office described in subsection (c) of this section for any one election. If a person has filed a notice of candidacy with a board of elections under this section for one office, then a notice of candidacy may not later be filed for any other office under this section when the election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (e) of this section; provided that this subsection shall not apply unless the deadline for filing notices of candidacy for both offices is the same. Notwithstanding this subsection, a person may file a notice of candidacy for a full term as United States Senator, and also file a notice of candidacy for the remainder of the unexpired term of that same seat in an election held under G.S. 163-12, and may file a notice of candidacy for a full term as a member of the United States House of Representatives, and also file a notice of candidacy for the remainder of the unexpired term in an election held under G.S. 163-13.

~~(i) No person may file a notice of candidacy for superior court judge unless that person is at the time of filing the notice of candidacy a resident of the judicial district as it will exist at the time the person would take office if elected. No person may be nominated as a superior court judge under G.S. 163-114 unless that person is at the time of nomination a resident of the judicial district as it will exist at the time the person would take office if elected. This subsection implements Article IV Section 9(1) of the North Carolina Constitution which requires regular Superior Court Judges to reside in the district for which elected.~~"

SECTION 4. G.S. 163-107(a) reads as rewritten:

"(a) Fee Schedule. – At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of G.S. 163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	Amount of Filing Fee
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All Justices, Judges, and District Attorneys of the General Court of Justice other than superior and district court judge	One percent (1%) of the annual salary of the office sought
United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States	One percent (1%) of the annual

House of Representatives	salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
County commissioners, if compensated entirely by fees	Ten dollars ($10.00)
Members of county board of education, if compensated entirely by fees	Five dollars ($5.00)
Sheriff, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Clerk of superior court, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Register of deeds, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Any other county office, if compensated entirely by fees	Twenty dollars ($20.00), plus one percent (1%) of the income of the office above two thousand dollars ($2,000)
All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)."

SECTION 5. G.S. 163-111(c)(1) reads as rewritten:

"(1) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing or by telegram with the Executive Secretary-Director of the State Board of Elections no later than 12:00 noon on the seventh day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State Board of Elections determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the

Executive Secretary-Director of the State Board of Elections shall immediately notify such candidate and permit him to exercise any options available to him within a 48-hour period following the notification:

Governor,
Lieutenant Governor,
All State executive officers,
Justices, Judges, or District Attorneys of the General Court of Justice, other than superior and district court ~~judge.~~ judges.
United States Senators,
Members of the United States House of Representatives,
State Senators in multi-county senatorial districts, and
Members of the State House of Representatives in multi-county representative districts."

SECTION 6. G.S. 163-140(a)(8) reads as rewritten:

"(8) Judicial ballot for superior and district court."

SECTION 7. G.S. 163-107.1(c) reads as rewritten:

"(c) County, Municipal and District Primaries. – If the candidate is seeking one of the offices set forth in G.S. 163-106(c) but which is not listed in subsection (b) of this section, or a municipal or any other office requiring a partisan primary which is not set forth in G.S. 163-106(c) or (d), he shall file a written petition with the appropriate board of elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for, who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 200 registered voters regardless of said voter's political party affiliation, whichever requirement is greater. The board of elections shall verify the names on the petition, and if the petition is found to be sufficient, the candidate's name shall be printed on the appropriate primary ballot. Petitions for candidates for member of the U.S. House of Representatives, District Attorney, and ~~judge of the District Court or~~ members of the State House of Representatives from multi-county districts or members of the State Senate from multi-county districts must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections, and such petition must be filed with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms."

SECTION 8. G.S. 163-114 reads as rewritten:

"**§ 163-114. Filling vacancies among party nominees occurring after nomination and before election.**

If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the

date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

Position	Vacancy is to be filled by
Any elective State office	appointment of State executive committee of political party in which vacancy occurs
United States Senator	
A district office, including:	
Member of the United States House of Representatives	
~~Judge of district court~~	Appropriate district executive committee of political party in which vacancy occurs
District Attorney	
State Senator in a multi-county senatorial district	
Member of State House of Representatives in a multi-county representative district	
State Senator in a single-county senatorial district	County executive committee of political party in which vacancy occurs, provided, in the case of the State Senator or State Representative in a single-county district where not all the county is located in that district, then in voting, only those members of the county executive committee who reside within the district shall vote
Member of State House of Representatives in a Single-county representative district	
Any elective county office	

The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, charged with the duty of printing the ballots on which the name is to appear. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S. 163-139 shall apply. If any person nominated as a candidate of a political party vacates such nomination and such vacancy arises from a cause other than death and the vacancy in nomination occurs more than 120 days before the general election, the vacancy in nomination may be filled under this

section only if the appropriate executive committee certifies the name of the nominee in accordance with this paragraph at least 75 days before the general election.

In a county not all of which is located in one congressional district, in choosing the congressional district executive committee member or members from that area of the county, only the county convention delegates or county executive committee members who reside within the area of the county which is within the congressional district may vote.

In a county which is partly in a multi-county senatorial district or which is partly in a multi-county House of Representatives district, in choosing that county's member or members of the senatorial district executive committee or House of Representatives district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote."

SECTION 9. G.S. 163-135(f) reads as rewritten:

"(f) Judicial Elections. – Except as provided by Article 25 of this Chapter, this Article shall apply to and control all elections for judges of the ~~superior court.~~ superior and district courts."

SECTION 10. G.S. 163-140(b)(9) reads as rewritten:

"(9) Judicial ballot for superior and district court. The form of the judicial ballot for judges of the superior court and district court shall be prepared by the county board of elections. On the face of the ballot, shall be printed instructions for marking the voter's choice, in addition to the following instruction: "If you tear or deface or wrongly mark this ballot, return it and get another." On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the responsible county board of elections. This ballot may not be combined with any other ballot except another judicial ballot."

SECTION 11. G.S. 163-191 reads as rewritten:

"**§ 163-191. Contested primaries and elections; how tie broken.**

In a primary for party nomination for one or more of the offices to be canvassed by the State Board of Elections under the provisions of G.S. 163-187, the results shall be determined in accordance with the provisions of G.S. 163-111.

In a general election for one or more of the offices to be canvassed by the State Board of Elections under the provisions of G.S. 163-187, the persons having the highest number of votes for each office, respectively, shall be declared duly elected to that office by the State Board of Elections. But if two or more be equal and highest in votes for the office, then the State Board of Elections shall order a new election for the purpose of breaking the tie except if there is a tie for superior or district court judge the tie shall be broken in accordance with Article 25 of this Chapter."

SECTION 12. G.S. 163-123(g) reads as rewritten:

"(g) Municipal and Nonpartisan Elections Excluded. – This section does not apply to municipal elections conducted under Subchapter IX of Chapter 163 of the General Statutes, and does not apply to nonpartisan

elections except for superior court judge and district court judge elections under Article 25 of this Chapter. "

SECTION 13. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 1

SENATE BILL 119

Short Title:	District Court Elections Nonpartisan.	(Public)
Sponsors:	Senators Dalton; Clodfelter, Hartsell, Martin of Guilford, Rand, Thomas, and Wellons.	
Referred to:	Judiciary II.	

February 12, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR NONPARTISAN ELECTION OF DISTRICT COURT JUDGES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 25 of Chapter 163 of the General Statutes reads as rewritten:

"SUBCHAPTER X. ELECTION OF SUPERIOR AND DISTRICT COURT JUDGES.

"ARTICLE 25.

"NOMINATION AND ELECTION OF SUPERIOR AND DISTRICT COURT JUDGES.

"**§ 163-321. Applicability.**

The nomination and election of superior and district court judges of the General Court of Justice shall be as provided by this Article.

"**§ 163-322. Nonpartisan primary election method.**

(a) General. – Except as provided in G.S. 163-329, there shall be a primary to narrow the field of candidates to two candidates for each position to be filled if, when the filing period closes, there are more than two candidates for a single office or the number of candidates for a group of offices exceeds twice the number of positions to be filled. If only one or two candidates file for a single office, no primary shall be held for that office and the candidates shall be declared nominated. If the number of candidates for a group of offices does not exceed twice the number of positions to be filled, no primary shall be held for those offices and the candidates shall be declared nominated.

(b) Determination of Nominees. – In the primary, the two candidates for a single office receiving the highest number of votes, and those candidates for a group of offices receiving the highest number of votes, equal to twice the number of positions to be filled, shall be declared nominated. If two or more candidates receiving the highest

number of votes each receive the same number of votes, the State Board of Elections shall determine their relative ranking by lot, and shall declare the nominees accordingly. The canvass of the primary shall be held on the same date as the primary canvass fixed under G.S. 163-188. The canvass shall be conducted in accordance with Article 16 of this Chapter.

(c) Determination of Election Winners. – In the election, the names of those candidates declared nominated without a primary and those candidates nominated in the primary shall be placed on the ballot. The candidate for a single office receiving the highest number of votes shall be elected. Those candidates for a group of offices receiving the highest number of votes, equal in number to the number of positions to be filled, shall be elected. If two candidates receiving the highest number of votes each received the same number of votes, the State Board of Elections shall determine the winner by lot.

"**§ 163-323. Notice of candidacy.**

(a) Form of Notice. – Each person offering to be a candidate for election shall do so by filing a notice of candidacy with the State Board of Elections in the following form, inserting the words in parentheses when appropriate:

"Date _____:

I hereby file notice that I am a candidate for election to the office of_____ in the regular election to be held _____, _____.

Signed _____:

(Name of Candidate)

Witness: _____".

The notice of candidacy shall be either signed in the presence of the chairman or secretary of the State Board of Elections, or signed and acknowledged before an officer authorized to take acknowledgments who shall certify the notice under seal. An acknowledged and certified notice may be mailed to the State Board of Elections. In signing a notice of candidacy, the candidate shall use only the candidate's legal name and, in his discretion, any nickname by which commonly known. A candidate may also, in lieu of that candidate's first name and legal middle initial or middle name, if any, sign that candidate's nickname, provided the candidate appends to the notice of candidacy an affidavit that the candidate has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way the candidate's name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate himself shall be invalid.

(b) Time for Filing Notice of Candidacy. – Candidates seeking election to the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the election:

Judges of the superior courts.

Judges of the district courts.

(c) Withdrawal of Notice of Candidacy. – Any person who has filed a notice of candidacy for an office shall have the right to withdraw it at any time prior to the date on which the right to file for that office expires under the terms of subsection (b) of this section.

(d) Certificate That Candidate Is Registered Voter. – Candidates shall file along with their notice a certificate signed by the chairman of the board of elections or the supervisor of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, and if the candidacy is for superior court judge and the county contains more than one superior court district, stating the superior court district of which the person is a resident. In issuing such certificate, the chairman or supervisor shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline, the State Board of Elections shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections shall prescribe the form for such certificate, and distribute it to each county board of elections no later than the last Monday in December of each odd-numbered year.

(e) Candidacy for More Than One Office Prohibited. – No person may file a notice of candidacy for more than one office or group of offices described in subsection (b) of this section, or for an office or group of offices described in subsection (b) of this section and an office described in G.S. 163-106(c), for any one election. If a person has filed a notice of candidacy with a board of elections under this section or under G.S. 163-106(c) for one office or group of offices, then a notice of candidacy may not later be filed for any other office or group of offices under this section when the election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (c) of this section.

(f) Notice of Candidacy for Certain Offices to Indicate Vacancy. – In any election in which there are two or more vacancies for the office of district court judge to be filled by nominations, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks election. Votes cast for a candidate shall be effective only for his election to the vacancy for which the candidate has given notice of candidacy as provided in this subsection.

A person seeking election for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which the person seeks nomination.

(g) No person may file a notice of candidacy for superior court judge unless that person is at the time of filing the notice of candidacy a resident of the judicial district as it will exist at the time the person would take office if elected. No person may be nominated as a superior court judge under G.S. 163-114 unless that person is at the time of nomination a resident of the judicial district as it will exist at the time the person would take office if elected. This subsection implements Article IV Section 9(1) of the

North Carolina Constitution which requires regular Superior Court Judges to reside in the district for which elected.

"§ 163-324. Filing fees required of candidates; refunds.

(a) Fee Schedule. – At the time of filing a notice of candidacy under this Article, each candidate shall pay to the State Board of Elections a filing fee for the office he seeks in the amount of one percent (1%) of the annual salary of the office sought.

(b) Refund of Fees. – If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section withdraws his notice of candidacy within the period prescribed in G.S. 163-323(c), he shall be entitled to have the fee he paid refunded. The chairman of the State Board of Elections shall cause a warrant to be drawn on the State Treasurer for the refund payment.

If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section dies prior to the date of the election, the personal representative of the estate shall be entitled to have the fee refunded if application is made to the board of elections to which the fee was paid no later than one year after the date of death, and refund shall be made in the same manner as in withdrawal of notice of candidacy.

"§ 163-325. Petition in lieu of payment of filing fee.

(a) General. – Any qualified voter who seeks election under this Article may, in lieu of payment of any filing fee required for the office he seeks, file a written petition requesting him to be a candidate for a specified office with the State Board of Elections.

(b) Requirements of Petition; Deadline for Filing. – If the candidate is seeking the office of superior or district court judge, that individual shall file a written petition with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for. The board of elections shall verify the names on the petition, and if the petition and notice of candidacy are found to be sufficient, the candidate's name shall be printed on the appropriate ballot. Petitions must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms.

"§ 163-326. Certification of notices of candidacy.

(a) Names of Candidates Sent to Secretary of State. – Within three days after the time for filing notices of candidacy with the State Board of Elections under the provisions of G.S. 163-323(b) has expired, the chairman or secretary of that Board shall certify to the Secretary of State the name and address of each person who has filed with the State Board of Elections, indicating in each instance the office sought.

(b) Notification of Local Boards. – No later than 10 days after the time for filing notices of candidacy under the provisions of G.S. 163-323(b) has expired, the chairman of the State Board of Elections shall certify to the chairman of the county board of elections in each county in the appropriate district the names of candidates for nomination to the offices of superior and district court judge who have filed the required notice and paid the required filing fee or presented the required petition to the State

Board of Elections, so that their names may be printed on the official judicial ballot for superior and district court.

(c) Receipt of Notification by County Board. – Within two days after receipt of each of the letters of certification from the chairman of the State Board of Elections required by subsection (b) of this section, each county elections board chairman shall acknowledge receipt by letter addressed to the chairman of the State Board of Elections.

"**§ 163-327. Vacancies of candidates or elected officers.**

(a) Death or Disqualification of Candidate Before Primary. – If a candidate for nomination in a primary dies or becomes disqualified before the primary but after the ballots have been printed, the State Board of Elections shall determine whether or not there is time to reprint the ballots. If the Board determines that there is not enough time to reprint the ballots, the deceased or disqualified candidate's name shall remain on the ballots. If that candidate receives enough votes for nomination, such votes shall be disregarded and the candidate receiving the next highest number of votes below the number necessary for nomination shall be declared nominated. If the death or disqualification of the candidate leaves only two candidates for each office to be filled, the nonpartisan primary shall not be held and all candidates shall be declared nominees.

(b) Death, Disqualification, or Resignation of Official After Election. – If a person elected to the office of superior or district court judge dies, becomes disqualified, or resigns on or after election day and before he has qualified by taking the oath of office, the office shall be deemed vacant and shall be filled as provided by law.

"**§ 163-328. Failure of candidates to file; death or other disqualification of a candidate before election.**

(a) Insufficient Number of Candidates. – If when the filing period expires, candidates have not filed for an office to be filled under this Article, the State Board of Elections shall extend the filing period for five days for any such offices.

(b) Death or Other Disqualification of Candidate; Reopening Filing. – If there is no primary because only one or two candidates have filed for a single office, or the number of candidates filed for a group of offices does not exceed twice the number of positions to be filled, and thereafter a candidate dies or otherwise becomes disqualified before the election and before the ballots are printed, the State Board of Elections shall, upon notification of the death or other disqualification, immediately reopen the filing period for an additional five days during which time additional candidates shall be permitted to file for election. If the ballots have been printed at the time the State Board of Elections receives notice of the candidate's death or other disqualification, the Board shall determine whether there will be sufficient time to reprint them before the election if the filing period is reopened for three days. If the Board determines that there will be sufficient time to reprint the ballots, it shall reopen the filing period for three days to allow other candidates to file for election, and such election shall be conducted on the plurality basis.

(c) Vacancy Caused by Nominated Candidate; Ballots Not Reprinted. – If the ballots have been printed at the time the State Board of Elections receives notice of a candidate's death, other disqualification, or resignation, and if the Board determines that there is not enough time to reprint the ballots before the election if the filing period is

reopened for three days, then regardless of the number of candidates remaining for the office or group of offices, the ballots shall not be reprinted and the name of the vacated candidate shall remain on the ballots. If a vacated candidate should poll the highest number of votes in the election for a single office or enough votes to be elected to one of a group of offices, the State Board of Elections shall declare the office vacant and it shall be filled in the manner provided by law.

"§ 163-329. Elections to fill vacancy created after primary filing period to use plurality method.

(a) General. – If a vacancy is created in the office of judge of superior court after the filing period for the primary opens but more than 60 days before the general election, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted without a primary using the plurality method as provided in subsection (b) of this section. If a vacancy is created in the office of judge of superior court before the filing period for the primary opens, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted in accordance with G.S. 163-322.

(b) Plurality Election Rules. – Elections under this section shall be conducted using the following rules:

(1) The filing period shall be prescribed by the State Board of Elections, but in no event may it be less than five working days. If a vacancy occurs in a second office in the same superior court district after the first filing period established under the section has closed, the State Board of Elections shall reopen filing for a period of not less than five working days for the office of superior court judge. All persons filing in either filing period shall run as a group and the election results shall be determined by subdivision (3) of this subsection.

(2) When more than one person is seeking election to a single office, the candidate who receives the highest number of votes shall be declared elected.

(3) When more persons are seeking election to two or more offices (constituting a group) than there are offices to be filled, those candidates receiving the highest number of votes, equal in number to the number of offices to be filled, shall be declared elected.

(4) If two or more candidates receiving the highest number of votes each receive the same number of votes, the board of elections shall determine the winner by lot.

(5) Except as provided in this section, the provisions of this Article apply to elections conducted under this section.

"§ 163-330. Voting in primary.

Any person who will become qualified by age or residence to register and vote in the general election for which the primary is held, even though not so qualified by the date

of the primary, shall be entitled to register for the primary and general election prior to the primary and then to vote in the primary after being registered. Such person may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6(c) prior to the primary.

"§ 163-331. Date of primary.

The primary shall be held on the same date as established for primary elections under G.S. 163-1(b).

"§ 163-332. Ballots.

(a) General. – In elections there shall be official ballots. The ballots shall be printed to conform to the requirement of G.S. 163-140(c) and to show the name of each person who has filed notice of candidacy, and the office for which each aspirant is a candidate.

Only those who have filed the required notice of candidacy with the proper board of elections, and who have paid the required filing fee or qualified by petition, shall have their names printed on the official primary ballots. Only those candidates properly nominated shall have their names appear on the official general election ballots.

(b) Ballots to be Furnished by County Board of Elections. – It shall be the duty of the county board of elections to print official ballots for the following offices to be voted for in the primary:

Superior court judge.

District court judge.

In printing ballots, the county board of elections shall be governed by instructions of the State Board of Elections with regard to width, color, kind of paper, form, and size of type.

Three days before the election, the chairman of the county board of elections shall distribute official ballots to the chief judge of each precinct in his county, and the chief judge shall give a receipt for the ballots received. On the day of the primary, it shall be the chief judge's duty to have all the ballots so delivered available for use at the precinct voting place.

"§ 163-333. Canvass.

The county board of elections shall, in addition to the requirements contained in G.S. 163-175, canvass the results in judicial primaries and elections, the number of legal votes cast in each precinct for each candidate, the name of each person voted for, and the total number of votes cast in the county for each person for each different office.

"§ 163-334. Counting of ballots.

Counting of ballots in primaries and elections held under this Article shall be under the same rules as for counting of ballots in nonpartisan municipal elections under Article 24 of this Chapter.

"§ 163-335. Other rules.

Except as provided by this Article, the conduct of elections shall be governed by Subchapter VI of this Chapter."

SECTION 2.(a) G.S. 7A-142 reads as rewritten:

"§ 7A-142. Vacancies in office.

A vacancy in the office of district judge shall be filled for the unexpired term by appointment of the Governor from nominations submitted by the bar of the judicial district as defined in G.S. 84-19, except that in judicial District 9, when vacancies occur in District Court District 9 or 9B, only those members who reside in the district court district shall participate in the selection of the nominees. If the district court district is comprised of counties in more than one judicial district, the nominees shall be submitted jointly by the bars of those judicial districts, but only those members who reside in the district court district shall participate in the selection of the nominees. If the district court judge was elected as the nominee of a political party, then the district bar shall submit to the Governor the names of three persons who are residents of the district court district who are duly authorized to practice law in the district and who are members of the same political party as the vacating judge; provided that if there are not three persons who are available, the bar shall submit the names of two persons who meet the qualifications of this sentence. If the district court judge was not elected as the nominee of a political party, then the district bar shall submit to the Governor the names of three persons who are residents of the district court district and who are duly authorized to practice law in the district; provided that if there are not three persons who are available, the bar shall submit the names of two persons who meet the qualifications of this sentence. Within 60 days after the district bar submits nominations for a vacancy, the Governor shall appoint to fill the vacancy. If the Governor fails to appoint a district bar nominee within 60 days, then the district bar nominee who received the highest number of votes from the district bar shall fill the vacancy. If the district bar fails to submit nominations within 30 days from the date the vacancy occurs, the Governor may appoint to fill the vacancy without waiting for nominations."

SECTION 2.(b) Effective on the first Monday in December of 2002, G.S. 7A-142, as amended by subsection (a) of this section, reads as rewritten:

"**§ 7A-142. Vacancies in office.**

A vacancy in the office of district judge shall be filled for the unexpired term by appointment of the Governor from nominations submitted by the bar of the judicial district as defined in G.S. 84-19, except that in judicial District 9, when vacancies occur in District Court District 9 or 9B, only those members who reside in the district court district shall participate in the selection of the nominees. If the district court district is comprised of counties in more than one judicial district, the nominees shall be submitted jointly by the bars of those judicial districts, but only those members who reside in the district court district shall participate in the selection of the nominees. ~~If the district court judge was elected as the nominee of a political party, then the district bar shall submit to the Governor the names of three persons who are residents of the district court district who are duly authorized to practice law in the district and who are members of the same political party as the vacating judge; provided that if there are not three persons who are available, the bar shall submit the names of two persons who meet the qualifications of this sentence.~~ If the district court judge was not elected as the nominee of a political party, then the district bar shall submit to the Governor the names of three persons who are residents of the district court district and who are duly authorized to practice law in the district; provided that if there are not three persons who are available,

the bar shall submit the names of two persons who meet the qualifications of this sentence. Within 60 days after the district bar submits nominations for a vacancy, the Governor shall appoint to fill the vacancy. If the Governor fails to appoint a district bar nominee within 60 days, then the district bar nominee who received the highest number of votes from the district bar shall fill the vacancy. If the district bar fails to submit nominations within 30 days from the date the vacancy occurs, the Governor may appoint to fill the vacancy without waiting for nominations."

SECTION 3. G.S. 163-106 reads as rewritten:

"**§ 163-106. Notices of candidacy; pledge; with whom filed; date for filing; withdrawal.**

(a) Notice and Pledge. – No one shall be voted for in a primary election unless he shall have filed a notice of candidacy with the appropriate board of elections, State or county, as required by this section. To this end every candidate for selection as the nominee of a political party shall file with and place in the possession of the board of elections specified in subsection (c) of this section, a notice and pledge in the following form:

"Date_____

I hereby file notice as a candidate for nomination as _____ in the _____ party primary election to be held on_____, _____. I affiliate with the _____ party, (and I certify that I am now registered on the registration records of the precinct in which I reside as an affiliate of the _____ party.)

I pledge that if I am defeated in the primary, I will not run for any office as a write-in candidate in the next general election.

Signed _____

Name of candidate

Witness:

_____

_____

(Title of witness)"

Each candidate shall sign his notice of candidacy in the presence of the chairman or secretary of the board of elections, State or county, with which he files. In the alternative, a candidate may have his signature on the notice of candidacy acknowledged and certified to by an officer authorized to take acknowledgments and administer oaths, in which case the candidate may mail his notice of candidacy to the appropriate board of elections.

In signing his notice of candidacy the candidate shall use only his legal name and, in his discretion, any nickname by which he is commonly known. A candidate may also, in lieu of his legal first name and legal middle initial or middle name (if any) sign his nickname, provided that he appends to the notice of candidacy an affidavit that he has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way his name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate himself shall be invalid.

Prior to the date on which candidates may commence filing, the State Board of Elections shall print and furnish, at State expense, to each county board of elections a sufficient number of the notice of candidacy forms prescribed by this subsection for use by candidates required to file with county boards of elections.

(b) Eligibility to File. – No person shall be permitted to file as a candidate in a primary if, at the time he offers to file notice of candidacy, he is registered on the appropriate registration book or record as an affiliate of a political party other than that in whose primary he is attempting to file. No person who has changed his political party affiliation or who has changed from unaffiliated status to party affiliation as permitted in G.S. 163-82.17, shall be permitted to file as a candidate in the primary of the party to which he changed unless he has been affiliated with the political party in which he seeks to be a candidate for at least 90 days prior to the filing date for the office for which he desires to file his notice of candidacy.

A person registered as "unaffiliated" shall be ineligible to file as a candidate in a party primary election.

(c) Time for Filing Notice of Candidacy. – Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

Governor
Lieutenant Governor
All State executive officers
Justices of the Supreme Court, Judges of the Court of Appeals
~~Judges of the district courts~~
United States Senators
Members of the House of Representatives of the United States
District attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

State Senators
Members of the State House of Representatives
All county offices.

(d) Notice of Candidacy for Certain Offices to Indicate Vacancy. – In any primary in which there are two or more vacancies for Chief Justice and associate justices of the Supreme Court, two or more vacancies for judge of the Court of Appeals, or two vacancies for United States Senator from North ~~Carolina or two or more vacancies for the office of district court judge to be filled by nominations,~~ Carolina, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks nomination.

Votes cast for a candidate shall be effective only for his nomination to the vacancy for which he has given notice of candidacy as provided in this subsection.

~~A person seeking party nomination for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which he seeks nomination.~~

(e) Withdrawal of Notice of Candidacy. – Any person who has filed notice of candidacy for an office shall have the right to withdraw it at any time prior to the date on which the right to file for that office expires under the terms of subsection (c) of this section. If a candidate does not withdraw before the filing deadline, except as provided in G.S. 163-112, his name shall be printed on the primary ballot, any votes for him shall be counted, and he shall not be refunded his filing fee.

(f) Candidates required to file their notice of candidacy with the State Board of Elections under subsection (c) of this section shall file along with their notice a certificate signed by the chairman of the board of elections or the director of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, stating the party with which the person is affiliated, and that the person has not changed his affiliation from another party or from unaffiliated within three months prior to the filing deadline under subsection (c) of this section. In issuing such certificate, the chairman or director shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline the State Board of Elections shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections shall prescribe the form for such certificate, and distribute it to each county board of elections no later than the last Monday in December of each odd-numbered year.

(g) When any candidate files a notice of candidacy with a county board of elections under subsection (c) of this section or under G.S. 163-291(2), the chairman or director of elections shall, immediately upon receipt of the notice of candidacy, inspect the registration records of the county, and cancel the notice of candidacy of any person who is not eligible under subsection (c) of this section. The Board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled under this subsection by mail or by having the notice served on him by the sheriff.

(h) No person may file a notice of candidacy for more than one office described in subsection (c) of this section for any one election. If a person has filed a notice of candidacy with a board of elections under this section for one office, then a notice of candidacy may not later be filed for any other office under this section when the election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (e) of this section; provided that this subsection shall not apply unless the deadline for filing notices of candidacy for both offices is the same. Notwithstanding this subsection, a person may file a notice of candidacy for a full term as United States Senator, and also file a notice of candidacy for the remainder of the unexpired term of that same seat in an election held under G.S. 163-12, and may file a

notice of candidacy for a full term as a member of the United States House of Representatives, and also file a notice of candidacy for the remainder of the unexpired term in an election held under G.S. 163-13.

~~(i) No person may file a notice of candidacy for superior court judge unless that person is at the time of filing the notice of candidacy a resident of the judicial district as it will exist at the time the person would take office if elected. No person may be nominated as a superior court judge under G.S. 163-114 unless that person is at the time of nomination a resident of the judicial district as it will exist at the time the person would take office if elected. This subsection implements Article IV Section 9(1) of the North Carolina Constitution which requires regular Superior Court Judges to reside in the district for which elected.~~"

SECTION 4. G.S. 163-107(a) reads as rewritten:

"(a) Fee Schedule. – At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of G.S. 163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	Amount of Filing Fee
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All Justices, Judges, and District Attorneys of the General Court of Justice other than superior <u>and</u> <u>district</u> court judge	One percent (1%) of the annual salary of the office sought
United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
County commissioners, if compensated entirely by fees	Ten dollars ($10.00)
Members of county board of education, if compensated	Five dollars ($5.00)

entirely by fees	
Sheriff, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Clerk of superior court, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Register of deeds, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Any other county office, if compensated entirely by fees	Twenty dollars ($20.00), plus one percent (1%) of the income of the office above two thousand dollars ($2,000)
All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)."

SECTION 5. G.S. 163-111(c)(1) reads as rewritten:

"(1) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing or by telegram with the Executive Secretary-Director of the State Board of Elections no later than 12:00 noon on the seventh day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State Board of Elections determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the Executive Secretary-Director of the State Board of Elections shall immediately notify such candidate and permit him to exercise any options available to him within a 48-hour period following the notification:

Governor,
Lieutenant Governor,
All State executive officers,
Justices, Judges, or District Attorneys of the General Court of Justice, other than superior and district court ~~judge,~~ judges,
United States Senators,
Members of the United States House of Representatives,
State Senators in multi-county senatorial districts, and

Members of the State House of Representatives in multi-county representative districts."

SECTION 6. G.S. 163-140(a)(8) reads as rewritten:

"(8) Judicial ballot for superior and district court."

SECTION 7. G.S. 163-107.1(c) reads as rewritten:

"(c) County, Municipal and District Primaries. – If the candidate is seeking one of the offices set forth in G.S. 163-106(c) but which is not listed in subsection (b) of this section, or a municipal or any other office requiring a partisan primary which is not set forth in G.S. 163-106(c) or (d), he shall file a written petition with the appropriate board of elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for, who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 200 registered voters regardless of said voter's political party affiliation, whichever requirement is greater. The board of elections shall verify the names on the petition, and if the petition is found to be sufficient, the candidate's name shall be printed on the appropriate primary ballot. Petitions for candidates for member of the U.S. House of Representatives, District Attorney, and ~~judge of the District Court or~~ members of the State House of Representatives from multi-county districts or members of the State Senate from multi-county districts must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections, and such petition must be filed with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms."

SECTION 8. G.S. 163-114 reads as rewritten:

"**§ 163-114. Filling vacancies among party nominees occurring after nomination and before election.**

If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

Position	Vacancy is to be filled by
Any elective State office	appointment of State
United States Senator	executive committee of political party in which vacancy occurs
A district office, including:	
Member of the United States House of Representatives	
~~Judge of district court~~	Appropriate district executive
District Attorney	committee of political party

State Senator in a multi-county senatorial district	in which vacancy occurs
Member of State House of Representatives in a multi-county representative district	
State Senator in a single-county senatorial district	County executive committee of political party in which vacancy occurs, provided, in the case of the State Senator or State Representative in a single-county district where not all the county is located in that district, then in voting, only those members of the county executive committee who reside within the district shall vote
Member of State House of Representatives in a Single-county representative district	
Any elective county office	

The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, charged with the duty of printing the ballots on which the name is to appear. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S. 163-139 shall apply. If any person nominated as a candidate of a political party vacates such nomination and such vacancy arises from a cause other than death and the vacancy in nomination occurs more than 120 days before the general election, the vacancy in nomination may be filled under this section only if the appropriate executive committee certifies the name of the nominee in accordance with this paragraph at least 75 days before the general election.

In a county not all of which is located in one congressional district, in choosing the congressional district executive committee member or members from that area of the county, only the county convention delegates or county executive committee members who reside within the area of the county which is within the congressional district may vote.

In a county which is partly in a multi-county senatorial district or which is partly in a multi-county House of Representatives district, in choosing that county's member or members of the senatorial district executive committee or House of Representatives district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote."

SECTION 9. G.S. 163-135(f) reads as rewritten:

"(f) Judicial Elections. – Except as provided by Article 25 of this Chapter, this Article shall apply to and control all elections for judges of the ~~superior court.~~ superior and district courts."

SECTION 10. G.S. 163-140(b)(9) reads as rewritten:

"(9) Judicial ballot for superior and district court. The form of the judicial ballot for judges of the superior court and district court shall be prepared by the county board of elections. On the face of the ballot, shall be printed instructions for marking the voter's choice, in addition to the following instruction: "If you tear or deface or wrongly mark this ballot, return it and get another." On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the responsible county board of elections. This ballot may not be combined with any other ballot except another judicial ballot."

SECTION 11. G.S. 163-191 reads as rewritten:

"**§ 163-191. Contested primaries and elections; how tie broken.**

In a primary for party nomination for one or more of the offices to be canvassed by the State Board of Elections under the provisions of G.S. 163-187, the results shall be determined in accordance with the provisions of G.S. 163-111.

In a general election for one or more of the offices to be canvassed by the State Board of Elections under the provisions of G.S. 163-187, the persons having the highest number of votes for each office, respectively, shall be declared duly elected to that office by the State Board of Elections. But if two or more be equal and highest in votes for the office, then the State Board of Elections shall order a new election for the purpose of breaking the tie except if there is a tie for superior or district court judge the tie shall be broken in accordance with Article 25 of this Chapter."

SECTION 12. This act is effective when it becomes law.

SENATE BILL 119:
District Court Elections Nonpartisan

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Dalton
Date:	August 7, 2001	**Summary by:**	Robin Johnson*
Version:	PCS for First Edition		Committee Counsel

The PCS adds a new Section 12 to the bill that would apply the write-in statute to district court judge elections. (This would conform to a change made in SB 831, which amended numerous election laws, including applying the write-in statute to superior court judge elections. SB 831 went into effect July 28, 2001.)

SUMMARY: Senate Bill 119 would provide for the nonpartisan election of district court judges.

CURRENT LAW: The District Court Division of the General Court of Justice consists of various district courts organized in 30 territorial districts, with at least one district judge in each district. The General Assembly determines the number of judges for each district. Each judge must be a resident of the district to which he or she is elected, and the voters of the district court district in which a judge is to serve elect that district judge. District court judges, who serve four-year terms, are elected at the regular election for members of the General Assembly immediately preceding termination of each regular term. A vacancy in the office of district judge is filled for the unexpired term by appointment of the Governor from nominations submitted by the district bar. Nominees must be residents of the district court district who are licensed to practice law in the district and who are members of the same political party as the vacating judge.

In 1996, the law governing the elections of superior court judges was amended to make those elections nonpartisan. Set out in Article 25 of Chapter 163, superior court judges are now nominated and elected without regard to political party. Candidates run in nonpartisan primaries, held on the same day in May as the party primaries. The primaries reduce the field to twice the number to be elected, eliminating additional candidates. Then the reduced field (twice the number to be elected) runs in the November general election. The system is patterned after the nonpartisan primary and elections used by some cities to elect their mayors and city councils. The nonpartisan primaries and elections are by district.

BILL ANALYSIS: In addition to a number of conforming changes, Senate Bill 119 basically amends Article 25 of Chapter 163 by moving the existing provisions regarding the nomination and election of district court judges from the partisan election method set out in the general election law to the nonpartisan election method set out for superior court judges.

Current law requires that in any election in which there are two or more vacancies for the office of district court judge to be filled by nominations, *each candidate for district court judge must file a written statement designating the vacancy to which the candidate seeks election.* Similarly, a person seeking election for a specialized district judgeship must file a written statement designating the specialized judgeship to which the person seeks nomination. These provisions are deleted from G.S. 163-106 [pages 10 and 11 of the bill], and are now set out in G.S. 163-323 (f), [page 3 of the bill], with *no substantive change.*

Senate Bill 119 would be effective when it becomes law.

S119-SMRH-001: Brenda Carte and Steve Rose, Principal Attorneys, contributed to this summary.

140 OUT OF THE STATE'S 327 TRIAL JUDGES (43%) RESPONDED

DISTRICT COURT

COURT WATCH QUESTIONNAIRE ON NON-PARTISAN ELECTIONS (JUNE 2001)

I AM A JUDGE IN:
(DISTRICT COURT) 104 DISTRICT COURT JUDGES RESPONDED
___ SUPERIOR COURT; ___ CHECK IF EVER ELECTED IN A NON-PARTISAN ELECTION

I AM A ___ DEMOCRAT; ___ REPUBLICAN

MY POSITION ON DISTRICT COURT ELECTIONS IS:
(21%) 22 I OPPOSE MAKING THEM NON-PARTISAN (13 REPUBLICANS, 9 DEMOCRATS)
(72%) 75 I FAVOR MAKING THEM NON-PARTISAN (68 DEMOCRATS, 7 REPUBLICANS)
(7%) 7 NO OPINION/ UNDECIDED

THE PRIMARY REASON FOR MY POSITION IS _____

OPTIONAL: YOUR NAME _____; PHONE ( )_____

ADDRESS: _____

(ZIP)

_____ CHECK IF YOU DON'T WANT YOUR NAME RELEASED.
_____ CHECK IF YOU WANT A COPY OF THE SURVEY RESULTS

SUPERIOR COURT

COURT WATCH QUESTIONNAIRE ON NON-PARTISAN ELECTIONS (JUNE 2001)

I AM A JUDGE IN:
___ DISTRICT COURT 36 SUPERIOR COURT JUDGES RESPONDED
(SUPERIOR COURT) 19 CHECK IF EVER ELECTED IN A NON-PARTISAN ELECTION (17 FAVORED)

I AM A ___ DEMOCRAT; ___ REPUBLICAN

MY POSITION ON DISTRICT COURT ELECTIONS IS:
(11%) 4 I OPPOSE MAKING THEM NON-PARTISAN (2 DEMOCRATS, 2 REPUBLICANS)
(83%) 30 I FAVOR MAKING THEM NON-PARTISAN
(6%) 2 NO OPINION/ UNDECIDED

THE PRIMARY REASON FOR MY POSITION IS _____

OPTIONAL: YOUR NAME _____; PHONE ( )_____

ADDRESS: _____

(ZIP)

_____ CHECK IF YOU DON'T WANT YOUR NAME RELEASED.
_____ CHECK IF YOU WANT A COPY OF THE SURVEY RESULTS

VISITOR REGISTRATION SHEET

JII
Name of Committee

8/7/01
Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
STAN SPRAGUE	COURT WATCH OF NC, PO BOX 10971, GREENSBORO
ROBERT RADER	DIST. CT. JUDGE WAKE
A. ROBINSON HASSELL	DIST. CT. JUDGE GUILFORD
TOM JARRELL	DIST. CT. JUDGE HIGH POINT
ANN MARIE CALABRIA	DIST CT JUDGE WAKE
JOY BARBOUR	CONCERNED BIKERS ASSOC./ABATE OF N.C.
STELLA BOSWELL	NCATL
DICK TAYLOR	NCATL
BARRY SMITH	FURMAN NEWSPAPER
MARGARET WESTBROOK	KENNEDY COVINGTON

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

August 14, 2001

The House Committee on JUDICIARY II met at 10:00 a.m. on Tuesday, August 14, 2001 in Room 421 of the Legislative Office Building. The following members were present: Chairman Phil Baddour, Vice Chairman Phil Haire, Representatives Bowie, Culpepper, Decker, Gulley, Hall, Jeffus, Justus, Miller, Pope, Sherrill, Weiss, ex officio member Representative Earle.

The Visitor Registration Sheet is attached as a part of the record of the Minutes. Related handouts are listed as ATTACHMENTS for the record.

Chairman Baddour presided and called the meeting to order. He recognized the Pages who were assigned to serve the Committee. The following bills were considered.

SB 119 – DISTRICT COURT ELECTIONS NONPARTISAN. A proposed House Committee Substitute was offered and a motion was made by Representative Haire for adoption of the Proposed Committee Substitute for the purpose of discussion. The motion carried. Senator Dalton, Sponsor, explained the bill and the changes made since last presented. Each member was given the opportunity to express his/her concerns. Representative Hall made a motion to table SB 119 and Chairman Baddour declined to accept the motion. Representative Jeffus made a motion for a favorable report as to the House Committee Substitute bill, unfavorable to the original bill. The motion carried by a vote of nine to five.

SB 241- HEALTH INSURANCE TERMINATION NOTICE. A proposed House Committee Substitute was offered and a motion was made by Representative Culpepper to adopt the Proposed Committee Substitute for the purpose of discussion. The motion carried. Senator Dalton explained and recognized Mr. Bill Hale with the NC Department of Insurance for comments. Representative Miller moved for a favorable report of the House Committee Substitute, unfavorable as to Senate Committee Substitute bill. The motion carried.

The meeting adjourned at 11:00 a.m.

Phil Baddour
Representative Philip A. Baddour
Presiding Chairman

Julie R. Allen
Julie R. Allen
Committee Assistant

Jacquelyn A. Hamby
Jacquelyn A. Hamby
Transcribing Committee Assistant

HOUSE JUDICIARY II COMMITTEE
AGENDA

Tuesday, August 14, 2001

10:00 A.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF

Robin Johnson
Esther Manheimer
Jeff Hudson
Julie Allen (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDERED:

SB 119 District Court Elections Nonpartisan – Sen. Dalton

SB 241 Health Insurance Termination Notice – Sen. Dalton

SB 881 Worker's Comp. Awards Filed as Judgments – Sen. Soles

ADJOURNMENT

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
S.B. 119 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR NONPARTISAN ELECTION OF DISTRICT COURT JUDGES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to House Committee Substitute bill, ☐ which changes the title, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 119
PROPOSED HOUSE COMMITTEE SUBSTITUTE S119-CSRH-55 [v.1]

8/7/2001 9:46:44 AM

Short Title: District Court Elections Nonpartisan. (Public)

Sponsors:

Referred to:

February 12, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR NONPARTISAN ELECTION OF DISTRICT COURT JUDGES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 25 of Chapter 163 of the General Statutes reads as rewritten:

"SUBCHAPTER X. ELECTION OF SUPERIOR AND DISTRICT COURT JUDGES.

"ARTICLE 25.

"NOMINATION AND ELECTION OF SUPERIOR AND DISTRICT COURT JUDGES.

"**§ 163-321. Applicability.**

The nomination and election of superior and district court judges of the General Court of Justice shall be as provided by this Article.

"**§ 163-322. Nonpartisan primary election method.**

(a) General. – Except as provided in G.S. 163-329, there shall be a primary to narrow the field of candidates to two candidates for each position to be filled if, when the filing period closes, there are more than two candidates for a single office or the number of candidates for a group of offices exceeds twice the number of positions to be filled. If only one or two candidates file for a single office, no primary shall be held for that office and the candidates shall be declared nominated. If the number of candidates for a group of offices does not exceed twice the number of positions to be filled, no primary shall be held for those offices and the candidates shall be declared nominated.

(b) Determination of Nominees. – In the primary, the two candidates for a single office receiving the highest number of votes, and those candidates for a group of offices receiving the highest number of votes, equal to twice the number of positions to be filled, shall be declared nominated. If two or more candidates receiving the highest number of votes each receive the same number of votes, the State Board of Elections shall determine their relative ranking by lot, and shall declare the nominees accordingly.

The canvass of the primary shall be held on the same date as the primary canvass fixed under G.S. 163-188. The canvass shall be conducted in accordance with Article 16 of this Chapter.

(c) Determination of Election Winners. – In the election, the names of those candidates declared nominated without a primary and those candidates nominated in the primary shall be placed on the ballot. The candidate for a single office receiving the highest number of votes shall be elected. Those candidates for a group of offices receiving the highest number of votes, equal in number to the number of positions to be filled, shall be elected. If two candidates receiving the highest number of votes each received the same number of votes, the State Board of Elections shall determine the winner by lot.

"**§ 163-323. Notice of candidacy.**

(a) Form of Notice. – Each person offering to be a candidate for election shall do so by filing a notice of candidacy with the State Board of Elections in the following form, inserting the words in parentheses when appropriate:

"Date _____:

I hereby file notice that I am a candidate for election to the office of_____ in the regular election to be held _____, _____.

Signed _____:

(Name of Candidate)

Witness: _____".

The notice of candidacy shall be either signed in the presence of the chairman or secretary of the State Board of Elections, or signed and acknowledged before an officer authorized to take acknowledgments who shall certify the notice under seal. An acknowledged and certified notice may be mailed to the State Board of Elections. In signing a notice of candidacy, the candidate shall use only the candidate's legal name and, in his discretion, any nickname by which commonly known. A candidate may also, in lieu of that candidate's first name and legal middle initial or middle name, if any, sign that candidate's nickname, provided the candidate appends to the notice of candidacy an affidavit that the candidate has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way the candidate's name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate himself shall be invalid.

(b) Time for Filing Notice of Candidacy. – Candidates seeking election to the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the election:

Judges of the superior courts.

Judges of the district courts.

(c) Withdrawal of Notice of Candidacy. – Any person who has filed a notice of candidacy for an office shall have the right to withdraw it at any time prior to the date on which the right to file for that office expires under the terms of subsection (b) of this section.

(d) Certificate That Candidate Is Registered Voter. – Candidates shall file along with their notice a certificate signed by the chairman of the board of elections or the supervisor of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, and if the candidacy is for superior court judge and the county contains more than one superior court district, stating the superior court district of which the person is a resident. In issuing such certificate, the chairman or supervisor shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline, the State Board of Elections shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections shall prescribe the form for such certificate, and distribute it to each county board of elections no later than the last Monday in December of each odd-numbered year.

(e) Candidacy for More Than One Office Prohibited. – No person may file a notice of candidacy for more than one office or group of offices described in subsection (b) of this section, or for an office or group of offices described in subsection (b) of this section and an office described in G.S. 163-106(c), for any one election. If a person has filed a notice of candidacy with a board of elections under this section or under G.S. 163-106(c) for one office or group of offices, then a notice of candidacy may not later be filed for any other office or group of offices under this section when the election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (c) of this section.

(f) Notice of Candidacy for Certain Offices to Indicate Vacancy. – In any election in which there are two or more vacancies for the office of district court judge to be filled by nominations, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks election. Votes cast for a candidate shall be effective only for his election to the vacancy for which the candidate has given notice of candidacy as provided in this subsection.

A person seeking election for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which the person seeks nomination.

(g) No person may file a notice of candidacy for superior court judge unless that person is at the time of filing the notice of candidacy a resident of the judicial district as it will exist at the time the person would take office if elected. No person may be nominated as a superior court judge under G.S. 163-114 unless that person is at the time of nomination a resident of the judicial district as it will exist at the time the person

would take office if elected. This subsection implements Article IV Section 9(1) of the North Carolina Constitution which requires regular Superior Court Judges to reside in the district for which elected.

"**§ 163-324. Filing fees required of candidates; refunds.**

(a) Fee Schedule. – At the time of filing a notice of candidacy under this Article, each candidate shall pay to the State Board of Elections a filing fee for the office he seeks in the amount of one percent (1%) of the annual salary of the office sought.

(b) Refund of Fees. – If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section withdraws his notice of candidacy within the period prescribed in G.S. 163-323(c), he shall be entitled to have the fee he paid refunded. The chairman of the State Board of Elections shall cause a warrant to be drawn on the State Treasurer for the refund payment.

If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section dies prior to the date of the election, the personal representative of the estate shall be entitled to have the fee refunded if application is made to the board of elections to which the fee was paid no later than one year after the date of death, and refund shall be made in the same manner as in withdrawal of notice of candidacy.

"**§ 163-325. Petition in lieu of payment of filing fee.**

(a) General. – Any qualified voter who seeks election under this Article may, in lieu of payment of any filing fee required for the office he seeks, file a written petition requesting him to be a candidate for a specified office with the State Board of Elections.

(b) Requirements of Petition; Deadline for Filing. – If the candidate is seeking the office of superior or district court judge, that individual shall file a written petition with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for. The board of elections shall verify the names on the petition, and if the petition and notice of candidacy are found to be sufficient, the candidate's name shall be printed on the appropriate ballot. Petitions must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms.

"**§ 163-326. Certification of notices of candidacy.**

(a) Names of Candidates Sent to Secretary of State. – Within three days after the time for filing notices of candidacy with the State Board of Elections under the provisions of G.S. 163-323(b) has expired, the chairman or secretary of that Board shall certify to the Secretary of State the name and address of each person who has filed with the State Board of Elections, indicating in each instance the office sought.

(b) Notification of Local Boards. – No later than 10 days after the time for filing notices of candidacy under the provisions of G.S. 163-323(b) has expired, the chairman of the State Board of Elections shall certify to the chairman of the county board of elections in each county in the appropriate district the names of candidates for

nomination to the offices of superior and district court judge who have filed the required notice and paid the required filing fee or presented the required petition to the State Board of Elections, so that their names may be printed on the official judicial ballot for superior and district court.

(c) Receipt of Notification by County Board. – Within two days after receipt of each of the letters of certification from the chairman of the State Board of Elections required by subsection (b) of this section, each county elections board chairman shall acknowledge receipt by letter addressed to the chairman of the State Board of Elections.

"**§ 163-327. Vacancies of candidates or elected officers.**

(a) Death or Disqualification of Candidate Before Primary. – If a candidate for nomination in a primary dies or becomes disqualified before the primary but after the ballots have been printed, the State Board of Elections shall determine whether or not there is time to reprint the ballots. If the Board determines that there is not enough time to reprint the ballots, the deceased or disqualified candidate's name shall remain on the ballots. If that candidate receives enough votes for nomination, such votes shall be disregarded and the candidate receiving the next highest number of votes below the number necessary for nomination shall be declared nominated. If the death or disqualification of the candidate leaves only two candidates for each office to be filled, the nonpartisan primary shall not be held and all candidates shall be declared nominees.

(b) Death, Disqualification, or Resignation of Official After Election. – If a person elected to the office of superior or district court judge dies, becomes disqualified, or resigns on or after election day and before he has qualified by taking the oath of office, the office shall be deemed vacant and shall be filled as provided by law.

"**§ 163-328. Failure of candidates to file; death or other disqualification of a candidate before election.**

(a) Insufficient Number of Candidates. – If when the filing period expires, candidates have not filed for an office to be filled under this Article, the State Board of Elections shall extend the filing period for five days for any such offices.

(b) Death or Other Disqualification of Candidate; Reopening Filing. – If there is no primary because only one or two candidates have filed for a single office, or the number of candidates filed for a group of offices does not exceed twice the number of positions to be filled, and thereafter a candidate dies or otherwise becomes disqualified before the election and before the ballots are printed, the State Board of Elections shall, upon notification of the death or other disqualification, immediately reopen the filing period for an additional five days during which time additional candidates shall be permitted to file for election. If the ballots have been printed at the time the State Board of Elections receives notice of the candidate's death or other disqualification, the Board shall determine whether there will be sufficient time to reprint them before the election if the filing period is reopened for three days. If the Board determines that there will be sufficient time to reprint the ballots, it shall reopen the filing period for three days to allow other candidates to file for election, and such election shall be conducted on the plurality basis.

(c) Vacancy Caused by Nominated Candidate; Ballots Not Reprinted. – If the ballots have been printed at the time the State Board of Elections receives notice of a candidate's death, other disqualification, or resignation, and if the Board determines that there is not enough time to reprint the ballots before the election if the filing period is reopened for three days, then regardless of the number of candidates remaining for the office or group of offices, the ballots shall not be reprinted and the name of the vacated candidate shall remain on the ballots. If a vacated candidate should poll the highest number of votes in the election for a single office or enough votes to be elected to one of a group of offices, the State Board of Elections shall declare the office vacant and it shall be filled in the manner provided by law.

"**§ 163-329. Elections to fill vacancy created after primary filing period to use plurality method.**

(a) General. – If a vacancy is created in the office of judge of superior court after the filing period for the primary opens but more than 60 days before the general election, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted without a primary using the plurality method as provided in subsection (b) of this section. If a vacancy is created in the office of judge of superior court before the filing period for the primary opens, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted in accordance with G.S. 163-322.

(b) Plurality Election Rules. – Elections under this section shall be conducted using the following rules:

(1) The filing period shall be prescribed by the State Board of Elections, but in no event may it be less than five working days. If a vacancy occurs in a second office in the same superior court district after the first filing period established under the section has closed, the State Board of Elections shall reopen filing for a period of not less than five working days for the office of superior court judge. All persons filing in either filing period shall run as a group and the election results shall be determined by subdivision (3) of this subsection.

(2) When more than one person is seeking election to a single office, the candidate who receives the highest number of votes shall be declared elected.

(3) When more persons are seeking election to two or more offices (constituting a group) than there are offices to be filled, those candidates receiving the highest number of votes, equal in number to the number of offices to be filled, shall be declared elected.

(4) If two or more candidates receiving the highest number of votes each receive the same number of votes, the board of elections shall determine the winner by lot.

(5) Except as provided in this section, the provisions of this Article apply to elections conducted under this section.

"**§ 163-330. Voting in primary.**

Any person who will become qualified by age or residence to register and vote in the general election for which the primary is held, even though not so qualified by the date of the primary, shall be entitled to register for the primary and general election prior to the primary and then to vote in the primary after being registered. Such person may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6(c) prior to the primary.

"**§ 163-331. Date of primary.**

The primary shall be held on the same date as established for primary elections under G.S. 163-1(b).

"**§ 163-332. Ballots.**

(a) General. – In elections there shall be official ballots. The ballots shall be printed to conform to the requirement of G.S. 163-140(c) and to show the name of each person who has filed notice of candidacy, and the office for which each aspirant is a candidate.

Only those who have filed the required notice of candidacy with the proper board of elections, and who have paid the required filing fee or qualified by petition, shall have their names printed on the official primary ballots. Only those candidates properly nominated shall have their names appear on the official general election ballots.

(b) Ballots to be Furnished by County Board of Elections. – It shall be the duty of the county board of elections to print official ballots for the following offices to be voted for in the primary:

Superior court judge.

District court judge.

In printing ballots, the county board of elections shall be governed by instructions of the State Board of Elections with regard to width, color, kind of paper, form, and size of type.

Three days before the election, the chairman of the county board of elections shall distribute official ballots to the chief judge of each precinct in his county, and the chief judge shall give a receipt for the ballots received. On the day of the primary, it shall be the chief judge's duty to have all the ballots so delivered available for use at the precinct voting place.

"**§ 163-333. Canvass.**

The county board of elections shall, in addition to the requirements contained in G.S. 163-175, canvass the results in judicial primaries and elections, the number of legal votes cast in each precinct for each candidate, the name of each person voted for, and the total number of votes cast in the county for each person for each different office.

"**§ 163-334. Counting of ballots.**

Counting of ballots in primaries and elections held under this Article shall be under the same rules as for counting of ballots in nonpartisan municipal elections under Article 24 of this Chapter.

"**§ 163-335. Other rules.**

Except as provided by this Article, the conduct of elections shall be governed by Subchapter VI of this Chapter."

SECTION 2.(a) G.S. 7A-142 reads as rewritten:

"**§ 7A-142. Vacancies in office.**

A vacancy in the office of district judge shall be filled for the unexpired term by appointment of the Governor from nominations submitted by the bar of the judicial district as defined in G.S. 84-19, except that in judicial District 9, when vacancies occur in District Court District 9 or 9B, only those members who reside in the district court district shall participate in the selection of the nominees. If the district court district is comprised of counties in more than one judicial district, the nominees shall be submitted jointly by the bars of those judicial districts, but only those members who reside in the district court district shall participate in the selection of the nominees. If the district court judge was elected as the nominee of a political party, then the district bar shall submit to the Governor the names of three persons who are residents of the district court district who are duly authorized to practice law in the district and who are members of the same political party as the vacating judge; provided that if there are not three persons who are available, the bar shall submit the names of two persons who meet the qualifications of this sentence. If the district court judge was not elected as the nominee of a political party, then the district bar shall submit to the Governor the names of three persons who are residents of the district court district and who are duly authorized to practice law in the district; provided that if there are not three persons who are available, the bar shall submit the names of two persons who meet the qualifications of this sentence. Within 60 days after the district bar submits nominations for a vacancy, the Governor shall appoint to fill the vacancy. If the Governor fails to appoint a district bar nominee within 60 days, then the district bar nominee who received the highest number of votes from the district bar shall fill the vacancy. If the district bar fails to submit nominations within 30 days from the date the vacancy occurs, the Governor may appoint to fill the vacancy without waiting for nominations."

SECTION 2.(b) Effective on the first Monday in December of 2002, G.S. 7A-142, as amended by subsection (a) of this section, reads as rewritten:

"**§ 7A-142. Vacancies in office.**

A vacancy in the office of district judge shall be filled for the unexpired term by appointment of the Governor from nominations submitted by the bar of the judicial district as defined in G.S. 84-19, except that in judicial District 9, when vacancies occur in District Court District 9 or 9B, only those members who reside in the district court district shall participate in the selection of the nominees. If the district court district is comprised of counties in more than one judicial district, the nominees shall be submitted jointly by the bars of those judicial districts, but only those members who reside in the district court district shall participate in the selection of the nominees. ~~If the district court judge was elected as the nominee of a political party, then the district bar shall submit to the Governor the names of three persons who are residents of the district court district who are duly authorized to practice law in the district and who are members of~~

~~the same political party as the vacating judge; provided that if there are not three persons who are available, the bar shall submit the names of two persons who meet the qualifications of this sentence.~~ If the district court judge was not elected as the nominee of a political party, then the district bar shall submit to the Governor the names of three persons who are residents of the district court district and who are duly authorized to practice law in the district; provided that if there are not three persons who are available, the bar shall submit the names of two persons who meet the qualifications of this sentence. Within 60 days after the district bar submits nominations for a vacancy, the Governor shall appoint to fill the vacancy. If the Governor fails to appoint a district bar nominee within 60 days, then the district bar nominee who received the highest number of votes from the district bar shall fill the vacancy. If the district bar fails to submit nominations within 30 days from the date the vacancy occurs, the Governor may appoint to fill the vacancy without waiting for nominations."

SECTION 3. G.S. 163-106 reads as rewritten:

"**§ 163-106. Notices of candidacy; pledge; with whom filed; date for filing; withdrawal.**

(a) Notice and Pledge. – No one shall be voted for in a primary election unless he shall have filed a notice of candidacy with the appropriate board of elections, State or county, as required by this section. To this end every candidate for selection as the nominee of a political party shall file with and place in the possession of the board of elections specified in subsection (c) of this section, a notice and pledge in the following form:

"Date_____

I hereby file notice as a candidate for nomination as _____ in the _____ party primary election to be held on_____, _____. I affiliate with the _____ party, (and I certify that I am now registered on the registration records of the precinct in which I reside as an affiliate of the _____ party.)

I pledge that if I am defeated in the primary, I will not run for any office as a write-in candidate in the next general election.

Signed _____

Name of candidate

Witness:

_____

_____

(Title of witness)"

Each candidate shall sign his notice of candidacy in the presence of the chairman or secretary of the board of elections, State or county, with which he files. In the alternative, a candidate may have his signature on the notice of candidacy acknowledged and certified to by an officer authorized to take acknowledgments and administer oaths, in which case the candidate may mail his notice of candidacy to the appropriate board of elections.

In signing his notice of candidacy the candidate shall use only his legal name and, in his discretion, any nickname by which he is commonly known. A candidate may also, in lieu of his legal first name and legal middle initial or middle name (if any) sign his nickname, provided that he appends to the notice of candidacy an affidavit that he has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way his name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate himself shall be invalid.

Prior to the date on which candidates may commence filing, the State Board of Elections shall print and furnish, at State expense, to each county board of elections a sufficient number of the notice of candidacy forms prescribed by this subsection for use by candidates required to file with county boards of elections.

(b) Eligibility to File. – No person shall be permitted to file as a candidate in a primary if, at the time he offers to file notice of candidacy, he is registered on the appropriate registration book or record as an affiliate of a political party other than that in whose primary he is attempting to file. No person who has changed his political party affiliation or who has changed from unaffiliated status to party affiliation as permitted in G.S. 163-82.17, shall be permitted to file as a candidate in the primary of the party to which he changed unless he has been affiliated with the political party in which he seeks to be a candidate for at least 90 days prior to the filing date for the office for which he desires to file his notice of candidacy.

A person registered as "unaffiliated" shall be ineligible to file as a candidate in a party primary election.

(c) Time for Filing Notice of Candidacy. – Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

Governor
Lieutenant Governor
All State executive officers
Justices of the Supreme Court, Judges of the Court of Appeals
~~Judges of the district courts~~
United States Senators
Members of the House of Representatives of the United States
District attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

State Senators
Members of the State House of Representatives

All county offices.

(d) Notice of Candidacy for Certain Offices to Indicate Vacancy. – In any primary in which there are two or more vacancies for Chief Justice and associate justices of the Supreme Court, two or more vacancies for judge of the Court of Appeals, or two vacancies for United States Senator from North ~~Carolina or two or more vacancies for the office of district court judge to be filled by nominations,~~ Carolina, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks nomination. Votes cast for a candidate shall be effective only for his nomination to the vacancy for which he has given notice of candidacy as provided in this subsection.

~~A person seeking party nomination for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which he seeks nomination.~~

(e) Withdrawal of Notice of Candidacy. – Any person who has filed notice of candidacy for an office shall have the right to withdraw it at any time prior to the date on which the right to file for that office expires under the terms of subsection (c) of this section. If a candidate does not withdraw before the filing deadline, except as provided in G.S. 163-112, his name shall be printed on the primary ballot, any votes for him shall be counted, and he shall not be refunded his filing fee.

(f) Candidates required to file their notice of candidacy with the State Board of Elections under subsection (c) of this section shall file along with their notice a certificate signed by the chairman of the board of elections or the director of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, stating the party with which the person is affiliated, and that the person has not changed his affiliation from another party or from unaffiliated within three months prior to the filing deadline under subsection (c) of this section. In issuing such certificate, the chairman or director shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline the State Board of Elections shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections shall prescribe the form for such certificate, and distribute it to each county board of elections no later than the last Monday in December of each odd-numbered year.

(g) When any candidate files a notice of candidacy with a county board of elections under subsection (c) of this section or under G.S. 163-291(2), the chairman or director of elections shall, immediately upon receipt of the notice of candidacy, inspect the registration records of the county, and cancel the notice of candidacy of any person who is not eligible under subsection (c) of this section. The Board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled under this subsection by mail or by having the notice served on him by the sheriff.

(h) No person may file a notice of candidacy for more than one office described in subsection (c) of this section for any one election. If a person has filed a notice of candidacy with a board of elections under this section for one office, then a notice of candidacy may not later be filed for any other office under this section when the election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (e) of this section; provided that this subsection shall not apply unless the deadline for filing notices of candidacy for both offices is the same. Notwithstanding this subsection, a person may file a notice of candidacy for a full term as United States Senator, and also file a notice of candidacy for the remainder of the unexpired term of that same seat in an election held under G.S. 163-12, and may file a notice of candidacy for a full term as a member of the United States House of Representatives, and also file a notice of candidacy for the remainder of the unexpired term in an election held under G.S. 163-13.

~~(i) No person may file a notice of candidacy for superior court judge unless that person is at the time of filing the notice of candidacy a resident of the judicial district as it will exist at the time the person would take office if elected. No person may be nominated as a superior court judge under G.S. 163-114 unless that person is at the time of nomination a resident of the judicial district as it will exist at the time the person would take office if elected. This subsection implements Article IV Section 9(1) of the North Carolina Constitution which requires regular Superior Court Judges to reside in the district for which elected.~~"

SECTION 4. G.S. 163-107(a) reads as rewritten:

"(a) Fee Schedule. – At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of G.S. 163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	Amount of Filing Fee
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All Justices, Judges, and District Attorneys of the General Court of Justice other than superior <u>and district</u> court judge	One percent (1%) of the annual salary of the office sought
United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States	One percent (1%) of the annual

House of Representatives	salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
County commissioners, if compensated entirely by fees	Ten dollars ($10.00)
Members of county board of education, if compensated entirely by fees	Five dollars ($5.00)
Sheriff, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Clerk of superior court, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Register of deeds, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Any other county office, if compensated entirely by fees	Twenty dollars ($20.00), plus one percent (1%) of the income of the office above two thousand dollars ($2,000)
All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)."

SECTION 5. G.S. 163-111(c)(1) reads as rewritten:

"(1) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing or by telegram with the Executive Secretary-Director of the State Board of Elections no later than 12:00 noon on the seventh day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State Board of Elections determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the

Executive Secretary-Director of the State Board of Elections shall immediately notify such candidate and permit him to exercise any options available to him within a 48-hour period following the notification:

Governor,
Lieutenant Governor,
All State executive officers,
Justices, Judges, or District Attorneys of the General Court of Justice, other than superior and district court ~~judge.~~ judges.
United States Senators,
Members of the United States House of Representatives,
State Senators in multi-county senatorial districts, and
Members of the State House of Representatives in multi-county representative districts."

SECTION 6. G.S. 163-140(a)(8) reads as rewritten:

"(8) Judicial ballot for superior and district court."

SECTION 7. G.S. 163-107.1(c) reads as rewritten:

"(c) County, Municipal and District Primaries. – If the candidate is seeking one of the offices set forth in G.S. 163-106(c) but which is not listed in subsection (b) of this section, or a municipal or any other office requiring a partisan primary which is not set forth in G.S. 163-106(c) or (d), he shall file a written petition with the appropriate board of elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for, who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 200 registered voters regardless of said voter's political party affiliation, whichever requirement is greater. The board of elections shall verify the names on the petition, and if the petition is found to be sufficient, the candidate's name shall be printed on the appropriate primary ballot. Petitions for candidates for member of the U.S. House of Representatives, District Attorney, and ~~judge of the District Court or~~ members of the State House of Representatives from multi-county districts or members of the State Senate from multi-county districts must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections, and such petition must be filed with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms."

SECTION 8. G.S. 163-114 reads as rewritten:

"**§ 163-114. Filling vacancies among party nominees occurring after nomination and before election.**

If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the

date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

Position	Vacancy is to be filled by
Any elective State office	appointment of State executive committee of political party in which vacancy occurs
United States Senator	
A district office, including:	
Member of the United States House of Representatives	
~~Judge of district court~~	Appropriate district executive committee of political party in which vacancy occurs
District Attorney	
State Senator in a multi-county senatorial district	
Member of State House of Representatives in a multi-county representative district	
State Senator in a single-county senatorial district	County executive committee of political party in which vacancy occurs, provided, in the case of the State Senator or State Representative in a single-county district where not all the county is located in that district, then in voting, only those members of the county executive committee who reside within the district shall vote
Member of State House of Representatives in a Single-county representative district	
Any elective county office	

The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, charged with the duty of printing the ballots on which the name is to appear. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S. 163-139 shall apply. If any person nominated as a candidate of a political party vacates such nomination and such vacancy arises from a cause other than death and the vacancy in nomination occurs more than 120 days before the general election, the vacancy in nomination may be filled under this

section only if the appropriate executive committee certifies the name of the nominee in accordance with this paragraph at least 75 days before the general election.

In a county not all of which is located in one congressional district, in choosing the congressional district executive committee member or members from that area of the county, only the county convention delegates or county executive committee members who reside within the area of the county which is within the congressional district may vote.

In a county which is partly in a multi-county senatorial district or which is partly in a multi-county House of Representatives district, in choosing that county's member or members of the senatorial district executive committee or House of Representatives district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote."

SECTION 9. G.S. 163-135(f) reads as rewritten:

"(f) Judicial Elections. – Except as provided by Article 25 of this Chapter, this Article shall apply to and control all elections for judges of the ~~superior court.~~ superior and district courts."

SECTION 10. G.S. 163-140(b)(9) reads as rewritten:

"(9) Judicial ballot for superior and district court. The form of the judicial ballot for judges of the superior court and district court shall be prepared by the county board of elections. On the face of the ballot, shall be printed instructions for marking the voter's choice, in addition to the following instruction: "If you tear or deface or wrongly mark this ballot, return it and get another." On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the responsible county board of elections. This ballot may not be combined with any other ballot except another judicial ballot."

SECTION 11. G.S. 163-191 reads as rewritten:

"**§ 163-191. Contested primaries and elections; how tie broken.**

In a primary for party nomination for one or more of the offices to be canvassed by the State Board of Elections under the provisions of G.S. 163-187, the results shall be determined in accordance with the provisions of G.S. 163-111.

In a general election for one or more of the offices to be canvassed by the State Board of Elections under the provisions of G.S. 163-187, the persons having the highest number of votes for each office, respectively, shall be declared duly elected to that office by the State Board of Elections. But if two or more be equal and highest in votes for the office, then the State Board of Elections shall order a new election for the purpose of breaking the tie except if there is a tie for superior or district court judge the tie shall be broken in accordance with Article 25 of this Chapter."

SECTION 12. G.S. 163-123(g) reads as rewritten:

"(g) Municipal and Nonpartisan Elections Excluded. – This section does not apply to municipal elections conducted under Subchapter IX of Chapter 163 of the General Statutes, and does not apply to nonpartisan

elections except for superior court judge and district court judge elections under Article 25 of this Chapter. "

SECTION 13. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

S 1

SENATE BILL 119

Short Title:	District Court Elections Nonpartisan.	(Public)
Sponsors:	Senators Dalton; Clodfelter, Hartsell, Martin of Guilford, Rand, Thomas, and Wellons.	
Referred to:	Judiciary II.	

February 12, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR NONPARTISAN ELECTION OF DISTRICT COURT JUDGES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 25 of Chapter 163 of the General Statutes reads as rewritten:

"SUBCHAPTER X. ELECTION OF SUPERIOR AND DISTRICT COURT JUDGES.

"ARTICLE 25.

"NOMINATION AND ELECTION OF SUPERIOR AND DISTRICT COURT JUDGES.

"**§ 163-321. Applicability.**

The nomination and election of superior and district court judges of the General Court of Justice shall be as provided by this Article.

"**§ 163-322. Nonpartisan primary election method.**

(a) General. – Except as provided in G.S. 163-329, there shall be a primary to narrow the field of candidates to two candidates for each position to be filled if, when the filing period closes, there are more than two candidates for a single office or the number of candidates for a group of offices exceeds twice the number of positions to be filled. If only one or two candidates file for a single office, no primary shall be held for that office and the candidates shall be declared nominated. If the number of candidates for a group of offices does not exceed twice the number of positions to be filled, no primary shall be held for those offices and the candidates shall be declared nominated.

(b) Determination of Nominees. – In the primary, the two candidates for a single office receiving the highest number of votes, and those candidates for a group of offices receiving the highest number of votes, equal to twice the number of positions to be filled, shall be declared nominated. If two or more candidates receiving the highest

number of votes each receive the same number of votes, the State Board of Elections shall determine their relative ranking by lot, and shall declare the nominees accordingly. The canvass of the primary shall be held on the same date as the primary canvass fixed under G.S. 163-188. The canvass shall be conducted in accordance with Article 16 of this Chapter.

(c) Determination of Election Winners. – In the election, the names of those candidates declared nominated without a primary and those candidates nominated in the primary shall be placed on the ballot. The candidate for a single office receiving the highest number of votes shall be elected. Those candidates for a group of offices receiving the highest number of votes, equal in number to the number of positions to be filled, shall be elected. If two candidates receiving the highest number of votes each received the same number of votes, the State Board of Elections shall determine the winner by lot.

"**§ 163-323. Notice of candidacy.**

(a) Form of Notice. – Each person offering to be a candidate for election shall do so by filing a notice of candidacy with the State Board of Elections in the following form, inserting the words in parentheses when appropriate:

"Date _____:

I hereby file notice that I am a candidate for election to the office of_____ in the regular election to be held _____, _____.

Signed _____:

(Name of Candidate)

Witness: _____".

The notice of candidacy shall be either signed in the presence of the chairman or secretary of the State Board of Elections, or signed and acknowledged before an officer authorized to take acknowledgments who shall certify the notice under seal. An acknowledged and certified notice may be mailed to the State Board of Elections. In signing a notice of candidacy, the candidate shall use only the candidate's legal name and, in his discretion, any nickname by which commonly known. A candidate may also, in lieu of that candidate's first name and legal middle initial or middle name, if any, sign that candidate's nickname, provided the candidate appends to the notice of candidacy an affidavit that the candidate has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way the candidate's name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate himself shall be invalid.

(b) Time for Filing Notice of Candidacy. – Candidates seeking election to the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the election:

Judges of the superior courts.

Judges of the district courts.

(c) Withdrawal of Notice of Candidacy. – Any person who has filed a notice of candidacy for an office shall have the right to withdraw it at any time prior to the date on which the right to file for that office expires under the terms of subsection (b) of this section.

(d) Certificate That Candidate Is Registered Voter. – Candidates shall file along with their notice a certificate signed by the chairman of the board of elections or the supervisor of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, and if the candidacy is for superior court judge and the county contains more than one superior court district, stating the superior court district of which the person is a resident. In issuing such certificate, the chairman or supervisor shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline, the State Board of Elections shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections shall prescribe the form for such certificate, and distribute it to each county board of elections no later than the last Monday in December of each odd-numbered year.

(e) Candidacy for More Than One Office Prohibited. – No person may file a notice of candidacy for more than one office or group of offices described in subsection (b) of this section, or for an office or group of offices described in subsection (b) of this section and an office described in G.S. 163-106(c), for any one election. If a person has filed a notice of candidacy with a board of elections under this section or under G.S. 163-106(c) for one office or group of offices, then a notice of candidacy may not later be filed for any other office or group of offices under this section when the election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (c) of this section.

(f) Notice of Candidacy for Certain Offices to Indicate Vacancy. – In any election in which there are two or more vacancies for the office of district court judge to be filled by nominations, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks election. Votes cast for a candidate shall be effective only for his election to the vacancy for which the candidate has given notice of candidacy as provided in this subsection.

A person seeking election for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which the person seeks nomination.

(g) No person may file a notice of candidacy for superior court judge unless that person is at the time of filing the notice of candidacy a resident of the judicial district as it will exist at the time the person would take office if elected. No person may be nominated as a superior court judge under G.S. 163-114 unless that person is at the time of nomination a resident of the judicial district as it will exist at the time the person would take office if elected. This subsection implements Article IV Section 9(1) of the

North Carolina Constitution which requires regular Superior Court Judges to reside in the district for which elected.

"§ 163-324. Filing fees required of candidates; refunds.

(a) Fee Schedule. – At the time of filing a notice of candidacy under this Article, each candidate shall pay to the State Board of Elections a filing fee for the office he seeks in the amount of one percent (1%) of the annual salary of the office sought.

(b) Refund of Fees. – If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section withdraws his notice of candidacy within the period prescribed in G.S. 163-323(c), he shall be entitled to have the fee he paid refunded. The chairman of the State Board of Elections shall cause a warrant to be drawn on the State Treasurer for the refund payment.

If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section dies prior to the date of the election, the personal representative of the estate shall be entitled to have the fee refunded if application is made to the board of elections to which the fee was paid no later than one year after the date of death, and refund shall be made in the same manner as in withdrawal of notice of candidacy.

"§ 163-325. Petition in lieu of payment of filing fee.

(a) General. – Any qualified voter who seeks election under this Article may, in lieu of payment of any filing fee required for the office he seeks, file a written petition requesting him to be a candidate for a specified office with the State Board of Elections.

(b) Requirements of Petition; Deadline for Filing. – If the candidate is seeking the office of superior or district court judge, that individual shall file a written petition with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for. The board of elections shall verify the names on the petition, and if the petition and notice of candidacy are found to be sufficient, the candidate's name shall be printed on the appropriate ballot. Petitions must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms.

"§ 163-326. Certification of notices of candidacy.

(a) Names of Candidates Sent to Secretary of State. – Within three days after the time for filing notices of candidacy with the State Board of Elections under the provisions of G.S. 163-323(b) has expired, the chairman or secretary of that Board shall certify to the Secretary of State the name and address of each person who has filed with the State Board of Elections, indicating in each instance the office sought.

(b) Notification of Local Boards. – No later than 10 days after the time for filing notices of candidacy under the provisions of G.S. 163-323(b) has expired, the chairman of the State Board of Elections shall certify to the chairman of the county board of elections in each county in the appropriate district the names of candidates for nomination to the offices of superior and district court judge who have filed the required notice and paid the required filing fee or presented the required petition to the State

Board of Elections, so that their names may be printed on the official judicial ballot for superior and district court.

(c) Receipt of Notification by County Board. – Within two days after receipt of each of the letters of certification from the chairman of the State Board of Elections required by subsection (b) of this section, each county elections board chairman shall acknowledge receipt by letter addressed to the chairman of the State Board of Elections.

"**§ 163-327. Vacancies of candidates or elected officers.**

(a) Death or Disqualification of Candidate Before Primary. – If a candidate for nomination in a primary dies or becomes disqualified before the primary but after the ballots have been printed, the State Board of Elections shall determine whether or not there is time to reprint the ballots. If the Board determines that there is not enough time to reprint the ballots, the deceased or disqualified candidate's name shall remain on the ballots. If that candidate receives enough votes for nomination, such votes shall be disregarded and the candidate receiving the next highest number of votes below the number necessary for nomination shall be declared nominated. If the death or disqualification of the candidate leaves only two candidates for each office to be filled, the nonpartisan primary shall not be held and all candidates shall be declared nominees.

(b) Death, Disqualification, or Resignation of Official After Election. – If a person elected to the office of superior or district court judge dies, becomes disqualified, or resigns on or after election day and before he has qualified by taking the oath of office, the office shall be deemed vacant and shall be filled as provided by law.

"**§ 163-328. Failure of candidates to file; death or other disqualification of a candidate before election.**

(a) Insufficient Number of Candidates. – If when the filing period expires, candidates have not filed for an office to be filled under this Article, the State Board of Elections shall extend the filing period for five days for any such offices.

(b) Death or Other Disqualification of Candidate; Reopening Filing. – If there is no primary because only one or two candidates have filed for a single office, or the number of candidates filed for a group of offices does not exceed twice the number of positions to be filled, and thereafter a candidate dies or otherwise becomes disqualified before the election and before the ballots are printed, the State Board of Elections shall, upon notification of the death or other disqualification, immediately reopen the filing period for an additional five days during which time additional candidates shall be permitted to file for election. If the ballots have been printed at the time the State Board of Elections receives notice of the candidate's death or other disqualification, the Board shall determine whether there will be sufficient time to reprint them before the election if the filing period is reopened for three days. If the Board determines that there will be sufficient time to reprint the ballots, it shall reopen the filing period for three days to allow other candidates to file for election, and such election shall be conducted on the plurality basis.

(c) Vacancy Caused by Nominated Candidate; Ballots Not Reprinted. – If the ballots have been printed at the time the State Board of Elections receives notice of a candidate's death, other disqualification, or resignation, and if the Board determines that there is not enough time to reprint the ballots before the election if the filing period is

reopened for three days, then regardless of the number of candidates remaining for the office or group of offices, the ballots shall not be reprinted and the name of the vacated candidate shall remain on the ballots. If a vacated candidate should poll the highest number of votes in the election for a single office or enough votes to be elected to one of a group of offices, the State Board of Elections shall declare the office vacant and it shall be filled in the manner provided by law.

"**§ 163-329. Elections to fill vacancy created after primary filing period to use plurality method.**

(a) General. – If a vacancy is created in the office of judge of superior court after the filing period for the primary opens but more than 60 days before the general election, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted without a primary using the plurality method as provided in subsection (b) of this section. If a vacancy is created in the office of judge of superior court before the filing period for the primary opens, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted in accordance with G.S. 163-322.

(b) Plurality Election Rules. – Elections under this section shall be conducted using the following rules:

(1) The filing period shall be prescribed by the State Board of Elections, but in no event may it be less than five working days. If a vacancy occurs in a second office in the same superior court district after the first filing period established under the section has closed, the State Board of Elections shall reopen filing for a period of not less than five working days for the office of superior court judge. All persons filing in either filing period shall run as a group and the election results shall be determined by subdivision (3) of this subsection.

(2) When more than one person is seeking election to a single office, the candidate who receives the highest number of votes shall be declared elected.

(3) When more persons are seeking election to two or more offices (constituting a group) than there are offices to be filled, those candidates receiving the highest number of votes, equal in number to the number of offices to be filled, shall be declared elected.

(4) If two or more candidates receiving the highest number of votes each receive the same number of votes, the board of elections shall determine the winner by lot.

(5) Except as provided in this section, the provisions of this Article apply to elections conducted under this section.

"**§ 163-330. Voting in primary.**

Any person who will become qualified by age or residence to register and vote in the general election for which the primary is held, even though not so qualified by the date

of the primary, shall be entitled to register for the primary and general election prior to the primary and then to vote in the primary after being registered. Such person may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6(c) prior to the primary.

"**§ 163-331. Date of primary.**

The primary shall be held on the same date as established for primary elections under G.S. 163-1(b).

"**§ 163-332. Ballots.**

(a) General. – In elections there shall be official ballots. The ballots shall be printed to conform to the requirement of G.S. 163-140(c) and to show the name of each person who has filed notice of candidacy, and the office for which each aspirant is a candidate.

Only those who have filed the required notice of candidacy with the proper board of elections, and who have paid the required filing fee or qualified by petition, shall have their names printed on the official primary ballots. Only those candidates properly nominated shall have their names appear on the official general election ballots.

(b) Ballots to be Furnished by County Board of Elections. – It shall be the duty of the county board of elections to print official ballots for the following offices to be voted for in the primary:

Superior court judge.

District court judge.

In printing ballots, the county board of elections shall be governed by instructions of the State Board of Elections with regard to width, color, kind of paper, form, and size of type.

Three days before the election, the chairman of the county board of elections shall distribute official ballots to the chief judge of each precinct in his county, and the chief judge shall give a receipt for the ballots received. On the day of the primary, it shall be the chief judge's duty to have all the ballots so delivered available for use at the precinct voting place.

"**§ 163-333. Canvass.**

The county board of elections shall, in addition to the requirements contained in G.S. 163-175, canvass the results in judicial primaries and elections, the number of legal votes cast in each precinct for each candidate, the name of each person voted for, and the total number of votes cast in the county for each person for each different office.

"**§ 163-334. Counting of ballots.**

Counting of ballots in primaries and elections held under this Article shall be under the same rules as for counting of ballots in nonpartisan municipal elections under Article 24 of this Chapter.

"**§ 163-335. Other rules.**

Except as provided by this Article, the conduct of elections shall be governed by Subchapter VI of this Chapter."

SECTION 2.(a) G.S. 7A-142 reads as rewritten:

"**§ 7A-142. Vacancies in office.**

A vacancy in the office of district judge shall be filled for the unexpired term by appointment of the Governor from nominations submitted by the bar of the judicial district as defined in G.S. 84-19, except that in judicial District 9, when vacancies occur in District Court District 9 or 9B, only those members who reside in the district court district shall participate in the selection of the nominees. If the district court district is comprised of counties in more than one judicial district, the nominees shall be submitted jointly by the bars of those judicial districts, but only those members who reside in the district court district shall participate in the selection of the nominees. If the district court judge was elected as the nominee of a political party, then the district bar shall submit to the Governor the names of three persons who are residents of the district court district who are duly authorized to practice law in the district and who are members of the same political party as the vacating judge; provided that if there are not three persons who are available, the bar shall submit the names of two persons who meet the qualifications of this sentence. If the district court judge was not elected as the nominee of a political party, then the district bar shall submit to the Governor the names of three persons who are residents of the district court district and who are duly authorized to practice law in the district; provided that if there are not three persons who are available, the bar shall submit the names of two persons who meet the qualifications of this sentence. Within 60 days after the district bar submits nominations for a vacancy, the Governor shall appoint to fill the vacancy. If the Governor fails to appoint a district bar nominee within 60 days, then the district bar nominee who received the highest number of votes from the district bar shall fill the vacancy. If the district bar fails to submit nominations within 30 days from the date the vacancy occurs, the Governor may appoint to fill the vacancy without waiting for nominations."

SECTION 2.(b) Effective on the first Monday in December of 2002, G.S. 7A-142, as amended by subsection (a) of this section, reads as rewritten:

"**§ 7A-142. Vacancies in office.**

A vacancy in the office of district judge shall be filled for the unexpired term by appointment of the Governor from nominations submitted by the bar of the judicial district as defined in G.S. 84-19, except that in judicial District 9, when vacancies occur in District Court District 9 or 9B, only those members who reside in the district court district shall participate in the selection of the nominees. If the district court district is comprised of counties in more than one judicial district, the nominees shall be submitted jointly by the bars of those judicial districts, but only those members who reside in the district court district shall participate in the selection of the nominees. ~~If the district court judge was elected as the nominee of a political party, then the district bar shall submit to the Governor the names of three persons who are residents of the district court district who are duly authorized to practice law in the district and who are members of the same political party as the vacating judge; provided that if there are not three persons who are available, the bar shall submit the names of two persons who meet the qualifications of this sentence.~~ If the district court judge was not elected as the nominee of a political party, then the district bar shall submit to the Governor the names of three persons who are residents of the district court district and who are duly authorized to practice law in the district; provided that if there are not three persons who are available,

the bar shall submit the names of two persons who meet the qualifications of this sentence. Within 60 days after the district bar submits nominations for a vacancy, the Governor shall appoint to fill the vacancy. If the Governor fails to appoint a district bar nominee within 60 days, then the district bar nominee who received the highest number of votes from the district bar shall fill the vacancy. If the district bar fails to submit nominations within 30 days from the date the vacancy occurs, the Governor may appoint to fill the vacancy without waiting for nominations."

SECTION 3. G.S. 163-106 reads as rewritten:

"**§ 163-106. Notices of candidacy; pledge; with whom filed; date for filing; withdrawal.**

(a) Notice and Pledge. – No one shall be voted for in a primary election unless he shall have filed a notice of candidacy with the appropriate board of elections, State or county, as required by this section. To this end every candidate for selection as the nominee of a political party shall file with and place in the possession of the board of elections specified in subsection (c) of this section, a notice and pledge in the following form:

"Date_____

I hereby file notice as a candidate for nomination as _____ in the _____ party primary election to be held on_____, _____. I affiliate with the _____ party, (and I certify that I am now registered on the registration records of the precinct in which I reside as an affiliate of the _____ party.)

I pledge that if I am defeated in the primary, I will not run for any office as a write-in candidate in the next general election.

Signed _____

Name of candidate

Witness:

_____

_____

(Title of witness)"

Each candidate shall sign his notice of candidacy in the presence of the chairman or secretary of the board of elections, State or county, with which he files. In the alternative, a candidate may have his signature on the notice of candidacy acknowledged and certified to by an officer authorized to take acknowledgments and administer oaths, in which case the candidate may mail his notice of candidacy to the appropriate board of elections.

In signing his notice of candidacy the candidate shall use only his legal name and, in his discretion, any nickname by which he is commonly known. A candidate may also, in lieu of his legal first name and legal middle initial or middle name (if any) sign his nickname, provided that he appends to the notice of candidacy an affidavit that he has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way his name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate himself shall be invalid.

Prior to the date on which candidates may commence filing, the State Board of Elections shall print and furnish, at State expense, to each county board of elections a sufficient number of the notice of candidacy forms prescribed by this subsection for use by candidates required to file with county boards of elections.

(b) Eligibility to File. – No person shall be permitted to file as a candidate in a primary if, at the time he offers to file notice of candidacy, he is registered on the appropriate registration book or record as an affiliate of a political party other than that in whose primary he is attempting to file. No person who has changed his political party affiliation or who has changed from unaffiliated status to party affiliation as permitted in G.S. 163-82.17, shall be permitted to file as a candidate in the primary of the party to which he changed unless he has been affiliated with the political party in which he seeks to be a candidate for at least 90 days prior to the filing date for the office for which he desires to file his notice of candidacy.

A person registered as "unaffiliated" shall be ineligible to file as a candidate in a party primary election.

(c) Time for Filing Notice of Candidacy. – Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

Governor
Lieutenant Governor
All State executive officers
Justices of the Supreme Court, Judges of the Court of Appeals
~~Judges of the district courts~~
United States Senators
Members of the House of Representatives of the United States
District attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

State Senators
Members of the State House of Representatives
All county offices.

(d) Notice of Candidacy for Certain Offices to Indicate Vacancy. – In any primary in which there are two or more vacancies for Chief Justice and associate justices of the Supreme Court, two or more vacancies for judge of the Court of Appeals, or two vacancies for United States Senator from North ~~Carolina or two or more vacancies for the office of district court judge to be filled by nominations.~~ Carolina, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks nomination.

Votes cast for a candidate shall be effective only for his nomination to the vacancy for which he has given notice of candidacy as provided in this subsection.

~~A person seeking party nomination for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which he seeks nomination.~~

(e) Withdrawal of Notice of Candidacy. – Any person who has filed notice of candidacy for an office shall have the right to withdraw it at any time prior to the date on which the right to file for that office expires under the terms of subsection (c) of this section. If a candidate does not withdraw before the filing deadline, except as provided in G.S. 163-112, his name shall be printed on the primary ballot, any votes for him shall be counted, and he shall not be refunded his filing fee.

(f) Candidates required to file their notice of candidacy with the State Board of Elections under subsection (c) of this section shall file along with their notice a certificate signed by the chairman of the board of elections or the director of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, stating the party with which the person is affiliated, and that the person has not changed his affiliation from another party or from unaffiliated within three months prior to the filing deadline under subsection (c) of this section. In issuing such certificate, the chairman or director shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline the State Board of Elections shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections shall prescribe the form for such certificate, and distribute it to each county board of elections no later than the last Monday in December of each odd-numbered year.

(g) When any candidate files a notice of candidacy with a county board of elections under subsection (c) of this section or under G.S. 163-291(2), the chairman or director of elections shall, immediately upon receipt of the notice of candidacy, inspect the registration records of the county, and cancel the notice of candidacy of any person who is not eligible under subsection (c) of this section. The Board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled under this subsection by mail or by having the notice served on him by the sheriff.

(h) No person may file a notice of candidacy for more than one office described in subsection (c) of this section for any one election. If a person has filed a notice of candidacy with a board of elections under this section for one office, then a notice of candidacy may not later be filed for any other office under this section when the election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (e) of this section; provided that this subsection shall not apply unless the deadline for filing notices of candidacy for both offices is the same. Notwithstanding this subsection, a person may file a notice of candidacy for a full term as United States Senator, and also file a notice of candidacy for the remainder of the unexpired term of that same seat in an election held under G.S. 163-12, and may file a

notice of candidacy for a full term as a member of the United States House of Representatives, and also file a notice of candidacy for the remainder of the unexpired term in an election held under G.S. 163-13.

~~(i) No person may file a notice of candidacy for superior court judge unless that person is at the time of filing the notice of candidacy a resident of the judicial district as it will exist at the time the person would take office if elected. No person may be nominated as a superior court judge under G.S. 163-114 unless that person is at the time of nomination a resident of the judicial district as it will exist at the time the person would take office if elected. This subsection implements Article IV Section 9(1) of the North Carolina Constitution which requires regular Superior Court Judges to reside in the district for which elected.~~"

SECTION 4. G.S. 163-107(a) reads as rewritten:

"(a) Fee Schedule. – At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of G.S. 163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	Amount of Filing Fee
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All Justices, Judges, and District Attorneys of the General Court of Justice other than superior and district court judge	One percent (1%) of the annual salary of the office sought
United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
County commissioners, if compensated entirely by fees	Ten dollars ($10.00)
Members of county board of education, if compensated	Five dollars ($5.00)

entirely by fees	
Sheriff, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Clerk of superior court, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Register of deeds, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Any other county office, if compensated entirely by fees	Twenty dollars ($20.00), plus one percent (1%) of the income of the office above two thousand dollars ($2,000)
All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)."

SECTION 5. G.S. 163-111(c)(1) reads as rewritten:

"(1) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing or by telegram with the Executive Secretary-Director of the State Board of Elections no later than 12:00 noon on the seventh day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State Board of Elections determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the Executive Secretary-Director of the State Board of Elections shall immediately notify such candidate and permit him to exercise any options available to him within a 48-hour period following the notification:

Governor,
Lieutenant Governor,
All State executive officers,
Justices, Judges, or District Attorneys of the General Court of Justice, other than superior and district court ~~judge,~~ judges,
United States Senators,
Members of the United States House of Representatives,
State Senators in multi-county senatorial districts, and

Members of the State House of Representatives in multi-county representative districts."

SECTION 6. G.S. 163-140(a)(8) reads as rewritten:

"(8) Judicial ballot for superior and district court."

SECTION 7. G.S. 163-107.1(c) reads as rewritten:

"(c) County, Municipal and District Primaries. – If the candidate is seeking one of the offices set forth in G.S. 163-106(c) but which is not listed in subsection (b) of this section, or a municipal or any other office requiring a partisan primary which is not set forth in G.S. 163-106(c) or (d), he shall file a written petition with the appropriate board of elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for, who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 200 registered voters regardless of said voter's political party affiliation, whichever requirement is greater. The board of elections shall verify the names on the petition, and if the petition is found to be sufficient, the candidate's name shall be printed on the appropriate primary ballot. Petitions for candidates for member of the U.S. House of Representatives, District Attorney, and ~~judge of the District Court or~~ members of the State House of Representatives from multi-county districts or members of the State Senate from multi-county districts must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections, and such petition must be filed with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms."

SECTION 8. G.S. 163-114 reads as rewritten:

"**§ 163-114. Filling vacancies among party nominees occurring after nomination and before election.**

If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

Position	Vacancy is to be filled by
Any elective State office United States Senator	appointment of State executive committee of political party in which vacancy occurs
A district office, including: Member of the United States House of Representatives ~~Judge of district court~~ District Attorney	Appropriate district executive committee of political party

State Senator in a multi-county senatorial district	in which vacancy occurs
Member of State House of Representatives in a multi-county representative district	
State Senator in a single-county senatorial district	County executive committee of political party in which vacancy occurs, provided, in the case of the State Senator or State Representative in a single-county district where not all the county is located in that district, then in voting, only those members of the county executive committee who reside within the district shall vote
Member of State House of Representatives in a Single-county representative district	
Any elective county office	

The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, charged with the duty of printing the ballots on which the name is to appear. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S. 163-139 shall apply. If any person nominated as a candidate of a political party vacates such nomination and such vacancy arises from a cause other than death and the vacancy in nomination occurs more than 120 days before the general election, the vacancy in nomination may be filled under this section only if the appropriate executive committee certifies the name of the nominee in accordance with this paragraph at least 75 days before the general election.

In a county not all of which is located in one congressional district, in choosing the congressional district executive committee member or members from that area of the county, only the county convention delegates or county executive committee members who reside within the area of the county which is within the congressional district may vote.

In a county which is partly in a multi-county senatorial district or which is partly in a multi-county House of Representatives district, in choosing that county's member or members of the senatorial district executive committee or House of Representatives district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote."

SECTION 9. G.S. 163-135(f) reads as rewritten:

"(f) Judicial Elections. – Except as provided by Article 25 of this Chapter, this Article shall apply to and control all elections for judges of the ~~superior court.~~ superior and district courts."

SECTION 10. G.S. 163-140(b)(9) reads as rewritten:

"(9) Judicial ballot for superior and district court. The form of the judicial ballot for judges of the superior court and district court shall be prepared by the county board of elections. On the face of the ballot, shall be printed instructions for marking the voter's choice, in addition to the following instruction: "If you tear or deface or wrongly mark this ballot, return it and get another." On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the responsible county board of elections. This ballot may not be combined with any other ballot except another judicial ballot."

SECTION 11. G.S. 163-191 reads as rewritten:

"**§ 163-191. Contested primaries and elections; how tie broken.**

In a primary for party nomination for one or more of the offices to be canvassed by the State Board of Elections under the provisions of G.S. 163-187, the results shall be determined in accordance with the provisions of G.S. 163-111.

In a general election for one or more of the offices to be canvassed by the State Board of Elections under the provisions of G.S. 163-187, the persons having the highest number of votes for each office, respectively, shall be declared duly elected to that office by the State Board of Elections. But if two or more be equal and highest in votes for the office, then the State Board of Elections shall order a new election for the purpose of breaking the tie except if there is a tie for superior or district court judge the tie shall be broken in accordance with Article 25 of this Chapter."

SECTION 12. This act is effective when it becomes law.

SENATE BILL 119:
District Court Elections Nonpartisan

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Dalton
Date:	August 7, 2001	**Summary by:**	Robin Johnson*
Version:	PCS for First Edition		Committee Counsel

The PCS adds a new Section 12 to the bill that would apply the write-in statute to district court judge elections. (This would conform to a change made in SB 831, which amended numerous election laws, including applying the write-in statute to superior court judge elections. SB 831 went into effect July 28, 2001.)

SUMMARY: Senate Bill 119 would provide for the nonpartisan election of district court judges.

CURRENT LAW: The District Court Division of the General Court of Justice consists of various district courts organized in 30 territorial districts, with at least one district judge in each district. The General Assembly determines the number of judges for each district. Each judge must be a resident of the district to which he or she is elected, and the voters of the district court district in which a judge is to serve elect that district judge. District court judges, who serve four-year terms, are elected at the regular election for members of the General Assembly immediately preceding termination of each regular term. A vacancy in the office of district judge is filled for the unexpired term by appointment of the Governor from nominations submitted by the district bar. Nominees must be residents of the district court district who are licensed to practice law in the district and who are members of the same political party as the vacating judge.

In 1996, the law governing the elections of superior court judges was amended to make those elections nonpartisan. Set out in Article 25 of Chapter 163, superior court judges are now nominated and elected without regard to political party. Candidates run in nonpartisan primaries, held on the same day in May as the party primaries. The primaries reduce the field to twice the number to be elected, eliminating additional candidates. Then the reduced field (twice the number to be elected) runs in the November general election. The system is patterned after the nonpartisan primary and elections used by some cities to elect their mayors and city councils. The nonpartisan primaries and elections are by district.

BILL ANALYSIS: In addition to a number of conforming changes, Senate Bill 119 basically amends Article 25 of Chapter 163 by moving the existing provisions regarding the nomination and election of district court judges from the partisan election method set out in the general election law to the nonpartisan election method set out for superior court judges.

Current law requires that in any election in which there are two or more vacancies for the office of district court judge to be filled by nominations, *each candidate for district court judge must file a written statement designating the vacancy to which the candidate seeks election.* Similarly, a person seeking election for a specialized district judgeship must file a written statement designating the specialized judgeship to which the person seeks nomination. These provisions are deleted from G.S. 163-106 [pages 10 and 11 of the bill], and are now set out in G.S. 163-323 (f), [page 3 of the bill], with *no substantive change.*

Senate Bill 119 would be effective when it becomes law.

S119-SMRH-001: Brenda Carte and Steve Rose, Principal Attorneys, contributed to this summary.

metaphor, to go deep.

Last weekend was the traditional annual induction of former professional football and baseball players into their halls of fame, in Canton, Ohio and Cooperstown, N.Y., respectively. Certain [illegible] seem predictable about both [illegible]. It is always very hot, so hot you c[illegible]feel it through the television screen, and the speeches always seems to last for several eternities. (A player, to be eligible, must have been inactive for five years. A friend of mine's wife, after this had been explained to her, looked at her and science and history and English. It's no mean feat at a time when classrooms often reflect wide disparities — financially, for one example — among students, in addition to varying degrees of parental involvement. And the teachers are up against all those peer pressures as well, among them the decidedly unpredictable behavior of those celebrities, athletes and others, to whom the kids look for an example.

Last weekend's celebrations offered hope, however, that some who grow up surrounded by cheers have in their years hard work even when no immediate reward presents itself at the end of the day.

All talked about overcoming frustration, and the need to carry on even when it appeared there was no hope for success.

All provided long lists of "thank-yous" for men, women and friends who had affected them before, during and after their careers were done.

Meaningful thoughts, those. If you've missed the cheers, gentlemen — well, perhaps you're owed another round.

THE PEOPLE'S FORUM

District judges' terms

I support current legislative proposals to extend the terms of district judges and to provide for nonpartisan elections of those officers.

The present system was designed for a one-party state and worked tolerably well within that scheme. It is now a potential source of disaster for the courts of North Carolina. We all understand the need for judicial independence and for a measure of accountability to discourage and correct abuses of that in[illegible]endence. The present system [illegible] neither.

[illegible]-year terms are too short. The district judges serving so short a term are required to be at all times sensitive, not to the policy consequences of their decisions, for there are seldom such consequences to consider, but to the potential political influence of individuals who may appear before them as litigants or lawyers. Lengthening the terms affords an appropriate measure of independence from such influences without giving judges too much power and discretion.

Partisan elections threaten the judiciary in a different way. Partisanship makes sense in campaigns for the state Supreme Court where decisions are frequently made that have substantial policy consequences. With respect to the trial judges, party affiliations merely serve to conceal the appropriate issue for the voters to consider — was this judge doing a good and honorable job of enforcing the law?

In a two-party system, partisan elections make the trial judges vulnerable to dismissal from office for reasons having almost nothing to do with their performance. A big turnout for a national or statewide election can result in the dismissal of some of the best judges who happened to bear the wrong party label. The secondary effect is to make it harder to recruit those who would be good judges.

PAUL D. CARRINGTON
Durham

The writer, a professor at the Duke University School of Law, is a former dean of the school.

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Mailing address: The People's Forum, P.O. Box 191, Raleigh, N.C. 27602
Fax: 829-4872
E-mail: forum@newsobserver.com

Preventing tobacco use

I recently attended the third meeting of the Health and Wellness Trust Commission, at which several presentations on prescription drug benefits for the elderly were made (news story, July 22). While the treatment of disease and disability with prescription drugs is an important issue, I was perplexed and dismayed that tobacco use prevention and control was not the focus of the discussion.

Tobacco is the leading cause of preventable disease and premature death in the U.S., causing over 12,000 (or 21 percent) of the deaths in North Carolina each year. Lung disease, which comprises a huge percentage of these illnesses, is the third leading cause of death in the United States and is the only one of the three leading causes of death that is increasing as a result of the benign neglect of preventing tobacco-related illness.

It is frightening to think that in a state where tobacco-related illness costs $2.1 billion annually (that is $281 per North Carolina resident) that the commission may feel compelled to spend most of the Trust Fund monies on something other than tobacco-use prevention and control.

The costs of treating the health problems related to tobacco use are already a huge burden on North Carolinians, and will only increase in the years to come if some measure is not taken to curb tobacco use. The priority of "preventing, reducing, and remedying the health effects of tobacco use" was clearly stated in the state law that created the Health Trust Fund. The Centers for Disease Control and Prevention has estimated that, at the minimum, North Carolina should spend about $442 million on tobacco-use prevention programs.

If we are to become a healthier state, the commission will have to fund tobacco-use prevention and control as its top priority. A plan for preventing and treating tobacco use has already been developed. Now, let's fund it and achieve a healthier state!

REBECCA LOGAN
President
American Lung Association of N.C.
Raleigh

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Four-year terms are too short. The district judges serving so short a term are required to be at all times sensitive, not to the policy consequences of their decisions, for there are seldom such consequences to consider, but to the potential political influence of individuals who may appear before them as litigants or lawyers. Lengthening the terms affords an appropriate measure of independence from such influences without giving judges too much power and discretion.

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President
American Lung Association of N.C.
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2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 241 A BILL TO BE ENTITLED AN ACT TO STRENGTHEN THE LAW MAKING IT A FELONY FOR AN INSURANCE FIDUCIARY TO CAUSE TERMINATION OF GROUP HEALTH OR LIFE INSURANCE COVERAGE BY NONPAYMENT OF PREMIUM WITHOUT GIVING NOTICE TO MEMBERS OF THE GROUP.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ With a favorable report as to House committee substitute bill, ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 241

Insurance and Consumer Protection Committee Substitute Adopted 4/10/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S241-CSSB-42 [v.7]

6/18/2001 3:51:56 PM

Short Title: Health Insurance Termination Notice. (Public)

Sponsors:

Referred to:

February 26, 2001

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LAW MAKING IT A FELONY FOR AN INSURANCE FIDUCIARY TO CAUSE TERMINATION OF GROUP HEALTH OR LIFE INSURANCE COVERAGE BY NONPAYMENT OF PREMIUM WITHOUT GIVING NOTICE TO MEMBERS OF THE GROUP.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-50-40 reads as rewritten:

"**§ 58-50-40. Willful failure to pay group insurance premiums; willful termination of a group health plan; notice to persons insured; penalty; restitution; examination of insurance transactions.**

(a) As used in this section and in ~~G.S. 58-50-45, the term "group health insurance" means: (1) any policy described in G.S. 58-51-75, 58-51-80, or 58-51-90; (2) any group insurance certificate or group subscriber contract issued by a hospital service corporation pursuant to Articles 65 and 66 of this Chapter; (3) any health care plan provided or arranged by a health maintenance organization pursuant to Article 67 of this Chapter; or (4) any multiple employer welfare arrangement as defined in G.S. 58-49-30(a). As used in this section and in G.S. 58-50-45, the term "insurance fiduciary" means any person, employer, principal, agent, trustee, or third party administrator, who is responsible for the payment of group health or group life insurance premiums. As used in this section and in G.S. 58-50-45, "premiums" includes contributions to a multiple employer welfare arrangement.~~G.S.58-50-45:

(1) 'Group health insurance' means any policy described in G.S. 58-51-75, G.S. 58-51-80, or G.S. 58-51-90; any group insurance certificate or group subscriber contract issued by a service corporation pursuant to Articles 65 and 66 of this Chapter; any health care plan provided or arranged by a health maintenance organization pursuant to Article 67 of this Chapter; or any multiple employer welfare arrangement as defined in G.S. 58-49-30(a).

(2) 'Group health plan' means a single employer self-insured group health plan as defined in section 607(1) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1167(1), as amended.

(3) 'Insurance fiduciary' means any person, employer, principal, agent, trustee, or third party administrator, who is responsible for the payment of group health or group life insurance premiums or has the authority or ability to terminate a group health plan.

(4) 'Premiums' includes contributions to a group health plan or to a multiple employer welfare arrangement.

(b) No insurance fiduciary shall:

(1) Cause the cancellation or nonrenewal of group health or group life insurance and the consequential loss of the coverages of the persons insured by willfully failing to pay such premiums in accordance with the terms of a group health or group life insurance contract; or, in the case of a group health plan to which there are no premiums contributed, willfully terminate the plan; and

(2) Willfully fail to deliver, at least 45 days before the termination of ~~such insurance,~~ the group health or group life insurance or group health plan, to all persons covered by the group policy or group health plan a written notice of the insurance fiduciary's intention to stop payment of ~~premiums.~~premiums or terminate the group health plan.

(c) Any insurance fiduciary who violates subsection (b) of this section shall be guilty of a Class H felony.

(e) Upon conviction under subsection (c) of this section the court shall order the insurance fiduciary to make full restitution to persons insured who incurred expenses that would have been covered by the group health insurance or group health plan or full restitution to beneficiaries of the group life insurance for death benefits that would have been paid if the coverage had not been terminated.

(f) Insurance fiduciaries subject to this section shall be subject to the provisions of G.S. 58-2-200 with respect only to transactions involving group health or life insurance.

(g) In the notice required by subsection (b) of this section, the insurance fiduciary shall also notify those persons of their rights to health insurance conversion policies under Article 53 of this Chapter and their rights ~~under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA).~~ to purchase individual policies under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, as amended, and Article 68 of this Chapter.

(h) In the event of the insolvency of an employer or insurance fiduciary who has violated this section, any person specified in subsection (e) of this section shall have a lien upon the assets of the employer or insurance fiduciary for the expenses or benefits specified in subsection (e) of this section. With respect to personal property within the estate of the insolvent employer or insurance fiduciary, the lien shall have priority over unperfected security interests.

(i) Upon the termination of a group health insurance contract by the insurer, the insurer shall notify every subscriber and certificate holder under the contract of the termination of the contract along with the certification required to be provided under G.S. 58-68-30(e)."

SECTION 2. G.S. 58-50-45 reads as rewritten:

"**§ 58-50-45. Group health or life insurers to notify insurance fiduciaries of obligations.**

(a) ~~On and after January 1, 1986, upon~~ Upon the issuance or renewal of any policy, contract, certificate, or evidence of coverage of group health or life insurance, the insurer, corporation, or health maintenance organization shall give written notice to the insurance fiduciary of the provisions of G.S. 58-50-40.

(b) The notice required by subsection (a) of this section shall be printed in 10 point type and shall read as follows:

'UNDER NORTH CAROLINA GENERAL STATUTE SECTION 58-50-40, NO PERSON, EMPLOYER, PRINCIPAL, AGENT, TRUSTEE, OR THIRD PARTY ADMINISTRATOR, WHO IS RESPONSIBLE FOR THE PAYMENT OF GROUP HEALTH OR LIFE INSURANCE OR GROUP HEALTH ~~CARE~~ PLAN PREMIUMS, SHALL: (1) CAUSE THE CANCELLATION OR NONRENEWAL OF GROUP HEALTH OR LIFE INSURANCE, HOSPITAL, MEDICAL, OR DENTAL SERVICE CORPORATION PLAN, MULTIPLE EMPLOYER WELFARE ARRANGEMENT, OR GROUP HEALTH ~~CARE~~ PLAN COVERAGES AND THE CONSEQUENTIAL LOSS OF THE COVERAGES OF THE PERSONS INSURED, BY WILLFULLY FAILING TO PAY ~~SUCH~~ THOSE PREMIUMS IN ACCORDANCE WITH THE TERMS OF THE INSURANCE OR PLAN CONTRACT, AND (2) WILLFULLY FAIL TO DELIVER, AT LEAST 45 DAYS ~~PRIOR TO~~ BEFORE THE TERMINATION OF ~~SUCH~~ THOSE COVERAGES, TO ALL PERSONS COVERED BY THE GROUP POLICY A WRITTEN NOTICE OF THE PERSON'S INTENTION TO STOP PAYMENT OF PREMIUMS. THIS WRITTEN NOTICE MUST ALSO CONTAIN A NOTICE TO ALL PERSONS COVERED BY THE GROUP POLICY OF THEIR RIGHTS TO HEALTH INSURANCE CONVERSION POLICIES UNDER ARTICLE 53 OF CHAPTER 58 OF THE GENERAL STATUTES ~~CHAPTER 58~~ AND THEIR RIGHTS TO PURCHASE INDIVIDUAL POLICIES UNDER THE FEDERAL ~~CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT (COBRA).~~ HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT AND UNDER ARTICLE 68 OF CHAPTER 58 OF THE GENERAL STATUTES. VIOLATION OF THIS LAW IS A FELONY. ANY PERSON VIOLATING THIS LAW IS ALSO SUBJECT TO A COURT ORDER REQUIRING THE PERSON TO COMPENSATE PERSONS INSURED FOR EXPENSES OR LOSSES INCURRED AS A RESULT OF THE TERMINATION OF THE INSURANCE.'"

SECTION 3. If any section or provision of this act is declared unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the validity of the act as a whole or any part other than the part declared to be unconstitutional, preempted, or otherwise invalid.

SECTION 4. This act becomes effective December 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 2

SENATE BILL 241

Insurance and Consumer Protection Committee Substitute Adopted 4/10/01

Short Title: Health Insurance Termination Notice. (Public)

Sponsors:

Referred to:

February 26, 2001

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LAW MAKING IT A FELONY FOR AN INSURANCE FIDUCIARY TO CAUSE TERMINATION OF GROUP HEALTH OR LIFE INSURANCE COVERAGE BY NONPAYMENT OF PREMIUM WITHOUT GIVING NOTICE TO MEMBERS OF THE GROUP.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-50-40 reads as rewritten:

"**§ 58-50-40. Willful failure to pay group insurance premiums; notice to persons insured; penalty; restitution; examination of insurance transactions.**

(a) As used in this section and in G.S. 58-50-45, the term "group health insurance" means: (1) any policy described in G.S. 58-51-75, 58-51-80, or 58-51-90; (2) any group insurance certificate or group subscriber contract issued by a ~~hospital~~ service corporation pursuant to Articles 65 and 66 of this Chapter; (3) any health care plan provided or arranged by a health maintenance organization pursuant to Article 67 of this Chapter; ~~or~~ (4) any multiple employer welfare arrangement as defined in ~~G.S. 58-49-30(a).~~ G.S. 58-49-30(a); or (5) a group health plan, as defined in section 607(1) of the Employee Retirement Income Security Act of 1974.

As used in this section and in G.S. 58-50-45, the term "insurance fiduciary" means any person, employer, principal, agent, trustee, or third party administrator, who is responsible for the payment of group health or group life insurance premiums. As used in this section and in G.S. 58-50-45, "premiums" includes contributions to a group health plan or to a multiple employer welfare arrangement.

(b) No insurance fiduciary shall:

(1) Cause the cancellation or nonrenewal of group health or group life insurance and the consequential loss of the coverages of the persons insured by willfully failing to pay such premiums in accordance with the terms of a group health or group life insurance contract; and

(2) Willfully fail to deliver, at least 45 days before the termination of such insurance, to all persons covered by the group policy a written notice of the insurance fiduciary's intention to stop payment of premiums.

(c) Any insurance fiduciary who violates subsection (b) of this section shall be guilty of a Class ~~H~~ G felony.

(e) Upon conviction under subsection (c) of this section the court shall order the insurance fiduciary to make full restitution to persons insured who incurred expenses that would have been covered by the group health insurance or full restitution to beneficiaries of the group life insurance for death benefits that would have been paid if the coverage had not been terminated.

(f) Insurance fiduciaries subject to this section shall be subject to the provisions of G.S. 58-2-200 with respect only to transactions involving group health or life insurance.

(g) In the notice required by subsection (b) of this section, the insurance fiduciary shall also notify those persons of their rights to health insurance conversion policies under Article 53 of this Chapter and their rights ~~under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA).~~ to purchase individual policies under the federal Health Insurance Portability and Accountability Act (HIPAA) and Article 68 of this Chapter.

(h) In the event of the insolvency of an employer or insurance fiduciary who has violated this section, any person specified in subsection (e) of this section shall have a lien upon the assets of the employer or insurance fiduciary for the expenses or benefits specified in subsection (e) of this section. With respect to personal property within the estate of the insolvent employer or insurance fiduciary, the lien shall have priority over unperfected security interests.

(i) Upon the termination of a group health insurance contract by the insurer, the insurer shall notify every subscriber and certificate holder under the contract of the termination of the contract along with the certification required to be provided under G.S. 58-68-30(e)."

SECTION 2. G.S. 58-50-45 reads as rewritten:

"**§ 58-50-45. Group health or life insurers to notify insurance fiduciaries of obligations.**

(a) ~~On and after January 1, 1986, upon~~ Upon the issuance or renewal of any policy, contract, certificate, or evidence of coverage of group health or life insurance, the insurer, corporation, or health maintenance organization shall give written notice to the insurance fiduciary of the provisions of G.S. 58-50-40.

(b) The notice required by subsection (a) of this section shall be printed in 10 point type and shall read as follows:

"UNDER NORTH CAROLINA GENERAL STATUTE SECTION 58-50-40, NO PERSON, EMPLOYER, PRINCIPAL, AGENT, TRUSTEE, OR THIRD PARTY ADMINISTRATOR, WHO IS RESPONSIBLE FOR THE PAYMENT OF GROUP HEALTH OR LIFE INSURANCE OR GROUP HEALTH ~~CARE~~ PLAN PREMIUMS, SHALL: (1) CAUSE THE CANCELLATION OR NONRENEWAL OF GROUP

HEALTH OR LIFE INSURANCE, HOSPITAL, MEDICAL, OR DENTAL SERVICE CORPORATION PLAN, MULTIPLE EMPLOYER WELFARE ARRANGEMENT, OR GROUP HEALTH ~~CARE~~ PLAN COVERAGES AND THE CONSEQUENTIAL LOSS OF THE COVERAGES OF THE PERSONS INSURED, BY WILLFULLY FAILING TO PAY ~~SUCH~~ THOSE PREMIUMS IN ACCORDANCE WITH THE TERMS OF THE INSURANCE OR PLAN CONTRACT, AND (2) WILLFULLY FAIL TO DELIVER, AT LEAST 45 DAYS ~~PRIOR TO~~ BEFORE THE TERMINATION OF ~~SUCH~~ THOSE COVERAGES, TO ALL PERSONS COVERED BY THE GROUP POLICY A WRITTEN NOTICE OF THE PERSON'S INTENTION TO STOP PAYMENT OF PREMIUMS. THIS WRITTEN NOTICE MUST ALSO CONTAIN A NOTICE TO ALL PERSONS COVERED BY THE GROUP POLICY OF THEIR RIGHTS TO HEALTH INSURANCE CONVERSION POLICIES UNDER ARTICLE 53 OF CHAPTER 58 OF THE GENERAL STATUTES ~~CHAPTER 58~~ AND THEIR RIGHTS TO PURCHASE INDIVIDUAL POLICIES UNDER THE FEDERAL ~~CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT (COBRA).~~ HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT AND UNDER ARTICLE 68 OF CHAPTER 58 OF THE GENERAL STATUTES. VIOLATION OF THIS LAW IS A FELONY. ANY PERSON VIOLATING THIS LAW IS ALSO SUBJECT TO A COURT ORDER REQUIRING THE PERSON TO COMPENSATE PERSONS INSURED FOR EXPENSES OR LOSSES INCURRED AS A RESULT OF THE TERMINATION OF THE INSURANCE."

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

SENATE BILL 241:
Health Insurance Termination Notice

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Dalton
Date:	August 7, 2001	**Summary by:**	Jeff Hudson
Version:	Proposed Committee Substitute S241-CSSB-42 [v.3]		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 241 (PCS) would make group health plans that are currently regulated only by the federal Employee Retirement Income Security Act of 1974 (ERISA) subject to the provisions of G.S. 58-50-40. The PCS would also require insurers to personally notify every subscriber or certificate holder upon termination of the group health insurance contract at the same time the insurer provides information on obtaining continuing insurance coverage under the federal Health Insurance Portability and Accountability Act (HIPAA). The act would become effective December 1, 2001.***

BILL ANALYSIS

Section 1 would:

- Add group health plans as defined in Section 609(l) of the Employee Retirement Income Security Act of 1974 (ERISA) to the types of plans that are currently subject to the provisions of G.S. 58-50-40. Section 609(l) defines "group health plan" to mean an employee welfare benefit plan providing medical care to participants or beneficiaries directly or through insurance, reimbursement, or otherwise. G.S. 58-50-40 makes it a class H penalty for an insurance fiduciary to cause the cancellation of group health or life insurance by willfully failing to pay the insurance premiums and willfully failing to deliver to the persons covered by the insurance notice of intention to stop payment of premiums at least 45 days before the termination of the insurance. G.S. 58-50-40 also provides that if an insurance fiduciary is convicted under the statute, the court will order the insurance fiduciary to make full restitution to the persons who would have been covered by the insurance and such persons will have a lien upon the assets of the employer or insurance fiduciary. **Note:** ERISA may preempt State regulation of group health plans currently covered by ERISA.
- Update G.S. 58-50-40 by deleting the reference to the Consolidated Omnibus Budget Reconciliation Act (COBRA) and replacing it with a reference to the Health Insurance Portability and Accountability Act (HIPAA) and Article 68 of Chapter 58 of the General Statutes.
- Add a new subsection to G.S 58-50-40 to require an insurer underwriting the group insurance to notify every subscriber or certificate holder personally upon termination of the contract when the insurer provides the subscriber or certificate holder their written certification of creditable coverage for purposes of obtaining continuing coverage that is otherwise required under the federal and State law.

Section 2 would make conforming changes.

Section 3 is a severability clause.

Section 4 would make the act effective December 1, 2001.

Note: Linda Attarian, Research Division, contributed to the preparation of this summary.

S241-SMSB-001

VISITOR REGISTRATION SHEET

JII
Name of Committee

8/14/01
Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	MFS
Michelle Frazier	NC Bar Assoc.
Ross M. Smith	PCS Phosphate
John Phelps	NCLM
[illegible]	Freedom Newspapers
Stella Boswell	NCATL
Dick Taylor	NCATL
BILL RUSTON	Citizen
[illegible]	NCSWT
STAN SPRAGUE	COURT WATCH ON NC INC
Tom Coley	CWA CSO
DAVID BARNES	Poyner Spruill, LLP
[illegible]	ADC
Lucius PULLEN	ATTORNEY
MIKE AYOTTE	CVS/pharmacy
[illegible]	NCDOT

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

August 28, 2001

The House Committee on JUDICIARY II met at 10:00 a.m. on Tuesday, August 28, 2001 in Room 421 of the Legislative Office Building. The following members were present: Chairman Phil Baddour, Vice Chairman Phil Haire, Representatives Bowie, Gulley, Jeffus, Justus, Miller, Pope, Sherrill, Weiss.

The Visitor Registration sheet is attached as a part of the record of the Minutes. Related handouts are listed as ATTACHMENTS for the record.

Chairman Baddour presided and called the meeting to order. The following bills were considered:

SB 790 – GOOD FUNDS SETTLEMENT ACT REVISIONS. A Proposed House Committee Substitute was offered and explained by staff. A motion was made by Representative Miller to adopt the proposed committee substitute for the purpose of discussion. The motion carried. Robin Johnson, Staff, was recognized to explain the committee substitute followed by comments from Senator Hartsell, sponsor of SB 790. The PCS for SB 790 would clarify the authority of a settlement agent, in a real estate transaction, to disburse funds in reliance on a deposit in the form of a check from a mortgage banker or agricultural credit association. A representative of the Bar Association and George Teague of the Mortgage Bankers, were recognized for comments.

A motion was made by Representative Sherrill for a favorable report of the House Committee Substitute, unfavorable to the original bill, and the motion carried.

The meeting adjourned at 10:25 a.m.

Phil Baddour
Representative Philip A. Baddour
Presiding Chairman

Julie R. Allen
Julie R. Allen
Committee Assistant

Jacquelyn A. Hamby
Jacquelyn A. Hamby
Transcribing Committee Assistant

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
S.B. 790 A BILL TO BE ENTITLED AN ACT TO REVISE THE GOOD FUNDS SETTLEMENT ACT TO REPEAL THE AUTHORITY OF A SETTLEMENT AGENT TO DISBURSE SETTLEMENT PROCEEDS IN RELIANCE ON A DEPOSIT IN THE FORM OF A CHECK DRAWN ON THE ACCOUNT OF OR ISSUED BY A LENDER WHICH IS APPROVED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AS EITHER A SUPERVISED OR NONSUPERVISED MORTAGEE/

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to House committee substitute bill, ☐ which changes the title, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(b), the bill is placed on the Calendar of _____.

____ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on _____.

____ The bill/resolution is re-referred to the Committee on _____.

____ On motion of (Rep. _____,) (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.

____ Pursuant to Rule 36(b), the (House)committee substitute bill (No. ____)/resolution is placed on the Calendar of _____. (The original bill) (House Committee Substitute Bill No. ____)/resolution is placed on the Unfavorable Calendar.

____ On motion of Rep. _____, (the rules are suspended) (Rule ____ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ Rep. _____ offers Amendment No. _____ which (is adopted.) (fails of adoption.) (by EV ____ ____.) ( ) This amendment changes the title.

____ The bill/resolution (, as amended,) passes its second reading (by following vote, ____ ____ RC) (, by EV ____ ____,) and (remains on the Calendar,) (and there being no objection is read a third time).

____ The bill/resolution (, as amended,) passes its third reading (by the following vote, ____ ____ RC) (, by EV ____ ____,) and is ordered
____ sent to the Senate.
____ without engrossment. ____ by Special message.
____ sent to the Senate for concurrence in
_____ House amendment (s).
_____ House committee substitute.
____ enrolled.

____ On motion of Rep. _____, the House concurs in the (material) Senate _____ (by the following vote, ____ ____ RC) (, by EV ____ ____,) and the bill is ordered enrolled.

HOUSE JUDICIARY II COMMITTEE
AGENDA

Tuesday, August 28, 2001

10:00 A.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF

Robin Johnson
Esther Manheimer
Jeff Hudson
Julie Allen (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDERED:

SB 790 Good Funds Settlement Act Revisions – Sen. Hartsell

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 790
PROPOSED HOUSE COMMITTEE SUBSTITUTE S790-CSRH-53 [v.5]

8/27/2001 3:05:52 PM

Short Title: Good Funds Settlement Act Revisions. (Public)

Sponsors:

Referred to:

April 3, 2001

A BILL TO BE ENTITLED

AN ACT TO REVISE THE GOOD FUNDS SETTLEMENT ACT TO CLARIFY THE AUTHORITY OF A SETTLEMENT AGENT TO DISBURSE SETTLEMENT PROCEEDS IN RELIANCE ON A DEPOSIT IN THE FORM OF A CHECK ISSUED BY AN AGRICULTURAL CREDIT ASSOCIATION OR IN THE FORM OF A CHECK DRAWN ON THE ACCOUNT OF OR ISSUED BY A LICENSED MORTGAGE BANKER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 45A-4 reads as rewritten:

"**§ 45A-4. Duty of settlement agent.**

The settlement agent shall cause recordation of the deed, if any, the deed of trust or mortgage, or other loan documents required to be recorded at settlement. The settlement agent shall not disburse any of the closing funds prior to the recordation of any deeds or loan documents required to be filed by the lender, if applicable, and verification that the closing funds used to fund disbursement are deposited in the settlement agent's trust or escrow account in one or more forms prescribed by this Chapter. Unless otherwise provided in this Chapter, a settlement agent shall not cause a disbursement of settlement proceeds unless those settlement proceeds are collected funds. Notwithstanding that a deposit made by a settlement agent to its trust or escrow account does not constitute collected funds, the settlement agent may cause a disbursement of settlement proceeds from its trust or escrow account in reliance on that deposit if the deposit is in one or more of the following forms:

(1) A certified check;

(2) A check issued by the ~~State of North Carolina,~~ State, the United States, ~~or~~ a political subdivision of the ~~State of North Carolina or the United States;~~State, or an agency or instrumentality of the United States, including an agricultural credit association;

(3) A cashier's check, teller's check, or official bank check drawn on or issued by a financial institution insured by the Federal Deposit

Insurance Corporation or a comparable agency of the federal or state government;

(4) A check drawn on the trust account of an attorney licensed to practice in the State of North Carolina;

(5) A check or checks drawn on the trust or escrow account of a real estate broker licensed under Chapter 93A of the General Statutes;

(6) A personal or commercial check or checks in an aggregate amount not exceeding five thousand dollars ($5,000) per closing if the settlement agent making the deposit has reasonable and prudent grounds to believe that the deposit will be irrevocably credited to the settlement agent's trust or escrow account;

(7) A check drawn on the account of or issued by a ~~lender which is approved by the United States Department of Housing and Urban Development as either a supervised or nonsupervised mortgagee as defined in 24 C.F.R. section 202.2.~~ mortgage banker registered under Article 19 of Chapter 53 of the General Statutes that has posted with the Commissioner of Banks a surety bond in the amount of at least three hundred thousand dollars ($300,000). The surety bond shall be in a form satisfactory to the Commissioner and shall run to the State for the benefit of any settlement agent with a claim against the licensee for a dishonored check."

SECTION 2. G.S. 45A-4, as amended by Section 1 or this act, reads as rewritten:

"**§ 45A-4. Duty of settlement agent.**

The settlement agent shall cause recordation of the deed, if any, the deed of trust or mortgage, or other loan documents required to be recorded at settlement. The settlement agent shall not disburse any of the closing funds prior to the recordation of any deeds or loan documents required to be filed by the lender, if applicable, and verification that the closing funds used to fund disbursement are deposited in the settlement agent's trust or escrow account in one or more forms prescribed by this Chapter. Unless otherwise provided in this Chapter, a settlement agent shall not cause a disbursement of settlement proceeds unless those settlement proceeds are collected funds. Notwithstanding that a deposit made by a settlement agent to its trust or escrow account does not constitute collected funds, the settlement agent may cause a disbursement of settlement proceeds from its trust or escrow account in reliance on that deposit if the deposit is in one or more of the following forms:

(1) A certified check;

(2) A check issued by the State, the United States, a political subdivision of the State, or an agency or instrumentality of the United States, including an agricultural credit association;

(3) A cashier's check, teller's check, or official bank check drawn on or issued by a financial institution insured by the Federal Deposit

Insurance Corporation or a comparable agency of the federal or state government;

(4) A check drawn on the trust account of an attorney licensed to practice in the State of North Carolina;

(5) A check or checks drawn on the trust or escrow account of a real estate broker licensed under Chapter 93A of the General Statutes;

(6) A personal or commercial check or checks in an aggregate amount not exceeding five thousand dollars ($5,000) per closing if the settlement agent making the deposit has reasonable and prudent grounds to believe that the deposit will be irrevocably credited to the settlement agent's trust or escrow account;

(7) A check drawn on the account of or issued by a mortgage banker ~~registered under Article 19~~ licensed under Article 19A of Chapter 53 of the General Statutes that has posted with the Commissioner of Banks a surety bond in the amount of at least three hundred thousand dollars ($300,000). The surety bond shall be in a form satisfactory to the Commissioner and shall run to the State for the benefit of any settlement agent with a claim against the licensee for a dishonored check."

SECTION 3. Section 1 of this act becomes effective January 1, 2002. Section 2 of this act becomes effective July 1, 2002. The remainder of this act is effective when it becomes law.

SENATE BILL 790:
Good Funds Settlement Act Revisions.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Hartsell
Date:	August 28, 2001	**Summary by:**	Robin Johnson*
Version:	S790-CSRH-53[V.5]		Committee Counsel

SUMMARY: ***The PCS for Senate Bill 790 would clarify the authority of a settlement agent, in a real estate transaction, to disburse funds in reliance on a deposit in the form of a check from a mortgage banker or agricultural credit association.***

CURRENT LAW: Currently, G.S. 45A-4 sets out the duties of settlement agents, or those persons responsible for conducting settlement and disbursement of settlement proceeds, in real estate transactions involving one- to four-family residential dwellings and lots restricted to residential use.

Generally, when settlement funds are deposited in the settlement agent's trust or escrow account, they must be in the form of "collected funds" before they may be disbursed by the agent. "Collected funds" are defined in the Chapter as funds that have been deposited and irrevocably credited to a settlement agent's account.

However, G.S. 45A-4 allows the settlement agent to disburse funds, even when they are not "collected funds", in reliance on a deposit when it is in one of the following forms:

- Certified check.
- Check issued by the State, a political subdivision of the State, or the United States.
- Cashier's check, teller's check, or official bank check, insured by FDIC or comparable agency.
- Check drawn on the trust account of a licensed attorney.
- Check drawn on the trust account of a licensed real estate broker.
- Personal or commercial checks not exceeding $5000 per closing when the agent has reasonable grounds to believe that the deposit will be irrevocably credited to the account.
- Check drawn on the account of a lender approved as a supervised or nonsupervised mortgagee by the United States Department of Housing and Urban Development.

Federal law defines agricultural credit associations as federally chartered corporate bodies and instrumentalities of the United States organized to engage in an agricultural credit business. They have substantial investment and loan authority, and operate under the regulatory jurisdiction of the Federal Farm Credit Bureau in their district. A recent Attorney General's advisory opinion found that the term "political subdivisions of the United States", as used in the Good Funds Settlement Act, is ambiguous as to whether it includes these associations.

BILL ANALYSIS: Senate Bill 790 would:

- Repeal the settlement agent's authority to disburse funds that are not "collected funds" in reliance on a deposit in the form of a check drawn on the account of a lender approved as a supervised or nonsupervised mortgagee by the United States Department of Housing and Urban Development. Instead, the settlement agent would be authorized to disburse funds that are not "collected funds"

in reliance on a deposit in the form of a check drawn on the account of a licensed mortgage banker that has posted a minimum surety bond of $300,000. The bond must run to the State for the benefit of any settlement agent with a claim against the licensee for a dishonored check.

- Clarify the meaning of a "political subdivision of the United States" by changing that term to "an agency or instrumentality of the United States, including an agricultural credit association."

EFFECTIVE DATE: The act would initially take effect January 1, 2002, and would apply to registered mortgage bankers. Effective July 1, 2002, (when these bankers will be subject to licensure requirements), the act would apply to licensed mortgage bankers.

S790-SMRH-002 Ms. Wendy Graf, Counsel to Senate Judiciary I, substantially contributed to this summary.*

VISITOR REGISTRATION SHEET

J.U.D. II — 8-28-01

Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Matt Sexton	Capitol Group
Michelle Frazier	NC Bar Assoc
David Sheara	Real Property Section, NCBA
Stephanie Mann	NCAR
Tim Minton	NC Home Builders Assn
[illegible]	Pharm & Chem Assn

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

October 9, 2001

The House Committee on JUDICIARY II met at 12:00 p.m. on Tuesday, October 9, 2001, in Room 421 of the Legislative Office Building. The following members were present: Chairman Baddour, Vice Chairman Haire, Representatives Bowie, Culpepper, Decker, Gulley, Hall, Jeffus, Sherrill, Weiss.

The Visitor Registration Sheet is attached as a part of the record of the Minutes and related handouts are listed as ATTACHMENTS for the record.

Chairman Baddour presided and called the meeting to order. He recognized the Pages who were assigned to serve the Committee. The following bill was considered:

SB 833 Possessing Fraudulent ID to get Liquor. Chairman Baddour recognized Senator Rand, bill sponsor, to explain the bill. Representative Hall moved that the Proposed Committee Substitute be considered for adoption. Motion carried. Mr. Andy Ellen, Retail Merchants Association, was recognized to speak on the bill. Representative Eddins was recognized to speak in favor of the bill. Representative Bowie moved that the House committee substitute be given a favorable report, unfavorable as to Senate committee substitute. Motion passes.

The meeting adjourned at 12:25 p.m.

Phil Baddour
Representative Philip A. Baddour
Presiding Chairman

Julie R. Allen
Julie R. Allen
Committee Assistant

Jacquelyn A. Hamby
Jacquelyn A. Hamby
Transcribing Assistant

ATTACHMENTS:

Jelle
J. H

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ House Committee Substitute for
S.B. 833 A BILL TO BE ENTITLED AN ACT TO MAKE POSSESSION OR MANUFACTURE OF FRAUDULENT FORMS OF IDENTIFICATION AN OFFENSE AND TO MAKE IT ILLEGAL TO POSSESS ANY FORM OF FALSE IDENTIFICATION WHILE ATTEMPTING TO OBTAIN ALCOHOLIC BEVERAGES WHEN UNDERAGE.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

X With a favorable report as to House committee substitute bill # 2, which changes the title, unfavorable as to House committee substitute bill #1.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

File
J-II
Law. 10-10-01
meeting

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 833

Judiciary I Committee Substitute Adopted 4/23/01
House Committee Substitute Favorable 5/17/01
Fourth Edition Engrossed 5/29/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S833-PCS4185-SB-58

Short Title: Possession/Manufacture of Fraudulent IDs. (Public)

Sponsors:

Referred to:

April 3, 2001

A BILL TO BE ENTITLED

AN ACT TO MAKE POSSESSION OR MANUFACTURE OF FRAUDULENT FORMS OF IDENTIFICATION AN OFFENSE, TO MAKE IT ILLEGAL TO POSSESS FRAUDULENT IDENTIFICATION WHILE ATTEMPTING TO ENTER THE PREMISES OF AN ALCOHOL PERMITTEE OR OBTAIN ALCOHOLIC BEVERAGES, AND TO AUTHORIZE THE DRIVERS LICENSE TECHNOLOGY FUND.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-100.1. Possession or manufacture of certain fraudulent forms of identification.**

(a) Except as otherwise made unlawful by G.S. 20-30, it shall be unlawful for any person to knowingly possess or manufacture a false or fraudulent form of identification as defined in this section for the purpose of deception, fraud, or other criminal conduct.

(b) For purposes of this section, a "form of identification" means any of the following or any replica thereof:

(1) An identification card containing a picture, issued by any department, agency, or subdivision of the State of North Carolina, the federal government, or any other state.

(2) A military identification card containing a picture.

(3) A passport.

(4) An alien registration card containing a picture.

(c) A violation of this section shall be punished as a Class 1 misdemeanor."

SECTION 2. G.S. 18B-302(e) reads as rewritten:

"(e) Fraudulent Use of Identification. – It shall be unlawful for any person to enter or attempt to enter a place where alcoholic beverages are sold or consumed, or to obtain or attempt to obtain alcoholic ~~beverages~~ beverages, or to obtain or attempt to obtain permission to purchase alcoholic beverages, in violation of subsection (b) of this ~~section~~ section, by using or attempting to ~~use:~~use any of the following:

(1) A fraudulent or altered ~~driver's license; or~~drivers license.

(2) A fraudulent or altered identification document other than a ~~driver's license; or~~drivers license.

(3) A ~~driver's~~ drivers license issued to another ~~person; or~~person.

(4) An identification document other than a ~~driver's~~ drivers license issued to another person.

(5) Any other form or means of identification that indicates or symbolizes that the person is not prohibited from purchasing or possessing alcoholic beverages under this section."

SECTION 3. G.S. 18B-302(f) reads as rewritten:

"(f) Allowing Use of Identification. – It shall be unlawful for any person to permit the use of ~~his driver's~~ the person's drivers license or any other form of identification ~~document~~ of any kind issued or given to the person, by any other person who violates or attempts to violate subsection (b) of this section."

SECTION 4. Article 2 of Chapter 20 is amended by adding the following new sections to read:

"**§ 20-37.01. Drivers license technology fund.**

The Drivers License Technology Fund is established in the Department of Transportation as a nonreverting, interest-bearing special revenue account. The revenue in the Fund at the end of a fiscal year does not revert, and earnings on the Fund shall be credited to the Fund annually. All money collected by the Commissioner pursuant to G.S. 20-37.02 shall be remitted to the State Treasurer and held in the Fund. Money held in the Fund shall be used to supplement funds otherwise available to the Division for information technology and office automation needs. The Commissioner shall report by February 1 and August 1 of each year to the Joint Legislative Commission on Governmental Operations, the chairs of the Senate and House of Representatives Appropriation Committees, and the chairs of the Senate and House of Representatives Appropriations Subcommittee on Transportation on all money collected and deposited in the Fund and on the proposed expenditure of funds collected during the preceding six months.

"**§ 20-37.02. Verification of drivers license information.**

(a) The Commissioner shall establish and operate an electronic system that can be used to verify drivers licenses and identification cards issued by the Division and the dates of birth on these documents in order to facilitate access to drivers license information by retailers and persons holding ABC permits to prevent the utilization of fictitious identification for the purpose of underage purchases of certain age-restricted products or to commit certain crimes.

(b) The electronic system established and operated by the Commissioner pursuant to subsection (a) of this section shall allow a retailer, as defined in G.S. 105-164.3(14), a person who holds an ABC permit, as defined in G.S. 18B-101(2), or an agent of the retailer or a person holding an ABC permit, to verify the validity of a drivers license or identification card issued by the Division and the date of birth of the person issued the drivers license or identification card. The Commissioner shall make drivers license and identification card information available in a read-only format, and the information to be made available shall not exceed the information contained on the face of the drivers license. The Division shall not keep a record of the inquiry. The retailer or a person holding an ABC permit may retain such information as is necessary to provide evidence that the person's drivers license or identification card was validated or that the person's age was verified. A retailer or permittee shall agree to comply with the requirements of this section prior to using the system.

(c) Except for purposes allowed in this section, a person using the electronic system established in accordance with subsection (a) of this section shall not collect or retain any information obtained through the use of the electronic system, nor transfer or make accessible to a third party any information obtained through an inquiry permitted under this section. A violation of the provisions of this subsection shall be punished as a Class 2 misdemeanor.

(d) A retailer or permittee using the electronic system established pursuant to this section shall be responsible for the costs of the equipment and communication lines approved by the Division needed by the retailer or permittee to access the system.

(e) The establishment and operation of an electronic system pursuant to this section may be funded through grants received from the State, the federal government, a private entity, or any other funding source made available to the Drivers License Technology Fund. The Commissioner may enter into one or more nonexclusive contracts under reasonable cost recovery terms with third parties to meet the purpose of this section. Costs recovered pursuant to this subsection and all other funds obtained through grants to the Fund shall be remitted to the State Treasurer to be held in the Drivers License Technology Fund established in G.S. 20-37.01."

SECTION 5. G.S. 20-313(b) reads as rewritten:

"(b) Sale or distribution to persons under the age of 18 years. – If any person shall distribute, or aid, assist, or abet any other person in distributing tobacco products or cigarette wrapping papers to any person under the age of 18 years, or if any person shall purchase tobacco products or cigarette wrapping papers on behalf of a person, less than 18 years, the person shall be guilty of a Class 2 misdemeanor; provided, however, that it shall not be unlawful to distribute tobacco products or cigarette wrapping papers to an employee when required in the performance of the employee's duties. Retail distributors of tobacco products shall prominently display near the point of sale a sign in letters at least five-eighths of an inch high which states the following:

N.C. LAW STRICTLY PROHIBITS

THE PURCHASE OF TOBACCO PRODUCTS

BY PERSONS UNDER THE AGE OF 18.

PROOF OF AGE REQUIRED.

Failure to post the required sign shall be an infraction punishable by a fine of twenty-five dollars ($25.00) for the first offense and seventy-five dollars ($75.00) for each succeeding offense.

A person engaged in the sale of tobacco products shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age. Failure to demand proof of age as required by this subsection is a Class 2 misdemeanor if in fact the prospective purchaser is under 18 years of age. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age in the case of a retailer, or any other documentary or written evidence of age in the case of a nonretailer, or that the defendant relied on the electronic system established and operated by the Division of Motor Vehicles pursuant to G.S. 20-37.02, shall be a defense to any action brought under this subsection. Retail distributors of tobacco products shall train their sales employees in the requirements of this law."

SECTION 6. The electronic system to be established pursuant to Section 4 of this act shall not be operated by the Commissioner until such time as the Drivers License Technology Fund contains sufficient funds to meet the purposes of Section 4 of this act and only for so long as adequate funds are available to operate the electronic system. Sections 1 through 3 of this act become effective December 1, 2001, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 833:
Possession/Manufacture of Fraudulent IDs.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Sen. Rand
Date:	October 9, 2001	**Summary by:**	O. Walker Reagan, Staff Attorney
Version:	Proposed Committee Substitute S833-CSSB-58[V.1]		

SUMMARY: ***The Proposed House Committee Substitute for Senate Bill 833 would create the Class 1 misdemeanor offense of manufacturing or possessing certain false or fraudulent identification. The bill would amend the underage drinking laws to also make it a crime to use fraudulent identification to enter a place that serves alcoholic beverages or to obtain permission to purchase alcoholic beverages, and to use forms or means of identification that give the impression that the person is entitled to purchase alcoholic beverages. Also the bill would create the Drivers License Technology Fund to establish a DMV electronic interactive drivers license verification system for use by retail merchants and ABC permit holders.***

CURRENT LAW: Under G.S. 20-30, it is currently unlawful for a person to display or cause to be displayed or to have in possession a driver's license or learner's permit, knowing the same to be fictitious or to have been altered. Violation is a Class 2 misdemeanor. It is also unlawful to sell or offer for sale any reproduction or facsimile or simulation of a driver's license or learner's permit; violation is a Class I felony. It is also a Class I felony to present, display, or use a driver license or learner's permit that contains a false or fictitious name in the commission or attempted commission of a felony.

G.S. 18B-302(e) makes it unlawful for any person under the age of 21 to obtain or attempt to obtain alcoholic beverages by using or attempting to use (1) A fraudulent or altered driver's license; (2) A fraudulent or altered identification document other than a driver's license; (3) A driver's license issued to another person; or (4) An identification document other than a driver's license issued to another person. Under G.S. 18B-302(f), it is also unlawful for any person to permit the use of his drivers license or other ID by a person under the age of 21 in obtaining or attempting to obtain alcoholic beverages. Violation of either of the existing provisions is a Class 1 misdemeanor.

BILL ANALYSIS: ***Section 1*** of the bill creates a new criminal offense of possession or manufacture of fraudulent forms of identification. The bill makes it a Class 1 misdemeanor to "knowing" possess or manufacture a false or fraudulent form of identification for the purpose of deception, fraud or other criminal conduct. The bill specifically applies to certain forms of identification including a picture: State, local, federal, or other state government issued IDs, military IDs, passports, or alien registration cards.

Section 2 of the bill would make it a crime for a person under age 21 to use fraudulent identification to enter into premises that serve alcoholic beverages or to obtain permission to purchase alcoholic beverages. This includes drivers licenses or any other form or means of identification that indicate that a person is not prohibited from purchasing alcoholic beverages. This change is proposed because many establishments that serve alcoholic beverages are screening for underage persons at the entrance to the establishment to avoid the necessity for those actually serving alcoholic beverages from having to require identification. Other establishments are using a single age-identification checkpoint and issuing a form of identification to indicate that the person is old enough to purchase alcoholic beverages, such as wristbands. While the current law covers the use of false identification to purchase alcohol, it does not cover the use of false identification to gain entrance to establishments that serve alcohol. The

law does not currently cover situations where an underage person obtains identification that indicates they can legally purchase alcohol, but that is not false identification or the identification of another. Violation would be a Class 1 misdemeanor. (Under G.S. 18B-102, unless a different punishment is otherwise expressly stated, all violations of the State's alcohol laws are Class 1 misdemeanors.)

Section 3 of the bill would expand the prohibition against a person allowing another to use his or her identification for the purpose of purchasing alcoholic beverages illegally, by including forms of identification other than drivers licenses.

Section 4 enacts two new sections to the DMV laws.

G.S. 20-37.01 establishes the Drivers License Technology Fund that will be used to fund information technology and office automation needs of the Division of Motor Vehicles. The fund is created as a nonreverting, interest-bearing account.

G.S. 20-37.02 authorizes the Commissioner of DMV to establish an electronic system to allow retail merchants and ABC permittees to access the DMV drivers license records for the sole purpose of verifying the valid of the drivers license or identification card and the age of the person to whom the license or card is issued. The information to be made available shall be in a "read-only" form and shall be limited to the information contained on the face of the license. The Division is to keep no record of the inquiry but the requester is permitted to keep information necessary to verify the identification was validated. The information obtained by the retailer or permittee may only be used for verification purpose and no other purpose, and, except as otherwise permitted, may not be retained. The unlawful use or disclosure of the DMV information is punished as a Class 2 misdemeanor.

The person utilizing the electronic system is responsible for the cost to connect and retrieve the information. The funding for this program may be from State, federal or private funds.

Section 5 makes a conforming change to the law prohibiting the sale or distribution of tobacco products to person under the age of 18. This change will allow a merchant to rely on the electronic verification of a drivers license through the system established in Section 4 of the bill as a defense to a charge of sale of tobacco to an underage person.

EFFECTIVE DATE: Sections 1 through 3 of the bill become effective December 1, 2001 and apply to offenses committed on or after that date. The authorization to create the electronic system established in Section 4 is effective when the act becomes law but will only be implemented when sufficient funds are available in the Drivers License Technology Fund and only for so long as sufficient funds are available. Section 5 is also effective when the bill becomes law.

This summary was substantially contributed to by Brenda Carter, Counsel to the House Judiciary III Committee.

S833-SMRU-V5-004

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 4

SENATE BILL 833

Judiciary I Committee Substitute Adopted 4/23/01
House Committee Substitute Favorable 5/17/01
Fourth Edition Engrossed 5/29/01

Short Title: Possessing False ID to Get Liquor. (Public)

Sponsors:

Referred to:

April 3, 2001

A BILL TO BE ENTITLED

AN ACT TO MAKE POSSESSION OR MANUFACTURE OF FRAUDULENT FORMS OF IDENTIFICATION AN OFFENSE AND TO MAKE IT ILLEGAL TO POSSESS ANY FORM OF FALSE IDENTIFICATION WHILE ATTEMPTING TO OBTAIN ALCOHOLIC BEVERAGES WHEN UNDERAGE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-100.1. Possession or manufacture of fraudulent forms of identification.**

(a) If any person shall knowingly and designedly possess or manufacture a false or fraudulent form of identification, that person shall be guilty of a Class 1 misdemeanor.

(b) For purposes of this section, a 'form of identification' shall include all of the following or any replica thereof:

(1) An operator's, chauffeur's, commercial driver's, or similar type of drivers license containing a picture, issued by the Division of Motor Vehicles or an equivalent agency in any state.

(2) An identification card containing a picture, issued by any department, agency, or subdivision of the State of North Carolina or any other state.

(3) A military identification card containing a picture.

(4) A passport.

(5) An alien registration card containing a picture."

SECTION 2. G.S. 18B-302(e) reads as rewritten:

"(e) Fraudulent Use of Identification. – It shall be unlawful for any person to enter or attempt to enter a place where alcoholic beverages are sold or consumed, or to obtain or attempt to obtain alcoholic ~~beverages~~ beverages, or to obtain or attempt to obtain

permission to purchase alcoholic beverages, in violation of subsection (b) of this ~~section~~ section, by using or attempting to ~~use:~~ use any of the following:

(1) A fraudulent or altered ~~driver's license; or~~ drivers license.

(2) A fraudulent or altered identification document other than a ~~driver's license; or~~ drivers license.

(3) A ~~driver's~~ drivers license issued to another ~~person; or~~ person.

(4) An identification document other than a ~~driver's~~ drivers license issued to another person.

(5) Any other form or means of identification that indicates or symbolizes that the person is not prohibited from purchasing or possessing alcoholic beverages under this section."

SECTION 3. G. S. 18B-302(f) reads as rewritten:

"(f) Allowing Use of Identification. – It shall be unlawful for any person to permit the use of ~~his driver's~~ the person's drivers license or any other form of identification ~~document~~ of any kind issued or given to that person, by any other person who violates or attempts to violate subsection (b) of this section."

SECTION 4. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

VISITOR REGISTRATION SHEET

JUD II — 10-9-01

Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sharon Matthews	DOT-DMV
Wayne Hurder	DOT-DMV
Bill Wilson	NCATL
Sarah Sanders	UNC SL
Eddie Caldwell	NC Sheriffs Assn / NC Law Enf Officers
[illegible]	NCPDA / NCDS-EHR
DAVID M BARNES	Poyner & Spruill, LLP
Cam Ayer	NCAES
Patricia Yaeger	ACLU
R. Paul Williams	NCHBA
FRAN PRESTON	NCRMA
ANDY ELLEN	NCRMA
HUGH TILSON	NCHA
Alicia Muenchbaum	VAIO, DOA
Barbara A Mann	Governor's Institute
TOM MOSS	NC ASSN OF CHIEFS OF POLICE
TOM YOUNG	NC STATE CAMPUS Police
JOE HILLIARD	NCCU POLICE - DURHAM
Emily Fulghum	Smith Anderson
Gov Rep 1/16	Albritis & Co.
PG	NCFB

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

October 23, 2001

The House Committee on JUDICIARY II met at 10:00 a.m. on Tuesday, October 23, 2001, in Room 421 of the Legislative Office Building. The following members were present: Chairman Baddour, Vice Chairman Haire, Representatives Bowie, Gulley, Jeffus, Miller, Sherrill, Weiss.

The Visitor Registration Sheet is attached as a part of the record of the Minutes and related handouts are listed as ATTACHMENTS for the record.

Chairman Baddour presided and called the meeting to order. The following bill was considered:

HB 1468 Certain Weapons of Mass Destruction. Vice Chairman Haire recognized Representative Baddour, bill sponsor, to explain the bill. Representative Weiss moved that the Proposed Committee Substitute be considered for adoption. Motion carried. Mr. Franklin Freeman, Office of the Governor, was recognized to speak on the bill. Representative Eddins was recognized to speak in favor of the bill. Representative Weiss moved that the House committee substitute be given a favorable report. Motion passes.

SB 826 Criminal Record Check Change/ Long Term Care. Chairman Baddour recognizes Senator Rand, bill sponsor, to explain the bill. Mr. Craig Souza, North Carolina Health Care Facilities, recognized to speak on the bill. Representative Sherrill makes a motion to extend date to January 1, 2003. Motion passes. Representative Sherrill moves to give the bill as amended a favorable report, New Proposed Committee Substitute a favorable report. Motion passes.

The meeting adjourned at 10:55 a.m.

Representative Philip A. Baddour
Presiding Chairman

Julie R. Allen
Committee Assistant

Jacquelyn A. Hamby
Committee Assistant

ATTACHMENTS

HOUSE JUDICIARY II COMMITTEE
AGENDA

Tuesday, October 23, 2001

10:00 A.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF

Robin Johnson
Esther Manheimer
Jeff Hudson
Julie Allen (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDERED:

HB 1468 Certain Weapons of Mass Destruction - Representative Baddour

SB 826 Criminal Record Check Change/ Long Term Care - Senator Rand

ADJOURNMENT

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1468 A BILL TO BE ENTITLED AN ACT TO PROVIDE CRIMINAL PENALTIES FOR THE MANUFACTURE, POSSESSION, STORAGE, TRANSPORTATION, DELIVERY, OR ACQUISITION OF CERTAIN WEAPONS OF MASS DESTRUCTION, AND TO PROVIDE CRIMINAL PENALTIES FOR THE USE OR ATTEMPTED USE OF CERTAIN WEAPONS OF MASS DESTRUCTION AND THE FALSE REPORTING OR THE PLACING OF A FALSE WEAPON OF MASS DESTRUCTION.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1468 DATE 10-23-01

S. B. No. _____ Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE H1468-CSSA-34 [v. 6]

(Rep.) BADDOUR
Sen.)

moves to amend the bill on page 1, line 2

(X) WHICH CHANGES THE TITLE

by rewriting the line to read:

"AN ACT TO PROVIDE CRIMINAL PENALTIES FOR THE KNOWING MANUFACTURE,"

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. 1468 DATE 10-23-01

S. B. No. _____ Amendment No. 2 (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE H1468-CSSA-34[v.6]

(Rep.) Sen.) Bowie

moves to amend the bill on page 2, line 21-22

( ) WHICH CHANGES THE TITLE

by inserting between the lines the following:

"The term 'nuclear, biological, or chemical weapon of mass destruction' also includes any combination of parts either designed or intended for use in converting any device into any ~~weapon described~~ nuclear, biological or chemical weapon of mass destruction ~~as~~ or from which a ~~weapon~~ nuclear, biological, or chemical weapon of mass destruction may be readily assembled."

SIGNED James A. Bowie

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1468
PROPOSED COMMITTEE SUBSTITUTE H1468-CSSA-34 [v.6]

10/22/2001 8:50:29 PM

Short Title: Certain Weapons of Mass Destruction. (Public)

Sponsors:

Referred to:

October 18, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE CRIMINAL PENALTIES FOR THE MANUFACTURE, ASSEMBLY, POSSESSION, STORAGE, TRANSPORTATION, SALE, PURCHASE, DELIVERY, OR ACQUISITION OF NUCLEAR, BIOLOGICAL, OR CHEMICAL WEAPONS OF MASS DESTRUCTION, TO PROVIDE CRIMINAL PENALTIES FOR THE USE OR ATTEMPTED USE OF NUCLEAR, BIOLOGICAL, OR CHEMICAL WEAPONS OF MASS DESTRUCTION, TO PROVIDE CRIMINAL PENALTIES FOR THE FALSE REPORTING OF A NUCLEAR, BIOLOGICAL, OR CHEMICAL WEAPON OF MASS DESTRUCTION, TO PROVIDE CRIMINAL PENALTIES FOR THE PERPETRATION OF A HOAX BY THE USE OF A FALSE NUCLEAR, BIOLOGICAL, OR CHEMICAL WEAPON OF MASS DESTRUCTION, AND TO PROVIDE THAT MURDER BY MEANS OF A NUCLEAR, BIOLOGICAL, OR CHEMICAL WEAPON IS FIRST DEGREE MURDER.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"Article 36B.

"Nuclear, Biological, or Chemical Weapons of Mass Destruction.

"**§ 14-288.21. Unlawful manufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of a nuclear, biological, or chemical weapon of mass destruction; exceptions; punishment.**

(a) Except as otherwise provided in this section, it is unlawful for any person to knowingly manufacture, assemble, possess, store, transport, sell, offer to sell, purchase, offer to purchase, deliver or give to another, or acquire a nuclear, biological, or chemical weapon of mass destruction.

(b) This section does not apply to:

(1) Persons listed in G.S. 14-269(b) with respect to any activities lawfully

engaged in while carrying out their duties.

(2) Persons under contract with the United States, the State of North Carolina, or any agency of either government, with respect to any activities lawfully engaged in under their contracts.

(3) Inventors, designers, ordnance consultants and researchers, chemists, physicists, and other persons lawfully engaged in pursuits designed to enlarge knowledge or to facilitate the creation, development, or manufacture of nuclear, biological, or chemical weapons of mass destruction intended for use in a manner consistent with the laws of the United States and the State of North Carolina.

(4) Persons lawfully engaged in research or other activity related to development, production, manufacture, assembly, transport, sale, purchase, delivery or acquisition of any biological agent, disease organism, toxic or poisonous chemical, radioactive substance or their precursors, for preventive, protective, or other peaceful purposes.

(c) The term 'nuclear, biological, or chemical weapon of mass destruction', as used in this Article, means any weapon or device that is designed, or has the capability, to cause death or serious injury through the release, dissemination, or impact of:

(1) Radiation or radioactivity;

(2) A disease organism; or

(3) Toxic or poisonous chemicals or their precursors.

(d) Any person who violates any provision of this section is guilty of a Class B1 felony.

"**§ 14-288.22. Unlawful use of a nuclear, biological, or chemical weapon of mass destruction; punishment.**

(a) Any person who unlawfully and willfully injures another by the use of a nuclear, biological, or chemical weapon of mass destruction is guilty of a Class A felony and shall be sentenced to life imprisonment without parole.

(b) Any person who attempts, solicits another, or conspires to injure another by the use of a nuclear, biological, or chemical weapon of mass destruction is guilty of a Class B1 felony.

(c) Any person who for the purpose of violating any provision of this Article, deposits for delivery or attempts to have delivered, a nuclear, biological, or chemical weapon of mass destruction by the United States Postal Service or other public or private business engaged in the delivery of mail, packages, or parcels is guilty of a Class B1 felony.

"**§ 14-288.23. Making a false report concerning a nuclear, biological or chemical weapon of mass destruction; punishment; restitution.**

(a) Any person who, by any means of communication to any person or group of persons, makes a report, knowing or having reason to know the report is false, that there is located at any place or structure whatsoever any nuclear, biological, or chemical weapon of mass destruction is guilty of a Class D felony.

(b) The court may order a person convicted under this section to pay restitution, including costs and consequential damages resulting from disruption of the normal activity that would have otherwise occurred but for the false report, pursuant to Article 81C of Chapter 15A of the General Statutes.

(c) For purposes of this section, the term "report" shall include making accessible to another person by computer.

"**§ 14-288.24. Perpetrating hoax by use of false nuclear, biological, or chemical weapon of mass destruction; punishment; restitution.**

(a) Any person who, with intent to perpetrate a hoax, conceals, places, or displays any device, object, machine, instrument or artifact, so as to cause any person reasonably to believe the same to be a nuclear, biological, or chemical weapon of mass destruction is guilty of a Class D felony.

(b) The court may order a person convicted under this section to pay restitution, including costs and consequential damages resulting from disruption of the normal activity that would have otherwise occurred but for the hoax, pursuant to Article 81C of Chapter 15A of the General Statutes."

SECTION 2. G.S. 14-17 reads as rewritten:

"**§ 14-17. Murder in the first and second degree defined; punishment.**

A murder which shall be perpetrated by means of a nuclear, biological, or chemical weapon of mass destruction as defined in G.S. 14-288.21, poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon shall be deemed to be murder in the first degree, a Class A felony, and any person who commits such murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000, except that any such person who was under 17 years of age at the time of the murder shall be punished with imprisonment in the State's prison for life without parole. Provided, however, any person under the age of 17 who commits murder in the first degree while serving a prison sentence imposed for a prior murder or while on escape from a prison sentence imposed for a prior murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000. All other kinds of murder, including that which shall be proximately caused by the unlawful distribution of opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or cocaine or other substance described in G.S. 90-90(1)d., when the ingestion of such substance causes the death of the user, shall be deemed murder in the second degree, and any person who commits such murder shall be punished as a Class B2 felon."

SECTION 3. G.S. 14-288.8(c) reads as rewritten:

"(c) The term 'weapon of mass death and destruction' includes:

(1) Any explosive, incendiary, poison gas or radioactive material:

a. Bomb; or
b. Grenade; or
c. Rocket having a propellant charge of more than four ounces; or
d. Missile having an explosive or incendiary charge of more than one-quarter ounce; or
e. Mine; or
f. Device similar to any of the devices described above; or

(2) Any type of weapon (other than a shotgun or a shotgun shell of a type particularly suitable for sporting purposes) which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; or

(3) Any firearm capable of fully automatic fire, any shotgun with a barrel or barrels of less than 18 inches in length or an overall length of less than 26 inches, any rifle with a barrel or barrels of less than 16 inches in length or an overall length of less than 26 inches, any muffler or silencer for any firearm, whether or not such firearm is included within this definition. For the purposes of this section, rifle is defined as a weapon designed or redesigned, made or remade, and intended to be fired from the ~~shoulder.~~shoulder; or

(4) Any combination of parts either designed or intended for use in converting any device into any weapon described above and from which a weapon of mass death and destruction may readily be ~~assembled;~~assembled.

~~(5) Radioactive material, which means any solid, liquid or gas which emits or may emit ionizing radiation spontaneously or which becomes capable of producing radiation or nuclear particles when controls or triggering mechanisms of any associated device are operable.~~

The term 'weapon of mass death and destruction' does not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line-throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of Title 10 of the United States Code; or any other device which the Secretary of the Treasury finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting purposes, in accordance with Chapter 44 of Title 18 of the United States Code."

SECTION 4. This act is effective when it becomes law and applies to offenses committed on or after that date. Prosecutions for offenses occurring before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

HOUSE BILL 1468:
Certain Weapons of Mass Destruction

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Baddour
Date:	October 23, 2001	**Summary by:**	Jeff Hudson
Version:	Proposed Committee Substitute H1468-CSSA-34 [v.6]		Committee Counsel

SUMMARY:

The Proposed Committee Substitute for House Bill 1468 (PCS) would provide criminal penalties for:

- ***The manufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of nuclear, biological, or chemical weapons of mass destruction.***
- ***The use or attempted use of nuclear, biological, or chemical weapons of mass destruction.***
- ***The false reporting of a nuclear, biological, or chemical weapon of mass destruction.***
- ***The perpetration of a hoax by the use of a false nuclear, biological, or chemical weapon of mass destruction.***

The PCS would also provide that murder by means of a nuclear, biological, or chemical weapon of mass destruction is first degree murder. The PCS would become effective when it becomes law.

CURRENT STATE LAW:

Under current G.S. 14-288.8, it is unlawful for any person to manufacture, assemble, possess, store, transport, sell, offer to sell, purchase, offer to purchase, deliver or give to another, or acquire any weapon of mass death and destruction. For purposes of this statute, the term "weapon of mass death and destruction" includes any explosive, incendiary, poison gas, or radioactive material bomb, missile, or similar device; certain firearms or modified firearms; and radioactive material. Any person who violates this statute is guilty of a **Class F felony**.

Under current G.S. 14-159.1, it is unlawful to willfully or wantonly contaminate or attempt to contaminate the water in a public water system with any toxic chemical, biological agent, or radiological substance that is harmful to human health or tamper with the property or equipment of a public water system with the intent to impair the services to the public water system. Any person who violates this statute is guilty of a **Class C felony**.

ANALYSIS OF THE PROPOSED COMMITTEE SUBSTITUTE:

Section 1 would establish an Article 36B in Chapter 14 of the General Statutes containing the following new statutes related to nuclear, biological, or chemical weapons of mass destruction. As used in these statutes, a "nuclear, biological, or chemical weapon of mass destruction" is any weapon or device that is designed or has the capability to cause death or serious injury through the release, dissemination, or impact of radiation, a disease organism, or poisonous chemicals or their precursors.

G.S. 14-288.21 would make it unlawful to manufacture, assemble, possess, store, transport, sell, offer to sell, purchase, offer to purchase, deliver or give to another, or acquire a nuclear, biological, or chemical weapon of mass destruction. Any person who violates this section is guilty of a **Class B1 felony**. This section would not apply to certain military personnel and law enforcement officers lawfully carrying out their duties; persons under contract with the federal or State government lawfully acting under their contracts; and certain persons engaged in research and development in a manner consistent with federal and State law.

G.S. 14-288.22 would:

- Make it unlawful to willfully injure another by the use of a nuclear, biological, or chemical weapon of mass destruction. Any person who violates this provision is guilty of a **Class A felony and shall be sentenced to life imprisonment without parole.**
- Make it unlawful to attempt, solicit another, or conspire to injure another by the use of a nuclear, biological, or chemical weapon of mass destruction. Any person who violates this provision is guilty of a **Class B1 felony.**
- Make it unlawful to use the United States Postal Service or other delivery business to violate any of the provisions of Article 36B. Any person who violates this provision is guilty of a **Class B1 felony.**

G.S. 14-288.23 would make it unlawful to make a report to any person, knowing or having reason to know the report is false, that a nuclear, biological, or chemical weapon of mass destruction is located at any place or structure. Any person who violates this section is guilty of a **Class D felony**. Also, a person convicted under this section may be ordered to pay restitution for damages resulting from the disruption of normal activities caused by the false report.

G.S. 14-288.24 would make it unlawful to intentionally perpetrate a hoax with an object to cause a person reasonably to believe that the object is a nuclear, biological, or chemical weapon of mass destruction. Any person who violates this section is guilty of a **Class D felony**. Also, a person convicted under this section may be ordered to pay restitution for damages resulting from the disruption of normal activities caused by the hoax.

Section 2 provides that murder perpetrated by means of a nuclear, biological, or chemical weapon of mass destruction is murder in the first degree, a **Class A felony, and may be punished with death or imprisonment in the State's prison for life without parole.**

Section 3 makes a conforming change by removing "radioactive material" from the current definition of "weapon of mass death and destruction" found in G.S. 14-288.8(c).

Section 4 provides that this act is effective when it becomes law and applies to offenses committed on or after that date. This section also provides that any prosecutions for offenses that occurred before the effective date of this act are not abated or affected by this act.

flood, collapse, or other disaster or calamity is guilty of a Class 1 misdemeanor of trespass during an emergency.

(b) Any person who commits the crime of trespass during emergency and, without legal justification, obtains or exerts control over, damages, ransacks, or destroys the property of another is guilty of the felony of looting and shall be punished as a Class H felon. (1969, c. 869, s. 1; 1979, c. 760, s. 5; 1979, 2nd Sess., c. 1316, s. 47; 1981, c. 63, s. 1; c. 179, s. 14; 1993, c. 539, ss. 191, 1227; 1994, Ex. Sess., c. 24, s. 14(c).)

Cross References. — For structured sentencing provisions effective October 1, 1994, see § 15A-1340.10 et seq.

§ 14-288.7. Transporting dangerous weapon or substance during emergency; possessing off premises; exceptions.

(a) Except as otherwise provided in this section, it is unlawful for any person to transport or possess off his own premises any dangerous weapon or substance in any area:

(1) In which a declared state of emergency exists; or

(2) Within the immediate vicinity of which a riot is occurring.

(b) This section does not apply to persons exempted from the provisions of G.S. 14-269 with respect to any activities lawfully engaged in while carrying out their duties.

(c) Any person who violates any provision of this section is guilty of a Class 1 misdemeanor. (1969, c. 869, s. 1; 1993, c. 539, s. 192; 1994, Ex. Sess., c. 24, s. 14(c).)

CASE NOTES

Penalty Not Limited to That Prescribed by Ordinance. — Since this section itself makes the possession of a disassembled shotgun and the shotgun shells in the area in question a criminal offense and specifies the penalty therefor, and since the warrant relating to this offense was founded upon the statute, not the ordinance, the sentence imposable in this case was not limited to the penalty prescribed for such conduct by the ordinance. State v. Dobbins, 277 N.C. 484, 178 S.E.2d 449 (1971).

Applied in State v. Dobbins, 9 N.C. App. 452, 176 S.E.2d 353 (1970).

§ 14-288.8. Manufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of weapon of mass death and destruction; exceptions.

(a) Except as otherwise provided in this section, it is unlawful for any person to manufacture, assemble, possess, store, transport, sell, offer to sell, purchase, offer to purchase, deliver or give to another, or acquire any weapon of mass death and destruction.

(b) This section does not apply to:

(1) Persons exempted from the provisions of G.S. 14-269 with respect to any activities lawfully engaged in while carrying out their duties.

(2) Importers, manufacturers, dealers, and collectors of firearms, ammunition, or destructive devices validly licensed under the laws of the United States or the State of North Carolina, while lawfully engaged in activities authorized under their licenses.

(3) Persons under contract with the United States, the State of North Carolina, or any agency of either government, with respect to any activities lawfully engaged in under their contracts.

(4) Inventors, designers, ordnance consultants and researchers, chemists, physicists, and other persons lawfully engaged in pursuits designed to enlarge knowledge or to facilitate the creation, development, or manufacture of weapons of mass death and destruction intended for use in a manner consistent with the laws of the United States and the State of North Carolina.

(c) The term "weapon of mass death and destruction" includes:

(1) Any explosive, incendiary, poison gas or radioactive material:
   a. Bomb; or
   b. Grenade; or
   c. Rocket having a propellant charge of more than four ounces; or
   d. Missile having an explosive or incendiary charge of more than one-quarter ounce; or
   e. Mine; or
   f. Device similar to any of the devices described above; or

(2) Any type of weapon (other than a shotgun or a shotgun shell of a type particularly suitable for sporting purposes) which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; or

(3) Any firearm capable of fully automatic fire, any shotgun with a barrel or barrels of less than 18 inches in length or an overall length of less than 26 inches, any rifle with a barrel or barrels of less than 16 inches in length or an overall length of less than 26 inches, any muffler or silencer for any firearm, whether or not such firearm is included within this definition. For the purposes of this section, rifle is defined as a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder.

(4) Any combination of parts either designed or intended for use in converting any device into any weapon described above and from which a weapon of mass death and destruction may readily be assembled;

(5) Radioactive material, which means any solid, liquid or gas which emits or may emit ionizing radiation spontaneously or which becomes capable of producing radiation or nuclear particles when controls or triggering mechanisms of any associated device are operable.

The term "weapon of mass death and destruction" does not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line-throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of Title 10 of the United States Code; or any other device which the Secretary of the Treasury finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting purposes, in accordance with Chapter 44 of Title 18 of the United States Code.

(d) Any person who violates any provision of this section is guilty of a Class F felony. (1969, c. 869, s. 1; 1975, c. 718, ss. 6, 7; 1977, c. 810; 1983, c. 413, ss. 1, 2; 1993, c. 539, s. 1228; 1994, Ex. Sess., c. 24, s. 14(c).)

Constituti[illegible]it completely bar[illegible] cl[illegible] the Constitution; t[illegible] sion of shotguns. v[illegible] which have been shorten the barrel a[illegible] length of a particular a reasonable purpos[illegible] Fennell, 95 N.C. Ap[illegible] (1989).

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Operability is n[illegible] crime to be proven by[illegible] affirmative defense. [illegible] App. 140, 382 S.E.2d[illegible]

Devices li[illegible] in status as we[illegible]ns o[illegible] tion once they are four[illegible] and incapable of bein[illegible] State v. Fennell, 95 N[illegible] 231 (1989).

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§ 14-288.9.

(a) An assault[illegible] coming within th[illegible] an area:

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(2) Within t[illegible] imminen[illegible]

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Carolina Ry., 179 N.C.

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house, uninhabited house or other building situated on the premises belonging to another, without having first obtained authority so to do and consent of the owner or agent thereof, he shall be guilty of a Class 3 misdemeanor. (1929, c. 192, s. 1; 1993, c. 539, s. 97; 1994, Ex. Sess., c. 24, s. 14(c).)

Cross References. — As to taking unlawful possession of another's house, see § 14-143. As to injuring houses, churches, fences and walls, see § 14-144. As to willful destruction by a tenant, see § 42-11.

§ 14-159.1. Contaminating a public water system.

(a) A person commits the offense of contaminating a public water system, as defined in G.S. 130A-313(10), if he willfully or wantonly:

(1) Contaminates, adulterates or otherwise impurifies or attempts to contaminate, adulterate or otherwise impurify the water in a public water system, including the water source, with any toxic chemical, biological agent or radiological substance that is harmful to human health, except those added in approved concentrations for water treatment operations; or

(2) Damages or tampers with the property or equipment of a public water system with the intent to impair the services of the public water system.

(b) Any person who commits the offense defined in this section is guilty of a Class C felony. (1983, c. 507, s. 1; 1985, c. 509, s. 4; c. 689, s. 5; 1993, c. 539, s. 1189; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 14-159.2. Interference with animal research.

(a) It is unlawful for a person willfully to commit any of the following acts:

(1) The unauthorized entry into any research facility where animals are kept within the facility for research in the advancement of medical, veterinary, dental, or biological sciences, with the intent to (i) disrupt the normal operation of the research facility, or (ii) damage the research facility or any personal property located thereon, or (iii) release from any enclosure or restraining device any animal kept within the research facility, or (iv) interfere with the care of any animal kept within the research facility;

(2) The damaging of any such research facility or any personal property located thereon;

(3) The unauthorized release from any enclosure or restraining device of any animal kept within any research facility; or

(4) The interference with the care of any animal kept within any research facility.

(b) Any person who commits an offense under subsection (a) of this section shall be guilty of a Class 1 misdemeanor.

(c) Any person who commits an offense under subsection (a) of this section that involves the release from any enclosure or restraining device of any animal having an infectious disease shall be guilty of a Class I felony.

(d) As a condition of probation, the court may order a person convicted under this section to make restitution to the owner of the animal for damages, including the cost of restoring the animal to confinement and of restoring the animal to its health condition prior to any release, and for damages to personal property, including materials, equipment, data, and records, and real property caused by the interference. If the interference causes the failure of an experiment, the restitution may include all costs of repeating the experiment, including replacement of the animals, labor, and materials.

§ 14-265: Repealed by Session Laws 1977, c. 711, s. 33.

ARTICLE 34.

Custodial Institutions.

§ 14-266. Persuading inmates to escape.

It shall be unlawful for any parent, guardian, brother, sister, uncle, aunt, or any person whatsoever to persuade or induce to leave, carry away, or accompany from any State institution, except with the permission of the superintendent or other person next in authority, any boy or girl, man or woman, who has been legally committed or admitted under suspended sentence to said institution by juvenile, recorder's, superior or any other court of competent jurisdiction. (1935, c. 307, s. 1; 1937, c. 189, s. 1.)

§ 14-267. Harboring fugitives.

It shall be unlawful for any person to harbor, conceal, or give succor to, any known fugitive from any institution whose inmates are committed by court or are admitted under suspended sentence. (1935, c. 307, s. 2; 1937, c. 189, s. 2.)

§ 14-268. Violation made misdemeanor.

Any person violating the provisions of this Article shall be guilty of a Class 1 misdemeanor. (1935, c. 307, s. 3; 1993, c. 539, s. 162; 1994, Ex. Sess., c. 24, s. 14(c).)

SUBCHAPTER IX. OFFENSES AGAINST THE PUBLIC PEACE.

ARTICLE 35.

Offenses Against the Public Peace.

§ 14-269. Carrying concealed weapons.

(a) It shall be unlawful for any person willfully and intentionally to carry concealed about his person any bowie knife, dirk, dagger, slung shot, loaded cane, metallic knuckles, razor, shurikin, stun gun, or other deadly weapon of like kind, except when the person is on the person's own premises.

(a1) It shall be unlawful for any person willfully and intentionally to carry concealed about his person any pistol or gun except in the following circumstances:

(1) The person is on the person's own premises.

(2) The deadly weapon is a handgun, and the person has a concealed handgun permit issued in accordance with Article 54B of this Chapter.

(b) This prohibition shall not apply to the following persons:

(1) Officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties as such and acting under orders requiring them to carry arms and weapons;

(2) Civil and law enforcement officers of the United States while in the discharge of their official duties;

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197, s. 8; C.S., s. 4
c. 459; 1949, c. 1
1977, c. 616; 198
1993, c. 539, s. 16
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Cross References
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I. General Conside
II. Elements of the
III. Persons Excepte
IV. Illustrative Case
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I. GENERAL C

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Gainey, 273 N.C. 620
Applied in State v.

(3) Officers and soldiers of the militia and the national guard when called into actual service;
(4) Officers of the State, or of any county, city, or town, charged with the execution of the laws of the State, when acting in the discharge of their official duties;
(5) Sworn law-enforcement officers, when off-duty, if:
a. Written regulations authorizing the carrying of concealed weapons have been filed with the clerk of superior court in the county where the law-enforcement unit is located by the sheriff or chief of police or other superior officer in charge; and
b. Such regulations specifically prohibit the carrying of concealed weapons while the officer is consuming or under the influence of alcoholic beverages.

(b1) It is a defense to a prosecution under this section that:
(1) The weapon was not a firearm;
(2) The defendant was engaged in, or on the way to or from, an activity in which he legitimately used the weapon;
(3) The defendant possessed the weapon for that legitimate use; and
(4) The defendant did not use or attempt to use the weapon for an illegal purpose.

The burden of proving this defense is on the defendant.

(c) Any person violating the provisions of subsection (a) of this section shall be guilty of a Class 2 misdemeanor. Any person violating the provisions of subsection (a1) of this section shall be guilty of a Class 2 misdemeanor for the first offense. A second or subsequent offense is punishable as a Class I felony.

(d) This section does not apply to an ordinary pocket knife carried in a closed position. As used in this section, "ordinary pocket knife" means a small knife designed for carrying in a pocket or purse, that has its cutting edge and point entirely enclosed by its handle, and that may not be opened by a throwing, explosive, or spring action. (Code, s. 1005; Rev., s. 3708; 1917, c. 76; 1919, c. 197, s. 8; C.S., s. 4410; 1923, c. 57; Ex. Sess. 1924, c. 30; 1929, cc. 51, 224; 1947, c. 459; 1949, c. 1217; 1959, c. 1073, s. 1; 1965, c. 954, s. 1; 1969, c. 1224, s. 7; 1977, c. 616; 1981, c. 412, s. 4; c. 747, s. 66; 1983, c. 86; 1985, c. 432, ss. 1-3; 1993, c. 539, s. 163; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 398, s. 2; 1997-238, s. 1.)

Local Modification. — Caswell: 1941, c. 90; Halifax: 1943, c. 34.

Cross References. — As to counties still governed by a former subdivision (b) of this section, which was eliminated by the 1965 amendment, see note to § 14-269.1. As to going armed on Sunday, see § 103-2.

Legal Periodicals. — For note on control of firearms, see 35 N.C.L. Rev. 149 (1956).

CASE NOTES

I. General Consideration.
II. Elements of the Offense.
III. Persons Excepted.
IV. Illustrative Cases.
V. Practice and Procedure.

I. GENERAL CONSIDERATION.

Purpose. — The purpose of this section is to reduce the likelihood that a concealed weapon may be resorted to in a fit of anger. State v. Gainey, 273 N.C. 620, 160 S.E.2d 685 (1968).

Applied in State v. Ratliff, 281 N.C. 397, 189 S.E.2d 179 (1972); State v. Patton, 18 N.C. App. 266, 196 S.E.2d 560 (1973); State v. McZorn, 288 N.C. 417, 219 S.E.2d 201 (1975).

Stated in State v. Burgess, 2 N.C. App. 677, 163 S.E.2d 662 (1968).

Cited in State v. Divine, 98 N.C. 778, 4 S. 477 (1887); State v. Barrett, 138 N.C. 630

FIGURE A

Effective for Offenses Committed on or after 12/1/95

FELONY PUNISHMENT CHART

PRIOR RECORD LEVEL

OFFENSE CLASS	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts
A	Death or Life Without Parole					
B1	A *240-300* **192-240** *144-192*	A *288-360* **230-288** *173-230*	A *336-420* **269-336** *202-269*	A *384-480* **307-384** *230-307*	A *Life Without Parole* **346-433** *260-346*	A *Life Without Parole* **384-480** *288-384*
B2	A *157 - 196* **125 - 157** *94 - 125*	A *189 - 237* **151 - 189** *114 - 151*	A *220 - 276* **176 - 220** *132 - 176*	A *251 - 313* **201 - 251** *151 - 201*	A *282 - 353* **225 - 282** *169 - 225*	A *313 - 392* **251 - 313** *188 - 251*
C	A *73 - 92* **58 - 73** *44 - 58*	A *100 - 125* **80 - 100** *60 - 80*	A *116 - 145* **93 - 116** *70 - 93*	A *133 - 167* **107-133** *80 - 107*	A *151 - 188* **121 - 151** *90 - 121*	A *168 - 210* **135 - 168** *101-135*
D	A *64 - 80* **51 - 64** *38 - 51*	A *77 - 95* **61 - 77** *46 - 61*	A *103 - 129* **82 - 103** *61 - 82*	A *117 - 146* **94 - 117** *71 - 94*	A *133 - 167* **107 - 133** *80 - 107*	A *146 - 183* **117 - 146** *88 - 117*
E	I/A *25 - 31* **20 - 25** *15 - 20*	I/A *29 - 36* **23 - 29** *17 - 23*	A *34 - 42* **27 - 34** *20 - 27*	A *46 - 58* **37 - 46** *28 - 37*	A *53 - 66* **42 - 53** *32 - 42*	A *59 - 74* **47 - 59** *35 - 47*
F	I/A *16 - 20* **13 - 16** *10 - 13*	I/A *19 - 24* **15 - 19** *11 - 15*	I/A *21 - 26* **17 - 21** *13 - 17*	A *25 - 31* **20 - 25** *15 - 20*	A *34 - 42* **27 - 34** *20 - 27*	A *39 - 49* **31 - 39** *23 - 31*
G	I/A *13 - 16* **10 - 13** *8 - 10*	I/A *15 - 19* **12 - 15** *9 - 12*	I/A *16 - 20* **13 - 16** *10 - 13*	I/A *20 - 25* **16 - 20** *12 - 16*	A *21 - 26* **17 - 21** *13 - 17*	A *29 - 36* **23 -29** *17 - 23*
H	C/I/A *6 - 8* **5 - 6** *4 - 5*	I/A *8 - 10* **6 - 8** *4 - 6*	I/A *10 - 12* **8 - 10** *6 - 8*	I/A *11 - 14* **9 - 11** *7 - 9*	I/A *15 - 19* **12 - 15** *9 - 12*	A *20 - 25* **16 - 20** *12 - 16*
I	C *6 - 8* **4 - 6** *3 - 4*	C/I *6 - 8* **4 - 6** *3 - 4*	I *6 - 8* **5 - 6** *4 - 5*	I/A *8 - 10* **6 - 8** *4 - 6*	I/A *9 - 11* **7 - 9** *5 - 7*	I/A *10 - 12* **8 -10** *6 - 8*

DISPOSITION
Aggravated Range
PRESUMPTIVE RANGE
Mitigated Range

Note: A - Active Punishment I - Intermediate Punishment C - Community Punishment
*Numbers shown are in months and represent the range of minimum sentences.

Revised: 08-04-95

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 1468

Short Title:	Certain Weapons of Mass Destruction.	(Public)
Sponsors:	Representatives Baddour; Alexander, Allen, Allred, Baker, Barbee, Barefoot, Barnhart, Bell, Blust, Bonner, Bowie, Brubaker, Buchanan, Capps, Carpenter, Church, Clary, Coates, Cole, Cox, J. Crawford, M. Crawford, Culp, Culpepper, Cunningham, Daughtry, Dedmon, Dockham, Earle, Easterling, Eddins, Edwards, Ellis, Esposito, Fox, Gibson, Gillespie, Goodwin, Grady, Gulley, Hackney, Haire, Hall, Harrington, Hill, Hilton, Holliman, Holmes, Howard, Hurley, Jarrell, Jeffus, Johnson, Justus, Lucas, Luebke, McAllister, McCombs, McLawhorn, McMahan, Miller, Morris, Nesbitt, Nye, Oldham, Owens, Pope, Preston, Rayfield, Redwine, Rogers, Russell, Saunders, Sherrill, Shubert, Smith, Sutton, Teague, Thompson, Tolson, Tucker, Underhill, Wainwright, Walker, Warner, Warren, Warwick, Weatherly, Weiss, West, G. Wilson, Womble, Wright, and Yongue.	
Referred to:	Judiciary II.	

October 18, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE CRIMINAL PENALTIES FOR THE MANUFACTURE, POSSESSION, STORAGE, TRANSPORTATION, DELIVERY, OR ACQUISITION OF CERTAIN WEAPONS OF MASS DESTRUCTION, AND TO PROVIDE CRIMINAL PENALTIES FOR THE USE OR ATTEMPTED USE OF CERTAIN WEAPONS OF MASS DESTRUCTION AND THE FALSE REPORTING OR THE PLACING OF A FALSE WEAPON OF MASS DESTRUCTION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"Article 62.

"Certain Weapons of Mss Destruction.

"**§ 14-471. Unlawful manufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of certain weapons of mass destruction.**

(a) Except as otherwise provided in this section, it is unlawful for any person to manufacture, assemble, possess, store, transport, sell, offer to sell, purchase, offer to purchase, deliver or give to another, or acquire certain weapons of mass destruction.

(b) The term "weapons of mass destruction", as used in this section, means:

(1) Any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;

(2) Any weapon involving a disease organism; or

(3) Any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.

(c) Any person who violates any provision of this section is guilty of a Class B1 felony.

"**§ 14-472. Unlawful use of certain weapons of mass destruction; punishment.**

(a) Any person who unlawfully and willfully injures another by the use of certain weapons of mass destruction, as defined in G.S. 14-471, is guilty of a Class A felony.

(b) Any person who attempts, solicits another, or conspires to injure another by the use of certain weapons of mass destruction, as defined in G.S. 14-471, is guilty of a Class B1 felony.

(c) Any person who delivers or attempts to deliver a weapon of mass destruction, as defined in G.S. 14-471, by the United States Postal Service or other public or private business engaged in the delivery of mail, packages, or parcels shall be guilty of a Class B1 felony.

"**§ 14-473. Falsely reporting or placing a false weapon of mass destruction.**

(a) Any person who falsely reports an incident of use of certain weapons of mass destruction is guilty of a Class D felony when knowing the information reported, conveyed, or circulated to be false or baseless, he or she:

(1) Initiates or circulates such report or warning of an alleged occurrence or impending occurrences of a crime, catastrophe, or emergency involving the use of certain weapons of mass destruction under circumstances in which it is not unlikely that public alarm or inconvenience will result;

(2) Reports, by word or action, to any official or quasi-official agency or organization having the function of dealing with emergencies involving danger of life or property, an alleged occurrence or impending occurrence of crime, catastrophe, or emergency involving the use of certain weapons of mass destruction which did not in fact occur or does not in fact exist.

(b) Any person who places a false weapon of mass destruction is guilty of a Class D felony when he or she places, or causes to be placed, any device or object that by its design, construction, content, or characteristics appears to be, or to contain, certain weapons of mass destruction, but is, in fact, an inoperative facsimile or imitation of such a certain weapon of mass destruction and which he or she knows, intends, or

reasonably believes will appear, to be a certain weapon of mass destruction under circumstances in which it is likely to cause public alarm or inconvenience."

SECTION 2. G.S. 14-17 reads as rewritten:

"**§ 14-17. Murder in the first and second degree defined; punishment.**

A murder which shall be perpetrated by means of weapons of mass destruction as defined in G.S. 14-471, poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon shall be deemed to be murder in the first degree, a Class A felony, and any person who commits such murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000, except that any such person who was under 17 years of age at the time of the murder shall be punished with imprisonment in the State's prison for life without parole. Provided, however, any person under the age of 17 who commits murder in the first degree while serving a prison sentence imposed for a prior murder or while on escape from a prison sentence imposed for a prior murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000. All other kinds of murder, including that which shall be proximately caused by the unlawful distribution of opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or cocaine or other substance described in G.S. 90-90(1)d., when the ingestion of such substance causes the death of the user, shall be deemed murder in the second degree, and any person who commits such murder shall be punished as a Class B2 felon."

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

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ House Committee Substitute for
S.B. 826 A BILL TO BE ENTITLED AN ACT TO REPEAL THE REQUIREMENT FOR A NATIONAL CRIMINAL HISTORY RECORD CHECK FOR CERTAIN LONG-TERM CARE FACILITIES BECAUSE OF FEDERAL REQUIREMENTS LIMITING DISTRIBUTION OF RECORD CHECK RESULTS AND TO ESTABLISH THE STUDY COMMISSION ON CRIMINAL HISTORY RECORD CHECKS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ With a favorable report as to House committee substitute bill (# 2), ☒ which changes the title, unfavorable as to ~~Senate~~ House committee substitute bill.** 1.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 826

Health Care Committee Substitute Adopted 4/19/01
Third Edition Engrossed 4/23/01
House Committee Substitute Favorable 7/10/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S826-PCS9367-RM-70

Short Title: Criminal Record Check Change/Long-Term Care. (Public)

Sponsors:

Referred to:

April 3, 2001

A BILL TO BE ENTITLED

AN ACT TO SUSPEND THE REQUIREMENT FOR A NATIONAL CRIMINAL HISTORY RECORD CHECK FOR CERTAIN APPLICANTS FOR CERTAIN POSITIONS IN CERTAIN LONG-TERM CARE FACILITIES BECAUSE OF FEDERAL REQUIREMENTS LIMITING DISTRIBUTION OF RECORD CHECK RESULTS UNTIL JANUARY 1, 2003, AND TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY CRIMINAL HISTORY RECORD CHECKS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Notwithstanding G.S. 131E-265, the requirements of that statute for nursing homes and home care agencies to conduct national criminal history record checks shall apply only to nursing home and home care agency employment positions involving direct patient care, and the national checks shall be conducted in accordance with Public Law 105-277.

SECTION 1.(b) This section expires January 1, 2003.

SECTION 2.(a) The requirements of G.S. 131E-265(a1) for contract agencies of nursing homes and home care agencies, G.S. 131D-40 for adult care homes and contract agencies of adult care homes, and of G.S. 122C-80 for area mental health, developmental disabilities, and substance abuse services authorities, to conduct national criminal history record checks are suspended until January 1, 2003.

SECTION 2.(b) The requirements of G.S. 131E-265(a) for nursing homes and home care agencies to conduct national criminal history record checks for employment positions other than those involving direct patient care are suspended until January 1, 2003.

SECTION 3.(a) The Legislative Research Commission may study how federal law affects the distribution of national criminal history record check information

requested for nursing homes, home care agencies, adult care homes, assisted living facilities, and area mental health, developmental disabilities, and substance abuse services authorities, and the problems federal restrictions pose for effective and efficient implementation of State-required criminal record checks. The study may include the following:

(1) Ways in which national record checks may be obtained and reviewed for these facilities to effectuate State policy and protections of facility residents, and the advantages, disadvantages, and costs of various approaches to implementation.

(2) A review of ways in which national record checks are obtained by the Division of Child Development, Department of Health and Human Services, and other State agencies, and related costs to the State.

(3) Solutions adopted by other states to effectively and efficiently implement criminal record check requirements, including costs to the State in implementing these solutions.

(4) Other issues relevant to State requirements for criminal history record checks in long-term care facilities.

The Legislative Research Commission may make its findings and recommendations in a final report to the 2002 Regular Session of the 2001 General Assembly.

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

SENATE BILL 826:
Criminal Record Check Change/Long Term Care

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Sen. Rand
Date:	October 24, 2001	**Summary by:**	Linda Attarian
Version:			Staff Attorney

SUMMARY: Senate Bill 826 (4th edition) would repeal the requirement for a national criminal history record check for prospective employees of nursing homes and adult care homes. A State criminal history report would still be required. The bill also establishes a 25 member Study Commission on Criminal Record Checks to study how federal law affects the distribution of national criminal history record check information requested for nursing homes, home care agencies, adult care homes, assisted living facilities, and area mental health, developmental disabilities, and substances abuse service authorities. Except for Section 4, which would become effective on July 1, 2001, the act would become effective when it becomes law.

The Proposed Committee Substitute keeps the state and national criminal history record check requirement in place for applicants for positions in nursing homes or home care agencies involving direct patient care and where the applicants have been a NC resident for less than 5 years. All State checks requirements would remain the same. The FBI would process these national checks under the authority of Public Law 105-277.

Specifically, the PCS would change the 4th edition by deleting Sections 1-3, and by substituting uncodified language that temporarily suspends until July 1, 2002, the provision in G.S. 131E-265, 131D-40, and 122C-80 that requires long-term care entities and their contract agencies to condition an applicants' employment, in positions not requiring an occupational license, on an applicant's consent to a national criminal background check. This temporary suspension would not apply to applicants for positions involving direct patient care in nursing homes and home health entities. These entities would be required to request such national criminal history checks pursuant to Public Law 105-277. The PCS also changes the 4th edition by deleting the establishment of the legislative study commission and substituting a section authorizing the Legislative Research Commission to study the issues that the commission was directed to study. The PCS would become effective when it became law.

CURRENT LAW: Currently, all applicants for positions not requiring an occupational license with long-term care facilities and home health agencies and related contract agencies are required, as a condition for employment, to consent to a criminal history record check. If the applicant has been a resident of North Carolina for less than five years, the criminal history record check would include both a national and a State criminal history record check. If the applicant has been a resident of North Carolina for five years or more, only a State criminal history record check is required. Requests for criminal record checks must be submitted not later than five business days after the individual begins conditional employment. The requesting entities provide the Department of Justice the fingerprints of the individual to be checked if a national check is required. For national checks, current law provides that the SBI shall forward the fingerprints to the FBI for searching the FBI's national database. G.S. 114-90.10 authorizes the NC Department of Justice to provide the requesting entities the criminal history records received from the FBI. The Department of Justice is authorized to charge up to $14.00 for the State check, and a 'reasonable' fee for the national check. The fee charged by the FBI is $24.00.

The Supreme Court has held the unauthorized disclosure of criminal records to a third person constitutes an unwarranted invasion of privacy. However, Congress has authorized the FBI to disseminate national criminal histories for non-criminal justice purposes under two separate federal laws.

First, Public Law 92-544, 86 Stat.1115, permits the FBI to exchange criminal history records with officials of federally chartered or insured banking institutions if authorized by a state statute which has been approved by the Attorney General of the United States (delegated to the FBI) and with officials of state and local government for the purposes of licensing and employment. This federal law clearly specifies that the state statute must provide that an authorized governmental agency is designated to be the recipient of the results of the record check, and the information shall not be disseminated to a private entity without authorizing federal legislation. **Current NC law does not meet this federal requirement and therefore, the FBI will not process any national checks requested under G.S. 114-90.10, until this statute is amended to conform to the requirements of P.L. 92-544.**

Secondly, under Public Law 105-277, the FBI may release the results of national criminal history checks directly to nursing homes and home health care agencies on applicants for positions that involve direct patient care. Under this law, Congress authorized the dissemination of the criminal history records to private facilities for a 'first hand' suitability determination. The records disseminated pursuant to this federal law may be used only by the facility or agency requesting the information and only for the purpose of determining the suitability of the applicant for employment in a position involved.

BILL ANALYSIS: Sections 1 and 2 would repeal the provisions in the nursing home and adult care home statutes requiring national criminal history record checks of applicants who have resided in the state for less than five years. These sections would also change current law by requiring a request for a criminal history record check to be submitted not later than five business days after the individual undertakes the functions of the job.

Section 3 would make conforming changes to the Department of Justice statutes.

Section 4 would establish a 25-member Study Commission on Criminal History Record Checks. The Commission would study how federal law affects the distribution of national criminal history record check information requested for long-term care facilities and area mental health authorities, and the problems federal restrictions pose for effective and efficient implementation of State-required criminal record checks, including a review of the way the Division of Child Development conducts these checks and solutions adopted by other states. A final report of the Commission's findings and recommendations would be submitted to the General Assembly upon the convening of its 2002 session.

PCS ANALYSIS:

Section 1.(a) provides that the requirement under current G.S. 131E-265 for certain applicants to consent to a national criminal history check shall ONLY apply to nursing home and home care agencies and ONLY to applicants for positions involving direct patient care. It further directs those agencies to request these checks in accordance to P.L. 105-277. All other requirements, including the requirement of conditioning employment upon the applicant's consent to a State criminal history check, are not changed and continue to be in effect.

Section 1.(b) sunsets Section 1.(a) on July 1, 2002. After that date, if not amended by an enactment of the 2001 General Assembly during the 2002 Regular Session, all the provisions of G.S. 131E-265 shall be in full effect.

Section 2.(a) suspends, until July 1, 2002, the effectiveness of the requirement for contract agencies of nursing homes and home care agencies, adult care homes and their contract agencies, and area mental health authorities to require applicants for unlicensed position to consent to a federal criminal history check. All other requirements of the relevant statutes, including the requirement of conditioning employment upon the applicant's consent to a State criminal history check, are not changed and continue to be in effect.

Section 2.(b) clarifies that the requirement under current G.S. 131E-265 pertaining to consent to national criminal history checks of applicants for employment positions not involving direct patient care are *suspended* until July 1, 2002.

Section 3 authorizes the Legislative Research Commission to study how federal law affects the distribution of national criminal history check information for the long-term care industry. The LRC may make its report to the 2001 General Assembly, Regular Session 2002.

Section 4 makes the bill effective when it becomes law.

Dianna Jessup contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 4

SENATE BILL 826

Health Care Committee Substitute Adopted 4/19/01
Third Edition Engrossed 4/23/01
House Committee Substitute Favorable 7/10/01

Short Title: Criminal Record Check Change/Long-Term Care. (Public)

Sponsors:

Referred to:

April 3, 2001

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE REQUIREMENT FOR A NATIONAL CRIMINAL HISTORY RECORD CHECK FOR CERTAIN LONG-TERM CARE FACILITIES BECAUSE OF FEDERAL REQUIREMENTS LIMITING DISTRIBUTION OF RECORD CHECK RESULTS AND TO ESTABLISH THE STUDY COMMISSION ON CRIMINAL HISTORY RECORD CHECKS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131E-265 reads as rewritten:

"**§ 131E-265. Criminal history record checks required for certain applicants for employment.**

(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 nursing home or home care agency shall submit a request to the Department of Justice under G.S. 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. 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 contract agency of a nursing home or home care agency shall submit a request to the Department of Justice under G.S. 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. 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.

(b) Action. – If an applicant's criminal history record check reveals one or more convictions of a relevant offense, the nursing home or home care agency, or the contract agency of a nursing home or home care agency, 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 nursing home or home care agency, or the contract agency of the nursing home or home care agency. If a nursing home, home care agency, or contract agency of a nursing home or home care agency disqualifies an applicant after consideration of the relevant factors, then the nursing home, home care agency, or contract agency 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.

(c) Limited Immunity. – An entity and an officer or employee of an entity that, in good faith, complies with this section is not liable for the failure of the entity to employ an individual on the basis of information provided in the criminal history record check of the individual.

(d) Relevant Offense. – As used in this section, the term "relevant offense" has the same meaning as in G.S. 131D-40.

(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 history 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 history 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 history record check not later than five business days after the individual ~~begins conditional employment.~~ undertakes the functions of the job.

(g) Immunity From Liability. – An entity and officers and employees of an entity shall be immune from civil liability for failure to check an employee's history of criminal offenses if the employee's criminal history record check is requested and received in compliance with this section."

SECTION 2. G.S. 131D-40 reads as rewritten:

"**§ 131D-40. Criminal history record checks required for certain applicants for employment.**

(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 adult care home shall submit a request to the Department of Justice under G.S. 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. 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 contract agency of an adult care home shall submit a request to the Department of Justice under G.S. 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. 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.

(b) Action. – If an applicant's criminal history record check reveals one or more convictions of a relevant offense, the adult care home or a contract agency of the adult care home 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 adult care home or the contract agency of the adult care home. If the adult care home or a contract agency of the adult care home disqualifies an applicant after consideration of the relevant factors, then the adult care home or the contract agency 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.

(c) Limited Immunity. – An adult care home and an officer or employee of an adult care home that, in good faith, complies with this section is not liable for the failure of the home to employ an individual on the basis of information provided in the criminal history record check of the individual.

(d) 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 aged or disabled persons. 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.

(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 history 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 history 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 history record check not later than five business days after the individual ~~begins conditional employment.~~undertakes the functions of the job.

(g) Immunity From Liability. – An entity and officers and employees of an entity shall be immune from civil liability for failure to check an employee's history of criminal offenses if the employee's criminal history record check is requested and received in compliance with this section."

SECTION 3. G.S. 114-19.10 reads as rewritten:

"**§ 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:~~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) 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,~~ 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. 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 4.(a) There is established the Study Commission on Criminal History Record Checks. The purpose of the Commission is to study how federal law affects the distribution of national criminal history record check information requested for nursing homes, home care agencies, adult care homes, assisted living facilities, and area mental health, developmental disabilities, and substance abuse services authorities, and the problems federal restrictions pose for effective and efficient implementation of State-required criminal record checks. The study shall include the following:

(1) Ways in which national record checks may be obtained and reviewed for these facilities to effectuate State policy and protections of facility residents, and the advantages, disadvantages, and costs of various approaches to implementation.

(2) A review of ways in which national record checks are obtained by the Division of Child Development, Department of Health and Human Services, and other State agencies, and related costs to the State.

(3) Solutions adopted by other states to effectively and efficiently implement criminal record check requirements, including costs to the State in implementing these solutions.

(4) Other issues the Commission considers relevant to State requirements for criminal history record checks in long-term care facilities.

SECTION 4.(b) The Commission shall consist of 25 members, appointed as follows:

(1) Ten members of the General Assembly, five of whom shall be Senators appointed by the President Pro Tempore of the Senate, and five of whom shall be members of the House of Representatives appointed by the Speaker of the House of Representatives.

(2) A representative from each of the following, appointed by the President Pro Tempore of the Senate:

a. North Carolina Association of Long Term Care Facilities.

b. North Carolina Assisted Living Association, Inc.

c. The Director of the Division of Aging of the Department of Health and Human Services.
d. The Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Services.
e. The public.

(3) A representative from each of the following, appointed by the Speaker of the House of Representatives:
a. North Carolina Health Care Facilities Association.
b. Friends of Residents in Long Term Care.
c. The Director of the Division of Facility Services of the Department of Health and Human Services.
d. CNC Access, Inc., an organization representing providers of mental health, developmental disabilities, and substance abuse services.
e. The public at large.

(4) A representative from each of the following, appointed by the Governor:
a. The Council on Community Programs.
b. The Secretary of Health and Human Services, or her designee.
c. The Attorney General, or his designee.
d. The Director of the State Bureau of Investigation, or the Director's designee.
e. Association for Home and Hospice Care in North Carolina.

SECTION 4.(c) With the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to assist in the work of the Study Commission on Criminal History Record Checks. With the prior approval of the Legislative Services Commission, the Study Commission may hold its meetings in the State Legislative Building or the Legislative Office Building.

SECTION 4.(d) The Commission shall submit a final written report of its findings and recommendations on or before the convening of the 2002 Regular Session of the 2001 General Assembly. All reports shall be filed with the President Pro Tempore of the Senate and the Speaker of the House of Representatives, the Principal Clerks of the Senate and the House of Representatives, and the Legislative Librarian. Upon filing its final report, the Commission shall terminate.

SECTION 4.(e) Members of the Commission shall be paid per diem, subsistence, and travel allowances as follows:

(1) Commission members who are also members of the General Assembly, at the rate established in G.S. 120-3.1;
(2) Commission members who are officials or employees of the State or local government agencies, at the rate established in G.S. 138-6;
(3) All other Commission members, at the rate established in G.S. 138-5.

SECTION 4.(f) All State departments and agencies shall cooperate with the Commission and, upon request, shall furnish to the Commission and its staff any information in their possession or available to them.

SECTION 4.(g) From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Study Commission on Criminal History Record Checks.

SECTION 5. Section 4 of this act becomes effective July 1, 2001. The remainder of this act is effective when it becomes law.

VISITOR REGISTRATION SHEET

Judiciary II — 10/23/01
Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Williams	NCHBA
Roger Bone	Bone & Assoc
Jeff Welsh	NCALTCF
Crissy Porter	Bone & Associates
Dan Barrett	DFS
Yvonne Watson	NC Courts
Jeanne Winn	NCSBA
Patricia A. Young	Friends of Residents in Long Term Care/ACLU
DAVID Brenner	Poyner & Spruill LLP
[illegible]	AOC
Michelle Frazier	NC Bar Assoc.
John Rustin	NCFPC
[illegible]	CCDS
[illegible]	DOJ
Carole Lawler	EGHS
Carol Teal	Friends of Residents in Long Term Care
JOE LIBERA	Assoc. Home & Hospice Care
Bill Wilson	NCATL
GORDON MYERS	NCCBI
[illegible]	Capitol Press
John Metheyl	Gov Office
FRED TAYLOR	WRAL-TV
[illegible]	AP
[illegible]	WS Journal

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

October 30, 2001

The House Committee on JUDICIARY II met at 10:00 a.m. on Tuesday, October 30, 2001, in Room 421 of the Legislative Office Building. The following members were present: Chairman Baddour, Vice-Chairman Haire, Representatives Culpepper, Gulley, Hall, Jeffus, Justus, Weiss.

The Visitor Registration Sheet is attached as a part of the record of the Minutes and related handouts are listed as ATTACHMENTS for the record.

Chairman Baddour presided and called the meeting to order. The following bill was considered:

SB 881 Worker's Compensation Awards Filed as Judgments. The committee adopted the Proposed Committee Substitute for purposes of discussion. Chairman Baddour explained the bill. Representative Baddour recognized Mr. Tom Andrews to speak on the bill. Mr. Bob Kaylor was recognized to speak on the bill. No votes were taken.

The meeting adjourned at 10:20 a.m.

Phil Baddour
Representative Philip A. Baddour
Presiding Chairman

Julie R. Allen
Julie R. Allen
Committee Assistant

Jacquelyn A. Hamby
Jacquelyn A. Hamby
Transcribing Committee Assistant
ATTACHMENTS:

HOUSE JUDICIARY II COMMITTEE AGENDA

Tuesday, October 30, 2001

10:00 A.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF

Robin Johnson
Esther Manheimer
Jeff Hudson
Julie Allen (Committee Assistant)

CALL TO ORDER

INTRODUCE PAGES

BILLS TO BE CONSIDERED:

SB 881 – Worker's Compensation Awards Filed as Judgments – Sen. Soles

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 881

Judiciary I Committee Substitute Adopted 4/12/01

PROPOSED HOUSE COMMITTEE SUBSTITUTE S881-CSSK-48 [v.2]

10/30/2001 8:42:18 AM

Short Title: Workers' Comp Awards Filed as Judgments. (Public)

Sponsors:

Referred to:

April 4, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AGREEMENTS, ORDERS, AND FINAL AWARDS UNDER THE WORKERS' COMPENSATION ACT MAY BE ENTERED AS JUDGMENTS BY THE CLERK OF SUPERIOR COURT IN THE COUNTY IN WHICH THE INJURY OCCURRED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-87 reads as rewritten:

"~~**§ 97-87. Filing agreements approved by Commission or awards; judgment in accordance therewith; discharge or restoration of lien.**~~

~~Any party in interest may file in the superior court of the county in which the injury occurred a certified copy of a memorandum of agreement approved by the Commission, or of an order or decision of the Commission, or of an award of the Commission unappealed from or of an award of the Commission affirmed upon appeal, whereupon said court shall render judgment in accordance therewith, and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though said judgment had been rendered in a suit duly heard and determined by said court: Provided, if the judgment debtor shall file a certificate duly issued by the Industrial Commission showing compliance with G.S. 97-83 with the clerk of the superior court in the county or counties where such judgment is docketed, then such clerk shall make upon the judgment roll an entry showing the filing of such certificate which shall operate as a discharge of the lien of the said judgment, and no execution shall be issued thereon; provided, further, that if at any time there is default in the payment of any installment due under the award set forth in said judgment the court may, upon application for cause and after 10 days' notice to judgment debtor, order the lien of such judgment restored, and execution may be immediately issued thereon for past due installments and for future installments as they may become due.~~

§97-87. Judgments on Awards.

(a) As used in this section, 'award' includes the following:

(1) A form filed, or an award arising, pursuant to G.S. 97-18(b), G.S. 97-18(d), or G.S. 97-82(b).
(2) A memorandum of agreement approved by the Commission.
(3) An order or decision of the Commission.
(4) An award of the Commission unappealed from.
(5) An award of the Commission affirmed on appeal.

(b) When an award or portion of an award provides for a sum certain or for a sum that can by computation be made certain, and that sum is immediately due and payable as of the date of the award, a judgment may be docketed as provided in subsection (d) of this section, in an amount equal to that sum.

(c) When an award or portion of an award provides for periodic payments to be made on or after the date of the award, a judgment may be docketed as provided in subsection (d) of this section, in an amount equal to the sum stated in any Certificate of Accrued Arrearages that is issued by the Commission pursuant to this subsection. If any payment that has accrued after the date of the award, or after the date specified in the most recent Certificate of Accrued Arrearages issued pursuant to this subsection, is not received by the claimant when due, the following procedure is available for obtaining a Certificate of Accrued Arrearages:

(1) The claimant may file with the Commission a Statement of Accrued Arrearages, on a form approved by the Commission, and shall serve a copy on the party responsible for making the payments.
(2) The responsible party may, within ten days of the date of service of a Statement of Accrued Arrearages, file with the Commission proof of any payments that have been made.
(3) If no such proof is filed within 10 days of the date of service of the Statement, the Commission shall issue a Certificate of Accrued Arrearages.
(4) If such proof is filed, the Commission shall determine the sum of the payments, if any, that have accrued and remain unpaid, shall issue a Proposed Certificate of Accrued Arrearages, and shall serve it on the claimant and the responsible party.
(5) If either party disputes the total sum stated in the Proposed Certificate of Accrued Arrearages, the party shall, within 10 days of the date of service of the Proposed Certificate of Accrued Arrearages, notify the Commission and the other party that it disputes the sum and state the reasons for the dispute.
(6) If no notice of dispute is filed, the Commission shall issue a Certificate of Accrued Arrearages.
(7) If a notice of dispute is filed, the Commission shall, within 10 days of its receipt of the notice, resolve the dispute and issue a Certificate of Accrued Arrearages. There shall be no further review.

(8) All service under this subsection shall be made as provided in Rule 5 of the North Carolina Rules of Civil Procedure, G.S. 1A-1, Rule 5.

(9) Each award and each Certificate of Accrued Arrearages shall include the following information:

a. The names and addresses of the parties.

b. The sum of all principal amounts that have accrued and remain unpaid since the date of the award or since the date of the most recent prior Certificate of Accrued Arrearages.

c. The total of any interest that has accrued on the award, as of the date of the Certificate of Accrued Arrearages, since the date of the award or since the date of the most recent prior Certificate of Accrued Arrearages.

d. Any costs, penalties, or monetary sanctions included in the award.

(d) Any party in interest may file a certified copy of an award, or of a Certificate of Accrued Arrearages, in the office of the clerk of superior court of the county in which the defendant has a place of business or has property, or in which an injury occurred, or in Wake County. An award shall be accompanied by the party's affidavit stating that the award has become final and the time for making the first payment under the award has expired.

(e) Promptly after a certified copy of an award or of a Certificate of Accrued Arrearages is filed, the clerk, in accordance with Chapter 1 of the General Statutes shall docket and index a judgment as provided in Chapter 1 of the General Statues. The principal amount in the award or in the Certificate of Accrued Arrearages shall bear interest at the judgment rate from the date the judgment is docketed. The judgment may be enforced in the same manner as a judgment docketed under Chapter 1 of the General Statutes.

(f) The filing of an award, or of a Certificate of Accrued Arrearages, for docketing as a judgment under this section shall be treated as a civil action for record keeping purposes. The amount in which the judgment is docketed shall determine the amount of the costs to be collected at the time of filing and assessed pursuant to G.S. 7A-305.

(g) Nothing in this section shall be construed to limit the Commission's authority to impose any other remedy provided by law."

SECTION 2. G.S. 1-209 reads as rewritten:

"**§ 1-209. Judgments authorized to be entered by clerk; sale of property; continuance pending sale; writs of assistance and possession.**

The clerks of the superior courts are authorized to enter the following judgments:

(1) All judgments of voluntary nonsuit.

(2) All consent judgments.

(3) In all actions upon notes, bills, bonds, stated accounts, balances struck, and other evidences of indebtedness within the jurisdiction of the superior court.

(4) All judgments by default final and default and inquiry as are authorized by Rule 55 of the Rules of Civil Procedure, and in this section provided.

(5) In all cases where the clerks of the superior court enter judgment by default final upon any debt secured by mortgage, deed of trust, conditional sale contract or other conveyance of any kind, either real or personal property, or by a pledge of property, the said clerks of the superior court are authorized and empowered to order a foreclosure of such mortgage, deed of trust, conditional sale contract, or other conveyance, and order a sale of the property so conveyed or pledged upon such terms as appear to be just; and the said clerks of the superior court shall have all the power and authority now exercised by the judges of the superior court to appoint commissioners to make such sales, to receive the reports thereof, and to confirm the report of sale or to order a resale, and to that end they are authorized to continue such causes from time to time as may be required to complete the sale, and in the final judgment in said causes they shall order the execution and delivery of all necessary deeds and make all necessary orders disbursing the funds arising from the sale, and may issue writs of assistance and possession upon ten days' notice to parties in possession. The commissioners appointed to make foreclosure sales, as herein authorized, may proceed to advertise such sales immediately after the date of entering judgment and order of foreclosure, unless otherwise provided in said judgment and order.

(6) Judgments on awards, or on Certificates of Accrued Arrearages, of the Industrial Commission in workers compensation cases, as defined and provided for in G.S. 97-87.

In any tax foreclosure action pending on March 15, 1939 or thereafter brought under the provisions of G.S. 105-414 in which there is filed no answer which seeks to prevent entry of judgment of sale, the clerk of the superior court may render judgment of sale and make all necessary subsequent orders and judgments to the same extent as permitted by this section in actions brought to foreclose a mortgage. All such judgments and orders heretofore rendered or made by a clerk of the superior court in such tax foreclosure actions are hereby, as to the authority of the said clerk, ratified and confirmed."

SECTION 3. This act is effective January 1, 2002, and applies to all forms filed and awards arising pursuant to G.S. 97-18(b), G.S. 97-18(d), or G.S. 97-82(b) that are filed or that arise before, on, or after that date; all agreements approved by the North Carolina Industrial Commission under the Workers' Compensation Act, Article 1 of

Chapter 97 of the General Statutes, that are approved before, on, or after that date; all orders or decisions of the North Carolina Industrial Commission under the Workers' Compensation Act that are entered before, on, or after that date; and all awards of the North Carolina Industrial Commission unappealed from or affirmed upon appeal under the Workers' Compensation Act that are awarded before, on, or after that date, and to all final certificates of amount accrued that are issued on and after that date.

VISITOR REGISTRATION SHEET

J II
Name of Committee

Oct. 30, 2001
Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Andrews	AOC
Cam Cole	BPMHC
Andy Romanet	NCLM
Carole Lauver	EGHS
DAVID M. BARNES	Poyner + Spruill, LLP
Steve Woodson	NC Farm Bureau
Michelle Frazier	NC Bar Ass'n
BILL SCOGGIN	KENNEDY COVINGTON
Ruth Sappie	NCDOT
Sharon Matthews	DOT-DMV
R W Kaylor	Kaylor Lowe Frizzelle
Mike Carpenter	NCHBA
Bill Wilson	NCATL
Ken Melton	J. D. Alley & Assoc.
John Mc[illegible]	Gov Office

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

October 31, 2001

The House Committee on JUDICIARY II met at 10:00 a.m. on Wednesday, October 31, 2001, in Room 421 of the Legislative Office Building. The following members were present: Chairman Baddour, Vice Chairman Haire, Representatives Culpepper, Decker, Gulley, Hall, Jeffus, Pope.

The Visitor Registration Sheet is attached as a part of the record of the Minutes and related handouts are listed as ATTACHMENTS for the record.

Chairman Baddour presided and called the meeting to order. The following bill was considered:

HB 1472 Biological Agents Registry. Chairman Baddour recognizes Representative Culpepper, bill sponsor to explain the bill. The Honorable Roy Cooper, Attorney General, was recognized to speak on the bill. Chris Hoke, Department of Health and Human Services, was recognized to speak on bill. No votes were taken.

The meeting adjourned at 10:30 a.m.

Phil Baddour
Representative Philip A. Baddour
Presiding Chairman

Julie R. Allen
Julie R. Allen
Committee Assistant

Jacquelyn A. Hamby
Jacquelyn A. Hamby
Transcribing Committee Assistant

ATTACHMENTS

HOUSE JUDICIARY II COMMITTEE
AGENDA

Wednesday, October 31, 2001

10:00 A.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF

Robin Johnson
Esther Manheimer
Jeff Hudson
Julie Allen (Committee Assistant)

CALL TO ORDER

BILLS TO BE CONSIDERED:

HB 1472 – Biological Agents Registry – Rep. Culpepper

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H

HOUSE DRH9369-LN-187A* (10/23)

H.B. FILED
1472 OCT 30 01
HOUSE PRINCIPAL CLERK
D

Short Title:	Biological Agents Registry.	(Public)
Sponsors:	Representative Culpepper.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT DIRECTING THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO ESTABLISH A BIOLOGICAL AGENTS REGISTRY, AND IMPOSING CIVIL PENALTIES FOR VIOLATION OF REGISTRY REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Part 1 of Article 6 of Chapter 130A of the General Statutes is amended by adding the following new section to read:

"**§ 130A-149. Biological agents registry; rules; penalties.**

(a) The Department shall establish and administer a program for the registration of biological agents. The biological agents registry shall identify the biological agents possessed or maintained by any laboratory, medical facility, or research facility in this State and shall contain other information required under rules adopted by the Commission. As used in this section, the term 'biological agent' means any microorganism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product capable of causing:

(1) Death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;

(2) Deterioration of food, water, equipment, supplies, or material of any kind;

(3) Deleterious alteration of the environment; or

(4) Any other risk of serious harm to the public health or safety.

(b) The Commission shall adopt rules for the implementation of the registry program, as follows:

(1) Determining the biological agents required to be reported under this section.

(2) Designating specific information required to be reported including time limits for reporting, form of reports, and to whom reports shall be submitted.

(3) Providing for the release of information in the registry to State and federal law enforcement agencies and the United States Centers for Disease Control and Prevention pursuant to a communicable disease investigation commenced or conducted by the Department, the Commission, or other State or federal law enforcement agency having investigatory authority, or in connection with any investigation involving release, theft, or loss of biological agents.

(4) Establishing a system of safeguards to be followed by laboratories, medical facilities, and research facilities, including a process for the laboratories or facilities to alert appropriate authorities of unauthorized possession or attempted possession of biological agents. The rules shall designate appropriate authorities for receipt of alerts from laboratories or facilities.

(c) Any person having administrative authority over a laboratory, medical facility, or research facility that possesses or maintains any biological agent required to be reported shall report to the Department the information required by the Commission for inclusion in the biological agent registry.

(d) Except as otherwise provided in this section, information maintained in the registry pursuant to this section shall be confidential and shall not be a public record under G.S. 132-1. The Department may, in accordance with rules adopted by the Commission, release information contained in the biological agent registry for the purpose of conducting or aiding in a communicable disease investigation. The Department shall cooperate with and may share information contained in the biological agent registry with the United States Centers for Disease Control and Prevention, and state and federal law enforcement agencies in any investigation involving the release, theft, or loss of a biological agent required to be reported under this section. Release of information from the registry as authorized under this subsection shall not render the information released a public record under G.S. 132-1.

(e) The Department shall impose a civil penalty for violation of this section in the amount of up to one thousand dollars ($1,000). Each day of a continuing violation shall be a separate offense. Any laboratory or facility wishing to contest a penalty shall be entitled to an administrative hearing in accordance with Chapter 150B of the General Statutes."

SECTION 2. G.S. 130A-29(c) is amended by adding the following subdivision to read:

"(10) Pertaining to the biological agents registry in accordance with G.S. 130A-149."

SECTION 3. This act becomes effective January 1, 2002.

HOUSE BILL 1472:
Biological Agents Registry

BILL ANALYSIS

Committee: House Judiciary II
Date: October 31, 2001
Version: First

Introduced by: Rep. Culpepper
Summary by: Robin Johnson

BILL ANALYSIS: House Bill 1472 would direct the Department of Health and Human Services (DHHS) to establish and administer a biological agents registry (registry). The Commission for Health Services would be required to adopt rules that:

-- Determine the biological agents that must be reported.

-- Establish the information that must be reported, in what manner and time frame, and to whom.

-- Provide for the release of registry information as part of a communicable disease investigation.

-- Establish safeguards to be followed by laboratories, medical facilities, and research facilities, including a process for reporting unauthorized or attempted possession of biological agents.

Information maintained in the registry would be confidential and would not be a public record. However, DHHS may release this information for the purpose of conducting or aiding a communicable disease investigation. Information may be released to federal and other states' law enforcement agencies and to the U.S. Centers for Disease Control and Prevention.

A maximum civil penalty of $1000 may be imposed by DHHS for each day of a violation of this act. A laboratory or facility may appeal this penalty under the Administrative Procedure Act.

The bill would take effect January 1, 2002.

H1472-SMRH-001

Roy Cooper
North Carolina Attorney General

ANTHRAX REGISTRY FACTS

The problem: State and federal agents are working to find out who has potentially dangerous biological agents, including anthrax, so they can match known cases with known sources. Without this information they are unable to track the source of the disease

The proposal: Research labs that maintain anthrax strains and other biological agents would report their holdings of biological agents, and log the amounts they hold, to the North Carolina Department of Health and Human Services.

How it would work: DHHS and the Commission for Health Services would establish rules on which biological agents should be reported, how often and when the release of information is in the best interest of the public. The records would remain confidential unless public health interests require its release to the Centers for Disease Control or law enforcement agencies.

Charlotte Observer
Sat, Oct. 20, 2001

RESEARCH LABS

Registry of biological agents sought

Theft would be hard to track in Carolinas

BY ROBERT F. MOORE
AND SCOTT DODD
Staff Writers

Research labs in the Carolinas study a number of bacteria, viruses and toxins that might be used to make a bioweapon - and now the government wants to know where to find them.

Authorities say that if someone stole anthrax or another biological agent from a lab and used it for terrorism, they're not sure investigators could pinpoint the source.


Cooper

Neither state maintains a registry of where the agents are stored or in what amounts. Researchers say potentially dangerous biological and chemical materials can be found at many labs in the Carolinas, under varying degrees of security.

In response, N.C. Attorney General Roy Cooper called

SEE LABORATORIES | 10A

Weather **WARM:** High: 7[illegible] this afternoon. tonight. **Full for[illegible]**

KNIGHT RIDDER

N.C. registry of biological agents pushed for

Laboratories *from 1A*

Friday for a law that would create a statewide database of biological agents, to be maintained by the N.C. Department of Health and Human Services.

Under Cooper's proposal, private, veterinary and university labs would have to report the types and amounts of agents they use. He hopes the effort will lead to a national registry.

South Carolina hasn't announced a similar effort, but earlier this week, Gov. Jim Hodges named a homeland-security director whose office will be responsible for dealing with all terrorism threats in the state.

Most researchers say they support tighter security. They also want to make sure it doesn't affect their ability to do research.

"The universities in the state work with some pretty nasty stuff," said Dr. Philip Carter, a professor of microbiology and immunology at the N.C. State College of Veterinary Medicine. "We really haven't been thinking in terms of keeping these things under lock and key, and now we have to do that."

Federal law requires labs to report when they transport about 40 types of viruses, bacteria, fungi and toxins - including anthrax. There is no such requirement for simply possessing them.

The Clinton administration asked Congress to create a national toxin database in 1999, but the proposal failed amid fears it would inhibit medical research.

Cooper's proposal, which has not been presented to the N.C. legislature, would also require strict security measures to prevent the theft of biological agents. Several lawmakers said they would support it.

"We may not be able to keep a foreign government (from bringing a bioweapon) into the country," Cooper said at a news conference in Charlotte. "But we can keep terrorists and criminals from stealing from our labs at home."

Cooper said recent anthrax exposures in New York City, New Jersey, Washington, D.C., and Florida motivated the proposal. But there are several types of biological agents that require tighter control, he said.

"Instead of just fighting the last battle, we need to anticipate the next one," he said.

Without such a registry, FBI officials say they would have difficulty tracing strains of biological agents. It would be like eliminating fingerprints from a crime scene.

Only state and federal law enforcement and the Centers for Disease Control and Prevention would have access to the registry.

Under the proposal, labs would face fines for noncompliance. Cooper said he didn't have a target date for putting it in place.

The major research schools and hospitals in the Carolinas say their labs don't store anthrax. Carter thought N.C. State might have a small amount in a freezer. But once he checked Friday, he said it must have been destroyed when the colleague who stocked it retired a few years ago.

Labs have plenty of other biological agents and potentially toxic substances around - everything from a relative of the plague that causes a gastrointestinal disease to some of the components for making the nerve gas sarin.



NORMAN NG - STAFF PHOTO

N.C. Attorney General Roy Cooper speaks at a news conference Friday in Charlotte about proposals to help law enforcement track bioterrorism.

Schools and labs require researchers to keep them informed about the substances they're using and to follow safety procedures. Until recently, though, most procedures were designed largely to ensure the safety of students and lab workers - not to keep materials from being stolen, several researchers say.

Still, labs in the Carolinas said they're unaware of any cases where a potentially harmful substance has gone missing.

Carter said he's not as concerned about a stranger breaking into a lab as he is about someone at the school who turns out to be a terrorist or foreign agent. A dozen or more people sometimes have access to a lab or a freezer in which organisms are stored.

"We get a lot of foreign students and visiting scientists at the research universities here, and maybe not all of them are on our side," Carter said. "That's remote, but it's still a possibility."

Labs need to consider more thorough background checks on researchers and putting tighter limits on who has access to potentially threatening substances, he said. "We don't want to discriminate, but we have to be aware now that we might be a target."

The labs provide ample ammunition.

"Essentially any type of microorganism that can infect humans can be weaponized," said Dr. Peter Gilligan, director of clinical microbiology and immunology at UNC Hospitals in Chapel Hill.

And he said there's probably no way any large institution can know for sure it doesn't have anthrax or another deadly bacteria in a freezer somewhere.

"I can't say with 100 percent assurance that there is no anthrax on the UNC campus, and I don't think anyone else can either," Gilligan said. "We may have had a microbiologist who may have been working on it back in the 1950s, and the cell cultures might still be around."

In that case, it's unlikely that someone who wanted to steal the organisms could find them, he said. But it's probably a good idea for researchers to get rid of anything they aren't sure about.

Labs and schools say they have procedures in place to track potentially harmful substances, even if they don't inform the state.

"The stuff that's in our labs is in such small quantities that it hasn't been on anybody's radar screen," said Robert Newberry, Clemson University's chief environmental health and safety officer.

"At least, it hasn't been so far."

Thomas Walker - A washingtonpost.com article from grbarner@ipass.net

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Access to Microbes Is Easily Obtained

Federal Oversight of Inventories Lax

By Joby Warrick and Steve Fainaru
Washington Post Staff Writers
Sunday, October 28, 2001; Page A01

Several weeks after the start of the nation's worst biological attack, the federal government has no central inventory of dangerous disease cultures maintained by academics and private labs. Bacteria and viruses are commonly exchanged in informal arrangements. And researchers aren't required to track their stocks or report losses or thefts.

These lax controls make the nation's universities, health agencies and laboratories easy targets for would-be biological terrorists. A 1999 bill that would have closed many of these gaps was supported both by the Clinton administration and many congressional

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Republicans. But the legislation died amid strong opposition from universities.

"The minimal federal controls in this area would come as quite a surprise to most Americans," former representative Tom Bliley (R-Va.) told a House committee two years ago when it considered toughening the law.

"We permit anyone in this country -- including felons, foreign nationals from sensitive countries and members of extremist groups -- to lawfully possess even the most deadly biological agents, including anthrax, the plague and the ebola virus. They don't even have to notify or register with any federal agency or gain government approval to get them."

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- Bush Signs Anti-Terror Bill
- Ashcroft on Retaliation
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It is not yet known whether the anthrax spores unleashed on Washington, New York and Florida since Sept. 11 originated in the United States or abroad. Also unclear is whether the finely milled, apparently sophisticated form of the bacteria was created in a military weapons lab or by a scientist working for terrorists or alone.

Bush administration officials on Friday said any number of trained scientists could have produced the powdery spores that contaminated the office of Senate Majority Leader Thomas A. Daschle (D-S.D.). White House spokesman Ari Fleischer said the analysis of the material "indicates that it could have been produced by a PhD microbiologist [and] that it could be derived at a small, well-equipped microbiology lab."

Such a renegade scientist would not have had to travel far for the microbes themselves, thanks to procedures and practices that make acquiring dangerous pathogens an elementary affair.

The World Federation for Culture Collections, a global registry of microbe and tissue cultures, lists 46 suppliers worldwide of the virulent strain of *Bacillus anthracis*, the bacterium that causes anthrax. Within the United States the number of labs with anthrax cultures is believed to number in the hundreds, spread across universities, private labs, hospitals, veterinary clinics and public health agencies. The exact figure is not known because the government does not keep an inventory.

"If you already have it, you don't have to register it," said Michael Allswede, associate professor of emergency medicine at the University of Pittsburgh.

Before 1997, there were few controls on even the most dangerous microbes. Numerous U.S. labs sold seed stock for anthrax and other potential "biological agents" to countries now on America's list of states that sponsor terrorism -- with the full knowledge and backing of the U.S. government.

Then, ordering microbes often was as simple as filling out a form, said Mary Gilchrist, president of the Association of Public Health Laboratories and a lab director at the University of Iowa.

"Basically, you had to have a convincing letterhead, know what the agent might look like and know how to spell the name of the organism," Gilchrist said.

Congress tightened the rules in 1996 after Ohio State University student Larry Wayne Harris used a fake letterhead to obtain three vials of the bacterium that causes plague. Harris, who was allegedly affiliated with a white supremacist group, was carrying the vials in his car when he was arrested on mail-fraud charges.

Under the 1996 Anti-Terrorism Act, anyone intending to send or receive the most dangerous microbes is required to register with the federal Centers for Disease Control and Prevention and to demonstrate a legitimate scientific or medical use for the material. But the law left enormous gaps, according to terrorism experts and many public health officials.

The law stopped short of criminalizing the possession of dangerous pathogens by non-scientists -- something federal law enforcement officials had favored. It did little to prod

university labs and hospitals into improving inventory controls or bolstering security, which experts describe as informal at best.

It also failed to address a form of off-the-books trading of lab specimens that is common among researchers -- a practice that accounts for at least some of the movement of pathogen cultures between the United States and other countries.

"It's the old game of 'I pat your back, you pat mine': They work out a deal to exchange," said Dorothy Preslar, who formerly headed the Biological Weapons Verification Project for the American Federation of Scientists. Preslar said she has observed foreign scientists bringing microbe samples -- including anthrax -- into the United States for meetings.

"That may not seem to pose a danger, but it leaves the door open for people to bring in material that shouldn't be here," she said.

Some exchanges are as simple as stashing a petri dish into a lab-coat pocket before jetting off to a conference, Gilchrist said.

"As a young researcher, you can work with the organism and then walk out with it," Gilchrist said. "And within a short period of time, you could have a billion or 10 billion or 20 billion organisms. It's not like a gold brick, where if you cut the brick in half, you only have half. You can give somebody a drop, and by the next day, they have all they need."

Mass producing the organism requires nothing more than a test tube and a warm "broth" in which it can be cultured. Enormous technical obstacles must be overcome in transforming bacteria into a weapon capable of killing large numbers of people. But an aspiring terrorist would find plenty of clues in books and documents available in U.S. libraries and on the Internet, bioterrorism experts say.

"For someone who is committed to doing this, there is public information out there," said Michael Moodie, a former U.S. arms control official who heads the Chemical and Biological Arms Institute. "Maybe not cookbooks or specific recipes, but information that points specifically to the kinds of barriers that need to be overcome."

The legislation proposed by the Clinton administration as

part of 1999's "21st Century Crime Bill" would have outlawed the possession of microbes used in biological weapons, with an exception for legitimate scientific research. The proposal, strongly backed by federal law enforcement agencies, also would have tightened inventory controls while requiring background checks for some lab workers.

Opponents, however, argued that the additional measures would hamper legitimate research and might even impede the development of new cures for diseases. "The real reason that scientists work with these agents are . . . to identify and protect us from epidemics," said Rep. Bart Stupak (D-Mich.) at a 1999 House committee hearing. "This is a great -- and a more certain -- threat than bioterrorism has ever been."

The bill was stridently attacked by university lobbyists who said it would severely restrict academic freedom. It lost momentum and was never brought up for a vote.

Since the Sept. 11 attacks, several universities and government agencies around the globe have begun tightening security. For example, the U.S. Department of Agriculture this month launched a snap investigation of all veterinary labs that produce livestock vaccines, to determine which ones possessed anthrax spores.

"Because of the heightened security, we felt it was important to check all of them out," said Hallie Pickhardt, spokesman for the agency's Animal and Plant Health Inspection Service.

There has been some speculation that the anthrax spores used in the attacks could have been stolen from the U.S. military, but that possibility remains unclear. In 1969, President Richard M. Nixon ordered the dismantling of the U.S. offensive biological weapons program, which included stockpiles of deadly pathogens kept at the Pine Bluff Arsenal in Arkansas and a storage facility at Dugway, Utah.

The program included 220 pounds of anthrax spores, according to declassified documents obtained by the National Security Archives. But Matthew S. Meselson, a Harvard biologist who helped influence Nixon's decision, said in later years the U.S. government had shifted its focus from anthrax to tularemia, in part because of Project Whitecoat, in which Seventh-day Adventist civilians volunteered as human guinea pigs to help the government calibrate the correct infectious dosage. Unlike anthrax, tularemia was easily

treatable after symptoms appeared.

The United States possessed 804 pounds of the bacteria that causes tularemia, also known as rabbit fever, and an array of lethal and incapacitating bacteria, including 5,098 gallons of the microbes that lead to Q fever and 4,991 gallons of Venezuelan equine encephalomyelitis virus, a relative of yellow fever. The United States also maintained 160,549 pounds of anti-crop biological agents and even small quantities of shellfish poison and snake venom.

In part because of pressure surrounding the Vietnam War, Nixon unilaterally renounced and dismantled the program. "I remember his exact words: 'Mankind already holds in its hands too many seeds of its own destruction,' " Meselson said. "I think it was one of the greatest things he ever did. If we were still doing this, dozens of nations would be doing this also."

The stockpiles were autoclaved, then incinerated, Meselson said. But Nixon's edict allowed for "research into offensive aspects of bacteriological/biological agents necessary to determine what defensive measures are required," raising the possibility that secret weaponized stocks were maintained. A 1972 treaty banning biological weapons allowed nations to keep small quantities for defensive research purposes, and 100 grams of anthrax, along with other potentially lethal agents, were later discovered at a CIA building. The United States also maintained "seed stocks" from which new batches of anthrax could be made.

"I don't know what they've got," said William C. Patrick, who worked in the U.S. biological weapons program at Fort Detrick. "But really all you need are the seed stocks."

Would tougher controls have thwarted terrorists bent on obtaining the ingredients of a biological assault? In the case of anthrax, perhaps not. There are many places around the world to get anthrax, scientists say. It is also a relatively simple matter to create a new culture from animals or even soil in a country where anthrax is common.

"I'll give you the Iowa quote: The barn is open, and the cows are out," Gilchrist said. "They're out. If you close the door, it's too late."

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Appendix A to Part 72-Select Agents

Viruses

1. Crimean-Congo haemorrhagic fever virus
2. Eastern Equine Encephalitis virus
3. Ebola viruses
4. Equine Morbillivirus
5. Lassa fever virus
6. Marburg virus
7. Rift Valley fever virus
8. South American Haemorrhagic fever viruses (Junin, Machupo, Sabia, Flexal, Guanarito)
9. Tick-borne encephalitis complex viruses
10. Variola major virus (Smallpox virus)
11. Venezuelan Equine Encephalitis virus
12. Viruses causing hantavirus pulmonary syndrome
13. Yellow fever virus

Exemptions: Vaccine strains of viral agents (Junin Virus strain candid #1, Rift Valley fever virus strain MP-12, Venezuelan Equine encephalitis virus strain TC-83, Yellow fever virus strain 17-D) are exempt.

Bacteria

1. *Bacillus anthracis*
2. *Brucella abortus, B. melitensis, B. suis*
3. *Burkholderia (Pseudomonas) mallei*
4. *Burkholderia (Pseudomonas) pseudomallei*
5. *Clostridium botulinum*
6. *Francisella tularensis*
7. *Yersinia pestis*

Exemptions: vaccine strains as described in Title 9 CFR. Part 78.1 are exempt.

Rickettsiae

1. *Coxiella burnetii*
2. *Rickettsia prowazekii*
3. *Rickettsia rickettsii*

Fungi

1. *Coccidioides immitis*

Toxins

1. Abrin
2. Aflatoxins
3. Botulinum toxins
4. *Clostridium perfringens* epsilon toxin
5. Conotoxins
6. Diacetoxyscirpenol
7. Ricin
8. Saxitoxin
9. Shigatoxin
10. Staphylococcal enterotoxins
11. Tetrodotoxin
12. T-2 toxin

Exemptions: Toxins for medical use, inactivated for use as vaccines, or toxin preparations for biomedical research use at an LD50 for vertebrates of more than 100 nanograms per kilogram body weight are exempt. National standard toxins required for biologic potency testing as described in 9 CFR Part 113 are exempt.

Recombinant organisms/molecules

1. Genetically modified microorganisms or genetic elements from

organisms on Appendix A, shown to produce or encode for a factor associated with a disease.

2. Genetically modified microorganisms or genetic elements that contain nucleic acid sequences coding for any of the toxins listed in this Appendix, or their toxic subunits.

VISITOR REGISTRATION SHEET

Judiciary II — 10/31/01

Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gary McLaurin	CCPS
Ruth Sappie	NCDOT
John McMillan	MFDS
Sharon Matthews	DMV
John McHugh	GOV OFFICE
Deb Ross	ACLU
Glenn Wells	DHHS
STEPHEN W. KEENE	NORTH CAROLINA MEDICAL SOCIETY
Brian Dugan	NCASA
Sam Taylor	NCBIO
ANN LOFLIN	OUHS
HUGH TILSON	NCHA
Tim Crowley	UNCTV
Lynn Bonner	N&O
Mark Johnson	Charlotte Observer
Mark Fleming	NC State University
T. Fagan	Freedom NC Raleigh Bureau
Hal Walker	NCDOJ
Julia White	NCDOJ
Jeff Raw	

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

November 6, 2001

The House Committee on JUDICIARY II met at 10:00 a.m. on Tuesday, November 6, 2001, in Room 421 of the Legislative Office Building. The following members were present: Chairman Baddour, Representatives Bowie, Culpepper, Decker, Gulley, Hall, Jeffus, Justus, Pope, Sherrill, Weiss, ex-officio member Representative Cunningham.

The Visitor Registration Sheet is attached as a part of the record of the Minutes and related handouts are listed as ATTACHMENTS for the record.

Chairman Baddour presided and called the meeting to order. The following bill was considered:

SB 881 Worker's Compensation Awards Filed as Judgments. Chairman Baddour explained the bill. Representative Weiss made motion to hear PCS before the committee. Motion passes. Representative Baddour recognizes Mr. Bob Kaylor to speak in favor of the bill. Mr. Victor Farah recognized to speak on bill. Representative Weiss made a motion to give the Proposed Committee Substitute a favorable report, unfavorable as to the original. Motion passed.

HB 1472 Biological Agents Registry. Chairman Baddour recognizes Representative Culpepper, bill sponsor, to explain the bill. Representative Hall made a motion to hear the Proposed Committee Substitute. Representative Culpepper explains changes to the bill. Mr. Sam Taylor, North Carolina Biosciences Organization, recognized to speak on the bill. Mr. Hugh Tilson, North Carolina Hospital Association, recognized to speak in favor of bill. Rep. Hall made motion to give bill a favorable report. Motion passes.

The meeting adjourned at 10:35 a.m.

Phil Baddour
Representative Philip A. Baddour
Presiding Chairman

Julie R. Allen
Julie R. Allen
Committee Assistant

Jacquelyn A. Hamby
Jacquelyn A. Hamby
Transcribing Committee Assistant

ATTACHMENTS

HOUSE JUDICIARY II COMMITTEE AGENDA

Tuesday, November 6, 2001

10:00 A.M.

Representative Phil Baddour – Chairman

COMMITTEE STAFF

Robin Johnson
Esther Manheimer
Jeff Hudson
Julie Allen (Committee Assistant)

CALL TO ORDER

BILLS TO BE CONSIDERED:

SB 881 – Worker's Compensation Awards Filed as Judgments – Sen. Soles

HB 1472 – Biological Agents Registry – Rep. Culpepper

ADJOURNMENT

File Minutes J-II 11-6-01

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 881 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT AGREEMENTS, ORDERS, AND FINAL AWARDS UNDER THE WORKERS' COMPENSATION ACT MAY BE ENTERED AS JUDGMENTS BY THE CLERK OF SUPERIOR COURT IN THE COUNTY IN WHICH THE INJURY OCCURRED.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☑ With a favorable report as to House committee substitute bill (#~~_____~~), ☑ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 881

Judiciary I Committee Substitute Adopted 4/12/01

PROPOSED HOUSE COMMITTEE SUBSTITUTE S881-CSSK-48 [v.6]

11/6/2001 9:46:01 AM

Short Title: Workers' Comp Awards Filed as Judgments. (Public)

Sponsors:

Referred to:

April 4, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AGREEMENTS, ORDERS, AND FINAL AWARDS UNDER THE WORKERS' COMPENSATION ACT MAY BE ENTERED AS JUDGMENTS BY THE CLERK OF SUPERIOR COURT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-87 reads as rewritten:

"~~**§ 97-87. Filing agreements approved by Commission or awards; judgment in accordance therewith; discharge or restoration of lien.**~~

~~Any party in interest may file in the superior court of the county in which the injury occurred a certified copy of a memorandum of agreement approved by the Commission, or of an order or decision of the Commission, or of an award of the Commission unappealed from or of an award of the Commission affirmed upon appeal, whereupon said court shall render judgment in accordance therewith, and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though said judgment had been rendered in a suit duly heard and determined by said court: Provided, if the judgment debtor shall file a certificate duly issued by the Industrial Commission showing compliance with G.S. 97-83 with the clerk of the superior court in the county or counties where such judgment is docketed, then such clerk shall make upon the judgment roll an entry showing the filing of such certificate which shall operate as a discharge of the lien of the said judgment, and no execution shall be issued thereon; provided, further, that if at any time there is default in the payment of any installment due under the award set forth in said judgment the court may, upon application for cause and after 10 days' notice to judgment debtor, order the lien of such judgment restored, and execution may be immediately issued thereon for past due installments and for future installments as they may become due.~~

§97-87. Judgments on Awards.

(a) As used in this section, 'award' includes the following:

(1) A form filed, or an award arising, under G.S. 97-18(b), G.S. 97-18(d), or G.S. 97-82(b).
(2) A memorandum of agreement approved by the Commission.
(3) An order or decision of the Commission.
(4) An award of the Commission from which there has been no appeal.
(5) An award of the Commission affirmed on appeal.

(b) When an award or portion of an award provides for a sum certain or for a sum that can by computation be made certain, and that sum is due and payable as of the date of the award, a judgment may be docketed as provided in subsection (d) of this section, in an amount equal to that sum.

(c) When an award or portion of an award provides for periodic payments to be made on or after the date of the award, a judgment may be docketed as provided in subsection (d) of this section, in an amount equal to the sum stated in any Certificate of Accrued Arrearages that is issued by the Commission under this subsection. If any payment that has accrued after the date of the award, or after the date specified in the most recent Certificate of Accrued Arrearages issued under this subsection, is not received by the claimant when due, the following procedure is available for obtaining a Certificate of Accrued Arrearages:

(1) The claimant may file with the Commission a Statement of Accrued Arrearages, on a form approved by the Commission, and shall serve a copy on all parties against whom judgment is sought and their attorney of record.
(2) Any party against whom judgment is sought may, within 15 days of the date of service of a Statement of Accrued Arrearages, file with the Commission proof of any payments that have been made or other responsive pleadings.
(3) If no proof or other responsive pleading is filed within 15 days of the date of service of the Statement, the Commission shall immediately issue a Certificate of Accrued Arrearages.
(4) If proof of payment or other responsive pleading is filed, the Commission shall, within seven days, either issue a Certificate of Accrued Arrearages that shall state the sum of payments due or decline to issue a Certificate Accrued Arrearages. The Commission shall notify the claimant, the party against whom judgment is sought, and their attorney of record of the Commission's decision.
(5) If any party disputes the decision of the Commission entered under subdivision (c)(4) of this section, the party may appeal to the full Commission within 10 days of the entry of the decision of the Commission. The non-appealing party may file a response within 10 days of receiving notice of appeal. The notice of appeal shall request one of the following:

a. The Commission reconsider the decision entered based on the record and any additional evidence that parties submit with the notice and response.

b. A de novo evidentiary hearing before the full Commission.

(6) The Commission shall grant the request for an evidentiary hearing under sub-subdivision (c)(5)b. of this section if a material issue of fact exists whose resolution is necessary to determine the appeal.

(7) If a notice of appeal is given under sub-subdivision (c)(5)a. of this section, the Commission shall issue its decision within 10 days of the filing of the response under subdivision (c)(5) of this section. If a notice of appeal is given under sub-subdivision (c)(5)b. of this section, the Commission shall either conduct an evidentiary hearing and issue its decision on the appeal within 90 days of the filing of the response under subdivision (c)(5) of this section or deny the request for the evidentiary hearing and issue its decision within 10 days of the filing of the response under subdivision (c)(5) of this section. Further appeals are governed by G.S. 97-86.

(8) Each award and each Certificate of Accrued Arrearages shall include the following information:

a. The names and addresses of the parties.

b. The sum of all principal amounts that have accrued and remain unpaid since the date of the award or since the date of the most recent prior Certificate of Accrued Arrearages.

c. The total of any interest that has accrued on the award, as of the date of the Certificate of Accrued Arrearages, since the date of the award or since the date of the most recent prior Certificate of Accrued Arrearages.

d. Any costs, penalties, or monetary sanctions included in the award.

(d) Any party in interest may file a certified copy of an award described in subsection (b) of this section, or of a Certificate of Accrued Arrearages, in the office of the clerk of superior court of the county in which the defendant has a place of business or has property, or in which an injury occurred, or in Wake County. An award shall be accompanied by the party's affidavit stating that the award has become final and the time for making the first payment under the award has expired.

(e) Promptly after a certified copy of an award or of a Certificate of Accrued Arrearages is filed, the clerk shall docket and index a judgment as provided in Chapter 1 of the General Statues. The principal amount in the award or in the Certificate of Accrued Arrearages shall bear interest at the judgment rate from the date the judgment is docketed. The judgment may be enforced in the same manner as a judgment docketed under Chapter 1 of the General Statutes.

(f) The filing of an award, or of a Certificate of Accrued Arrearages, for docketing as a judgment under this section shall be treated as a civil action for record keeping purposes. The amount in which the judgment is docketed shall determine the amount of the costs to be collected at the time of filing and assessed pursuant to G.S. 7A-305.

(g) Nothing in this section shall be construed to limit the Commission's authority to impose any other remedy provided by law."

SECTION 2. G.S. 1-209 reads as rewritten:

"**§ 1-209. Judgments authorized to be entered by clerk; sale of property; continuance pending sale; writs of assistance and possession.**

The clerks of the superior courts are authorized to enter the following judgments:

(1) All judgments of voluntary nonsuit.

(2) All consent judgments.

(3) In all actions upon notes, bills, bonds, stated accounts, balances struck, and other evidences of indebtedness within the jurisdiction of the superior court.

(4) All judgments by default final and default and inquiry as are authorized by Rule 55 of the Rules of Civil Procedure, and in this section provided.

(5) In all cases where the clerks of the superior court enter judgment by default final upon any debt secured by mortgage, deed of trust, conditional sale contract or other conveyance of any kind, either real or personal property, or by a pledge of property, the said clerks of the superior court are authorized and empowered to order a foreclosure of such mortgage, deed of trust, conditional sale contract, or other conveyance, and order a sale of the property so conveyed or pledged upon such terms as appear to be just; and the said clerks of the superior court shall have all the power and authority now exercised by the judges of the superior court to appoint commissioners to make such sales, to receive the reports thereof, and to confirm the report of sale or to order a resale, and to that end they are authorized to continue such causes from time to time as may be required to complete the sale, and in the final judgment in said causes they shall order the execution and delivery of all necessary deeds and make all necessary orders disbursing the funds arising from the sale, and may issue writs of assistance and possession upon ten days' notice to parties in possession. The commissioners appointed to make foreclosure sales, as herein authorized, may proceed to advertise such sales immediately after the date of entering judgment and order of foreclosure, unless otherwise provided in said judgment and order.

(6) All judgments on awards, or on Certificates of Accrued Arrearages, of the Industrial Commission in workers compensation cases, as defined and provided for in G.S. 97-87.

In any tax foreclosure action pending on March 15, 1939 or thereafter brought under the provisions of G.S. 105-414 in which there is filed no answer which seeks to prevent entry of judgment of sale, the clerk of the superior court may render judgment of sale and make all necessary subsequent orders and judgments to the same extent as permitted by this section in actions brought to foreclose a mortgage. All such judgments and orders heretofore rendered or made by a clerk of the superior court in such tax foreclosure actions are hereby, as to the authority of the said clerk, ratified and confirmed."

SECTION 3. This act is effective June 1, 2002, and applies to all forms filed and awards arising under G.S. 97-18(b), G.S. 97-18(d), or G.S. 97-82(b) that are filed or that arise before, on, or after that date; all agreements approved by the North Carolina Industrial Commission under the Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes, that are approved before, on, or after that date; all orders or decisions of the North Carolina Industrial Commission under the Workers' Compensation Act that are entered before, on, or after that date; and all awards of the North Carolina Industrial Commission unappealed from or affirmed upon appeal under the Workers' Compensation Act that are awarded before, on, or after that date, and to all Certificates of Accrued Arrearages that are issued on and after that date.

full minutes 11-6-01

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1472 A BILL TO BE ENTITLED AN ACT DIRECTING THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO ESTABLISH A BIOLOGICAL AGENTS REGISTRY, AND IMPOSING CIVIL PENALTIES FOR VIOLATION OF REGISTRY REQUIREMENTS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1472*
PROPOSED COMMITTEE SUBSTITUTE H1472-CSRH-58 [v.6]

11/5/2001 11:54:39 AM

Short Title: Biological Agents Registry. (Public)

Sponsors:

Referred to:

October 30, 2001

A BILL TO BE ENTITLED

AN ACT DIRECTING THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO ESTABLISH A BIOLOGICAL AGENTS REGISTRY, AND IMPOSING CIVIL PENALTIES FOR VIOLATION OF REGISTRY REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Part 1 of Article 6 of Chapter 130A of the General Statutes is amended by adding the following new section to read:

"**§ 130A-149. Biological agents registry; rules; penalties.**

(a) The Department shall establish and administer a program for the registration of biological agents. The biological agents registry shall identify the biological agents possessed and maintained by any person in this State and shall contain other information required under rules adopted by the Commission.

(b) The following definitions apply in this section:

(1) 'Biological agent' means:

a. Any select agent that is a microorganism, virus, bacterium, fungus, rickettsia, or toxin listed in Appendix A of Part 72 of Title 42 of the Code of Federal Regulations.

b. Any genetically modified microorganisms or genetic elements from an organism on Appendix A of Part 72 of Title 42 of the Code of Federal Regulations, shown to produce or encode for a factor associated with a disease.

c. Any genetically modified microorganisms or genetic elements that contains nucleic acid sequences coding for any of the toxins listed on Appendix A of Part 72 of Title 42 of the Code of Federal Regulations, or their toxic submits.

(2) `Person' means any association, business, corporation, facility, firm, individual, institution of higher education, organization, partnership, society, State agency, or other legal entity.

(c) The Commission shall adopt rules for the implementation of the registry program, as follows:

(1) Determining and listing the biological agents required to be reported under this section.

(2) Designating persons required to make reports and specific information required to be reported including time limits for reporting, form of reports, and to whom reports shall be submitted.

(3) Providing for the release of information in the registry to State and federal law enforcement agencies and the United States Centers for Disease Control and Prevention pursuant to a communicable disease investigation commenced or conducted by the Department, the Commission, or other State or federal law enforcement agency having investigatory authority, or in connection with any investigation involving release, theft, or loss of biological agents.

(4) Establishing a system of safeguards that requires persons possessing and maintaining biological agents subject to this section to comply with the same federal standards that apply to persons registered to possess the same agents under federal law.

(5) Establishing a process for persons that possess and maintain biological agents to alert appropriate authorities of unauthorized possession or attempted possession of biological agents. The rules shall designate appropriate authorities for receipt of alerts from these persons.

(d) Any person that possesses and maintains any biological agent required to be reported under this section shall report to the Department the information required by the Commission for inclusion in the biological agent registry.

(e) Except as otherwise provided in this section, information prepared for or maintained in the registry under this section shall be confidential and shall not be a public record under G.S. 132-1. The Department may, in accordance with rules adopted by the Commission, release information contained in the biological agent registry for the purpose of conducting or aiding in a communicable disease investigation. The Department shall cooperate with and may share information contained in the biological agent registry with the United States Centers for Disease Control and Prevention, and state and federal law enforcement agencies in any investigation involving the release, theft, or loss of a biological agent required to be reported under this section. Release of information from the registry as authorized under this subsection shall not render the information released a public record under G.S. 132-1. Release of information from the registry as authorized under this subsection also shall not render the information prepared for or maintained in the registry a public record under G.S. 132-1.

(f) The Department shall impose a civil penalty for a willful or knowing violation of this section in the amount of up to one thousand dollars ($1,000). Each day of a continuing violation shall be a separate offense. Any person wishing to contest a

penalty shall be entitled to an administrative hearing in accordance with Chapter 150B of the General Statutes."

SECTION 2. G.S. 130A-29(c) is amended by adding the following subdivision to read:

"(10) Pertaining to the biological agents registry in accordance with G.S. 130A-149."

SECTION 3. This act becomes effective January 1, 2002.

HOUSE BILL 1472:
Biological Agents Registry

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Rep. Culpepper
Date:	November 6, 2001	**Summary by:**	Robin Johnson
Version:	H1472-CSRH-58 [v.6]		

The PCS makes the following changes to the original bill:

-- Defines and limits the biological agents that must be reported to those on the CDC's list of "select agents" (see attached Appendix A).

-- Defines the "persons" that must report, but allows rulemaking process to designate which of those persons must report which biological agents.

-- Clarifies that the rule establishing system of safeguards for handling biological agents must conform to federal standards.

-- Makes confidential the information prepared for submission to the registry (This would protect "work product".)

-- Specifies that a violation must be "knowing" or "willful".

CURRENT LAW: It is unknown how many entities possess biological agents or where they are maintained. There are federal laws governing the transfer of the more dangerous agents. Persons required to register under federal law must comply with standards for the handling and security of these agents. However, there may be entities that "possess" these agents, but do not transfer them. Also, there are some exemptions under federal law.

BILL ANALYSIS: House Bill 1472 would direct the Department of Health and Human Services (DHHS) to establish and administer a biological agents registry (registry). The registry would identify the biological agents "possessed and maintained" by any person in the State. The Commission for Health Services would be required to adopt rules that:

-- Determine and list the biological agents that must be reported.

-- Designate persons required to report and specific information that must be reported, in what manner and time frame, and to whom.

-- Provide for the release of registry information as part of a communicable disease investigation.

-- Establish a system of safeguards that requires persons that possess and maintain these agents to comply with the same federal standards that apply to persons registered under federal law.

-- Establish a process for reporting unauthorized or attempted possession of biological agents.

Information prepared for or maintained in the registry would be confidential and would not be a public record. However, DHHS may release this information for the purpose of conducting or aiding a communicable disease investigation. Information may be released to federal and other states' law enforcement agencies and to the U.S. Centers for Disease Control and Prevention.

A maximum civil penalty of $1000 may be imposed by DHHS for each day of a willful or knowing violation of this act. A person may appeal this penalty under the Administrative Procedure Act.

The bill would take effect January 1, 2002.

geographic site are not covered by the provisions of Section 72.6 (d), (e), and (f) provided that:

(i) the intended use of the agent remains consistent with that specified in the most current transfer form and

(ii) for each intrafacility transfer, the facility maintains records that include the name and location of the recipient; the amount of agent transferred, and the date transferred. Such records must be maintained for a period of five (5) years after the date of transfer or for five (5) years after the agents are consumed or properly disposed, whichever is longer.

Transferor means any person who transfers or seeks to transfer through any means a select agent subject to this part to any other person.

§72.7 **Penalties.**

Individuals in violation of this part are subject to a fine of no more than $250,000 or one year in jail, or both. Violations by organizations are subject to a fine of no more than $500,000 per event. A false, fictitious, or fraudulent statement or representation on the Government forms required in the part for registration of facilities or for transfers of select agents is subject to a fine or imprisonment for not more than five years, or both for an individual, and a fine for an organization.

Appendix A to Part 72-Select Agents

Viruses

1. Crimean-Congo haemorrhagic fever virus
2. Eastern Equine Encephalitis virus
3. Ebola viruses
4. Equine Morbillivirus
5. Lassa fever virus
6. Marburg virus
7. Rift Valley fever virus
8. South American Haemorrhagic fever viruses (Junin, Machupo, Sabia, Flexal, Guanarito)
9. Tick-borne encephalitis complex viruses
10. Variola major virus (Smallpox virus)
11. Venezuelan Equine Encephalitis virus
12. Viruses causing hantavirus pulmonary syndrome
13. Yellow fever virus

Exemptions: Vaccine strains of viral agents (Junin Virus strain candid #1, Rift Valley fever virus strain MP-12, Venezuelan Equine encephalitis virus strain TC-83, Yellow fever virus strain 17-D) are exempt.

Bacteria

1. *Bacillus anthracis*
2. *Brucella abortus, B. melitensis, B. suis*
3. *Burkholderia (Pseudomonas) mallei*
4. *Burkholderia (Pseudomonas) pseudomallei*
5. *Clostridium botulinum*
6. *Francisella tularensis*
7. *Yersinia pestis*

Exemptions: vaccine strains as described in Title 9 CFR, Part 78.1 are exempt.

Rickettsiae

1. *Coxiella burnetii*
2. *Rickettsia prowazekii*
3. *Rickettsia rickettsii*

Fungi

1. *Coccidioides immitis*

Toxins

1. Abrin
2. Aflatoxins
3. Botulinum toxins
4. *Clostridium perfringens* epsilon toxin
5. Conotoxins
6. Diacetoxyscirpenol
7. Ricin
8. Saxitoxin
9. Shigatoxin
10. Staphylococcal enterotoxins
11. Tetrodotoxin
12. T-2 toxin

Exemptions: Toxins for medical use, inactivated for use as vaccines, or toxin preparations for biomedical research use at an LD50 for vertebrates of more than 100 nanograms per kilogram body weight are exempt. National standard toxins required for biologic potency testing as described in 9 CFR Part 113 are exempt.

Recombinant organisms/molecules

1. Genetically modified microorganisms or genetic elements from

organisms on Appendix A, shown to produce or encode for a factor associated with a disease.

2. Genetically modified microorganisms or genetic elements that contain nucleic acid sequences coding for any of the toxins listed in this Appendix, or their toxic subunits.

Charlotte Observer
Sat, Oct. 20, 2001

RESEARCH LABS

Registry of biological agents sought

Theft would be hard to track in Carolinas

BY ROBERT F. MOORE
AND SCOTT DODD
Staff Writers

Research labs in the Carolinas study a number of bacteria, viruses and toxins that might be used to make a bioweapon - and now the government wants to know where to find them.

Authorities say that if someone stole anthrax or another biological agent from a lab and used it for terrorism, they're not sure investigators could pinpoint the source.


Cooper

Neither state maintains a registry of where the agents are stored or in what amounts. Researchers say potentially dangerous biological and chemical materials can be found at many labs in the Carolinas, under varying degrees of security.

In response, N.C. Attorney General Roy Cooper called

SEE LABORATORIES | 10A

Weather WARM: High: 7[illegible] this afternoon. tonight. Full for[illegible]

KNIGHT RIDDER

N.C. registry of biological agents pushed for

Laboratories *from 1A*

Friday for a law that would create a statewide database of biological agents, to be maintained by the N.C. Department of Health and Human Services.

Under Cooper's proposal, private, veterinary and university labs would have to report the types and amounts of agents they use. He hopes the effort will lead to a national registry.

South Carolina hasn't announced a similar effort, but earlier this week, Gov. Jim Hodges named a homeland-security director whose office will be responsible for dealing with all terrorism threats in the state.

Most researchers say they support tighter security. They also want to make sure it doesn't affect their ability to do research.

"The universities in the state work with some pretty nasty stuff," said Dr. Philip Carter, a professor of microbiology and immunology at the N.C. State College of Veterinary Medicine. "We really haven't been thinking in terms of keeping these things under lock and key, and now we have to do that."

Federal law requires labs to report when they transport about 40 types of viruses, bacteria, fungi and toxins - including anthrax. There is no such requirement for simply possessing them.

The Clinton administration asked Congress to create a national toxin database in 1999, but the proposal failed amid fears it would inhibit medical research.

Cooper's proposal, which has not been presented to the N.C. legislature, would also require strict security measures to prevent the theft of biological agents. Several lawmakers said they would support it.

"We may not be able to keep a foreign government (from bringing a bioweapon) into the country," Cooper said at a news conference in Charlotte. "But we can keep terrorists and criminals from stealing from our labs at home."

Cooper said recent anthrax exposures in New York City, New Jersey, Washington, D.C., and Florida motivated the proposal. But there are several types of biological agents that require tighter control, he said.

"Instead of just fighting the last battle, we need to anticipate the next one," he said.

Without such a registry, FBI officials say they would have difficulty tracing strains of biological agents. It would be like eliminating fingerprints from a crime scene.

Only state and federal law enforcement and the Centers for Disease Control and Prevention would have access to the registry.

Under the proposal, labs would face fines for noncompliance. Cooper said he didn't have a target date for putting it in place.

The major research schools and hospitals in the Carolinas say their labs don't store anthrax. Carter thought N.C. State might have a small amount in a freezer. But once he checked Friday, he said it must have been destroyed when the colleague who stocked it retired a few years ago.

Labs have plenty of other biological agents and potentially toxic substances around - everything from a relative of the plague that causes a gastrointestinal disease to some of the components for making the nerve gas sarin.



NORMAN NG - STAFF PHOTO

N.C. Attorney General Roy Cooper speaks at a news conference Friday in Charlotte about proposals to help law enforcement track bioterrorism.

Schools and labs require researchers to keep them informed about the substances they're using and to follow safety procedures. Until recently, though, most procedures were designed largely to ensure the safety of students and lab workers - not to keep materials from being stolen, several researchers say.

Still, labs in the Carolinas said they're unaware of any cases where a potentially harmful substance has gone missing.

Carter said he's not as concerned about a stranger breaking into a lab as he is about someone at the school who turns out to be a terrorist or foreign agent. A dozen or more people sometimes have access to a lab or a freezer in which organisms are stored.

"We get a lot of foreign students and visiting scientists at the research universities here, and maybe not all of them are on our side," Carter said. "That's remote, but it's still a possibility."

Labs need to consider more thorough background checks on researchers and putting tighter limits on who has access to potentially threatening substances, he said. "We don't want to discriminate, but we have to be aware now that we might be a target."

The labs provide ample ammunition.

"Essentially any type of microorganism that can infect humans can be weaponized," said Dr. Peter Gilligan, director of clinical microbiology and immunology at UNC Hospitals in Chapel Hill.

And he said there's probably no way any large institution can know for sure it doesn't have anthrax or another deadly bacteria in a freezer somewhere.

"I can't say with 100 percent assurance that there is no anthrax on the UNC campus, and I don't think anyone else can either," Gilligan said. "We may have had a microbiologist who may have been working on it back in the 1950s, and the cell cultures might still be around."

In that case, it's unlikely that someone who wanted to steal the organisms could find them, he said. But it's probably a good idea for researchers to get rid of anything they aren't sure about.

Labs and schools say they have procedures in place to track potentially harmful substances, even if they don't inform the state.

"The stuff that's in our labs is in such small quantities that it hasn't been on anybody's radar screen," said Robert Newberry, Clemson University's chief environmental health and safety officer.

"At least, it hasn't been so far."

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE
DRAFT

BILL NUMBER: H1472 Proposed Committee Substitute

SHORT TITLE: Biological Agents Registry

SPONSOR(S): Representative Culpepper

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06
REVENUES					
***Cannot be estimated**					
EXPENDITURES					
Division of Public Health					
LOW ESTIMATE	$4,900*	$7,395	$7,617	$7,786	$8,081
POSITIONS:	.225	.20	.20	.20	.20
HIGH ESTIMATE	$30,600*	$61,918	$63,775	$65,688	$67,659
POSITIONS:	1.05	1.05	1.05	1.05	1.05

*Figure represents six months of program expenditures

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Division of Public Health

EFFECTIVE DATE: January 1, 2002

BILL SUMMARY: Amends GS 130A to require the Department of Health and Human Services to establish and administer a program for the registration of biological agents. The Commission for Health Services shall adopt rules for the implementation of the registry, which includes determining the agents to be reported, designating the specific information to be maintained, providing for the release of information in the registry to State and Federal law enforcement agencies, and establishing a system of safeguards to be followed by laboratories and other entities. The information collected shall be confidentially maintained and the Department shall only release information according to the rules adopted by the Commission. The Department shall impose a civil penalty for willful and knowing violation of this act, of $1,000 per day for each day of violation.

ASSUMPTIONS AND METHODOLOGY:
Included is a high and low estimate for the budget. For the low estimation, it is anticipated that the development and subsequent maintenance of the registry may be completed by a portion of two positions: an Office Assistant V and a Medical Laboratory Supervisor II. It is estimated for the first three months that 20% of the Office Assistant V's time will be spent on the creation of the registry/database, contacting the laboratories and other persons who may possess biological agents, and developing internal procedures for the tracking of select agents. It is estimated that this staff person's time for maintenance of the registry will decrease to 15% for support and further refining the registry during the last three months of FY02. It is anticipated that a Medical Laboratory Supervisor II will spend 5% of their time managing the development of the registry. For the purpose of this fiscal analysis, the midpoints of the position pay grades were used for calculations. Beginning in FY03, it is estimated that the clerical staff time needed for maintenance of the registry will further reduce to 10% of an Office Assist V's time and will continue at 5% of a Medical Laboratory Supervisor II's time.

LOW						HIGH					
Expenses	FY01-02	FY02-03	FY03-04	FY04-05	FY05-06	Expenses	FY01-02	FY02-03	FY03-04	FY04-05	FY05-06
Grade 61 Office Assistant V	3 months @ 20% and 3 months @ 15% $2925	$3,445	$3,549	$3,655	$3,765	Pay Grade 72 - Laboratory Specialist	$28,125	$57,938	$59,676	$61,466	$63,310
Pay Grade 74 Medical Laboratory Supervisor II	5% of time for 6 months $1475	$2,950	$3,039	$3,130	$3,224	Pay Grade 74 Medical Laboratory Supervisor II	5% of time for 6 months $1475	$2,950	$3,039	$3,130	$3,224
Supplies/ Miscellaneous	$500	$1,000	$1,030	$1,061	$1,093	Supplies	$1,000	$1,030	$1,061	$1,093	$1,126
Total	**$4,900**	**$7,395**	**$7,617**	**$7,846**	**$8,081**	**Total**	**$30,600**	**$61,918**	**$63,775**	**$65,688**	**$67,659**

For the high estimate, it is proposed that it will take a full time position at a program manager level to develop the database, contact the laboratories and entities that will become subject to this legislation, create the internal policies for this registry and to fully develop a secure database (as prescribed by the legislation). For the purpose of fiscal analysis, a full time pay grade 72 position has been used. The 5% of a manager's time is consistent with the low estimate.

It is estimated that 50 – 75 laboratories and entities will be reporting. Language in the Proposed Committee Substitute has broadened the definition of those required to report; therefore, this range may be low. Estimates for the amount to be collected from laboratories/persons for noncompliance are unavailable at this time. In addition, the Department will utilize a computer and software for the registry which it has available. The fiscal analysis includes office supplies and postage for the first fiscal year at $500 and subsequent years at $1000 in addition to the staffing needs.

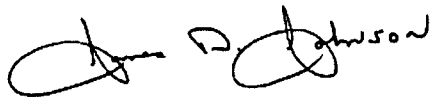
The legislation is effective January 1, 2002; therefore, the first year of the fiscal analysis is based on six months of operation and the additional years include 12 months. The calculations are based on a 3% inflationary increase.

The Department has indicated they can absorb these program expenses within existing budget.

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Lisa Hollowell

APPROVED BY: James D. Johnson



DATE: November 6, 2001

Thomas Walker - A washingtonpost.com article from grbarner@ipass.net

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Access to Microbes Is Easily Obtained

Federal Oversight of Inventories Lax

By Joby Warrick and Steve Fainaru
Washington Post Staff Writers
Sunday, October 28, 2001; Page A01

Several weeks after the start of the nation's worst biological attack, the federal government has no central inventory of dangerous disease cultures maintained by academics and private labs. Bacteria and viruses are commonly exchanged in informal arrangements. And researchers aren't required to track their stocks or report losses or thefts.

These lax controls make the nation's universities, health agencies and laboratories easy targets for would-be biological terrorists. A 1999 bill that would have closed many of these gaps was supported both by the Clinton administration and many congressional

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Republicans. But the legislation died amid strong opposition from universities.

"The minimal federal controls in this area would come as quite a surprise to most Americans," former representative Tom Bliley (R-Va.) told a House committee two years ago when it considered toughening the law.

"We permit anyone in this country -- including felons, foreign nationals from sensitive countries and members of extremist groups -- to lawfully possess even the most deadly biological agents, including anthrax, the plague and the ebola virus. They don't even have to notify or register with any federal agency or gain government approval to get them."

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It is not yet known whether the anthrax spores unleashed on Washington, New York and Florida since Sept. 11 originated in the United States or abroad. Also unclear is whether the finely milled, apparently sophisticated form of the bacteria was created in a military weapons lab or by a scientist working for terrorists or alone.

Bush administration officials on Friday said any number of trained scientists could have produced the powdery spores that contaminated the office of Senate Majority Leader Thomas A. Daschle (D-S.D.). White House spokesman Ari Fleischer said the analysis of the material "indicates that it could have been produced by a PhD microbiologist [and] that it could be derived at a small, well-equipped microbiology lab."

Such a renegade scientist would not have had to travel far for the microbes themselves, thanks to procedures and practices that make acquiring dangerous pathogens an elementary affair.

The World Federation for Culture Collections, a global registry of microbe and tissue cultures, lists 46 suppliers worldwide of the virulent strain of *Bacillus anthracis*, the bacterium that causes anthrax. Within the United States the number of labs with anthrax cultures is believed to number in the hundreds, spread across universities, private labs, hospitals, veterinary clinics and public health agencies. The exact figure is not known because the government does not keep an inventory.

"If you already have it, you don't have to register it," said Michael Allswede, associate professor of emergency medicine at the University of Pittsburgh.

Before 1997, there were few controls on even the most dangerous microbes. Numerous U.S. labs sold seed stock for anthrax and other potential "biological agents" to countries now on America's list of states that sponsor terrorism -- with the full knowledge and backing of the U.S. government.

Then, ordering microbes often was as simple as filling out a form, said Mary Gilchrist, president of the Association of Public Health Laboratories and a lab director at the University of Iowa.

"Basically, you had to have a convincing letterhead, know what the agent might look like and know how to spell the name of the organism," Gilchrist said.

Congress tightened the rules in 1996 after Ohio State University student Larry Wayne Harris used a fake letterhead to obtain three vials of the bacterium that causes plague. Harris, who was allegedly affiliated with a white supremacist group, was carrying the vials in his car when he was arrested on mail-fraud charges.

Under the 1996 Anti-Terrorism Act, anyone intending to send or receive the most dangerous microbes is required to register with the federal Centers for Disease Control and Prevention and to demonstrate a legitimate scientific or medical use for the material. But the law left enormous gaps, according to terrorism experts and many public health officials.

The law stopped short of criminalizing the possession of dangerous pathogens by non-scientists -- something federal law enforcement officials had favored. It did little to prod

university labs and hospitals into improving inventory controls or bolstering security, which experts describe as informal at best.

It also failed to address a form of off-the-books trading of lab specimens that is common among researchers -- a practice that accounts for at least some of the movement of pathogen cultures between the United States and other countries.

"It's the old game of 'I pat your back, you pat mine': They work out a deal to exchange," said Dorothy Preslar, who formerly headed the Biological Weapons Verification Project for the American Federation of Scientists. Preslar said she has observed foreign scientists bringing microbe samples -- including anthrax -- into the United States for meetings.

"That may not seem to pose a danger, but it leaves the door open for people to bring in material that shouldn't be here," she said.

Some exchanges are as simple as stashing a petri dish into a lab-coat pocket before jetting off to a conference, Gilchrist said.

"As a young researcher, you can work with the organism and then walk out with it," Gilchrist said. "And within a short period of time, you could have a billion or 10 billion or 20 billion organisms. It's not like a gold brick, where if you cut the brick in half, you only have half. You can give somebody a drop, and by the next day, they have all they need."

Mass producing the organism requires nothing more than a test tube and a warm "broth" in which it can be cultured. Enormous technical obstacles must be overcome in transforming bacteria into a weapon capable of killing large numbers of people. But an aspiring terrorist would find plenty of clues in books and documents available in U.S. libraries and on the Internet, bioterrorism experts say.

"For someone who is committed to doing this, there is public information out there," said Michael Moodie, a former U.S. arms control official who heads the Chemical and Biological Arms Institute. "Maybe not cookbooks or specific recipes, but information that points specifically to the kinds of barriers that need to be overcome."

The legislation proposed by the Clinton administration as

part of 1999's "21st Century Crime Bill" would have outlawed the possession of microbes used in biological weapons, with an exception for legitimate scientific research. The proposal, strongly backed by federal law enforcement agencies, also would have tightened inventory controls while requiring background checks for some lab workers.

Opponents, however, argued that the additional measures would hamper legitimate research and might even impede the development of new cures for diseases. "The real reason that scientists work with these agents are . . . to identify and protect us from epidemics," said Rep. Bart Stupak (D-Mich.) at a 1999 House committee hearing. "This is a great -- and a more certain -- threat than bioterrorism has ever been."

The bill was stridently attacked by university lobbyists who said it would severely restrict academic freedom. It lost momentum and was never brought up for a vote.

Since the Sept. 11 attacks, several universities and government agencies around the globe have begun tightening security. For example, the U.S. Department of Agriculture this month launched a snap investigation of all veterinary labs that produce livestock vaccines, to determine which ones possessed anthrax spores.

"Because of the heightened security, we felt it was important to check all of them out," said Hallie Pickhardt, spokesman for the agency's Animal and Plant Health Inspection Service.

There has been some speculation that the anthrax spores used in the attacks could have been stolen from the U.S. military, but that possibility remains unclear. In 1969, President Richard M. Nixon ordered the dismantling of the U.S. offensive biological weapons program, which included stockpiles of deadly pathogens kept at the Pine Bluff Arsenal in Arkansas and a storage facility at Dugway, Utah.

The program included 220 pounds of anthrax spores, according to declassified documents obtained by the National Security Archives. But Matthew S. Meselson, a Harvard biologist who helped influence Nixon's decision, said in later years the U.S. government had shifted its focus from anthrax to tularemia, in part because of Project Whitecoat, in which Seventh-day Adventist civilians volunteered as human guinea pigs to help the government calibrate the correct infectious dosage. Unlike anthrax, tularemia was easily

treatable after symptoms appeared.

The United States possessed 804 pounds of the bacteria that causes tularemia, also known as rabbit fever, and an array of lethal and incapacitating bacteria, including 5,098 gallons of the microbes that lead to Q fever and 4,991 gallons of Venezuelan equine encephalomyelitis virus, a relative of yellow fever. The United States also maintained 160,549 pounds of anti-crop biological agents and even small quantities of shellfish poison and snake venom.

In part because of pressure surrounding the Vietnam War, Nixon unilaterally renounced and dismantled the program. "I remember his exact words: 'Mankind already holds in its hands too many seeds of its own destruction,' " Meselson said. "I think it was one of the greatest things he ever did. If we were still doing this, dozens of nations would be doing this also."

The stockpiles were autoclaved, then incinerated, Meselson said. But Nixon's edict allowed for "research into offensive aspects of bacteriological/biological agents necessary to determine what defensive measures are required," raising the possibility that secret weaponized stocks were maintained. A 1972 treaty banning biological weapons allowed nations to keep small quantities for defensive research purposes, and 100 grams of anthrax, along with other potentially lethal agents, were later discovered at a CIA building. The United States also maintained "seed stocks" from which new batches of anthrax could be made.

"I don't know what they've got," said William C. Patrick, who worked in the U.S. biological weapons program at Fort Detrick. "But really all you need are the seed stocks."

Would tougher controls have thwarted terrorists bent on obtaining the ingredients of a biological assault? In the case of anthrax, perhaps not. There are many places around the world to get anthrax, scientists say. It is also a relatively simple matter to create a new culture from animals or even soil in a country where anthrax is common.

"I'll give you the Iowa quote: The barn is open, and the cows are out," Gilchrist said. "They're out. If you close the door, it's too late."

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VISITOR REGISTRATION SHEET

J. TT HOUSE — 11-6-01

Name of Committee — Date

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Steve Woodson	NC Farm Bureau
BRUCE THOMPSON	PARKER POE ADAMS & BERNSTEIN
Hugh Tilson	NCHA
John McMillan	NAIFA NC
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David Rainer	NC State University
Victor Farah	Jernigan Law Firm
Bill Wilson	NCTTL
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John Capeless	NCIBA
Tim Minton	NC Home Builders Assn
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ANN LORE	OUHS
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Steve Neal	CCNC
Tim Crosby	UNC TV
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Gary Roberts	AARP
Sam Taylor	NCBIO
Ruth Sappie	NCDOT
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Glenn Wilson	DHHS
Nancy Thompson	UNC IC
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VISITOR REGISTRATION SHEET

J-II House
Name of Committee

11-6-01
Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Ellen	NCRMA
STEPHEN W. KEENE	NC MEDICAL SOCIETY
Amy Jo Bain	NCMS
Hope Williams	NCICU
Andy Romanet	NCACM

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10. 2001 House Pensions & Retirement
11. 2002 House Pensions & Retirement

2002

HOUSE
JUDICIARY II

MINUTES

HOUSE COMMITTEE ON JUDICIARY II
2002 SESSION

MEMBER	ASSISTANT	PHONE	OFFICE	SEAT
BADDOUR, Phil Chair	Tracy Dixon Committee Assistant	715-0850	2301	31
HAIRE, Phil Vice Chair	Sara Jane Lennard	715-3005	419B	47
BOWIE, Joni	Sharon Gaudette	733-5877	538	77
CULPEPPER, Bill	Dot Crocker	715-3028	404	36
DECKER, Michael	Anne Soles	733-5988	1021	87
GULLEY, Jim	Suzanne Gulley	733-5860	1307	25
HALL, John	Joan Peacock	733-5898	614	60
JEFFUS, Maggie	Mary Lee Robinson	733-5191	1013	4
JUSTUS, Larry	Carolyn Justus	733-5956	2204	13
MILLER, Paul	Eryn Gee	733-5872	640	27
MINER, David	Susan Phillips	733-5861	1006	76
POPE, Art	Barbara Rhodes	733-5809	539	53
SHERRILL, Wilma	Rosa Kelley	715-3026	403	37
WEISS, Jennifer	Susan Doty	733-5781	2221	16
WILLINGHAM, Shelly	Carolyn Branch	715-2241	1202	17
Esther Manheimer, Committee Counsel Jeffrey Hudson, Committee Counsel	Robin Johnson, Committee Counsel	733-2578	545	

Member attendance
2002 short session

Member	6–11	6–18	7–2, 10:00	7–2, 12:00	7–9, 10:00	7–9, 1:00	7–16	7–23	7–30	8–14	8–15	8–20	8–27	9–24	9–25	10–1	10–3
Baddour	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X
Haire	X	X	X		X	X		X		X	X		X	X		X	X
Bowie	X	X	X	X	X	X	X	X	X	X	X	X		X		X	X
Culpepper	X	X	X		X						X		X	X	X		
Decker		X			X	X	X		X	X		X		X	X		
Gulley	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	
Hall	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Jeffus	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Justus	X	X	X	X	X	X	X	X	X	X	X	X	X		X		
Miller	X	X	X	X	X	X	X	X	X	X	X	X	X		X		
Miner					X	X											
Pope	X		X	X	X	X	X	X	X	X	X	X	X	X	X		
Sherrill	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Weiss	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Willingham	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Ex officio																	
Cunningham																	
Dedmon																	
Earle																	
Hackney																	

X=present for meeting

2001-2002 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0007	Hill	AMEND WORTHLESS CHECK PROGRAM.	*HR	Ch. SL 2001-61	03-15-01	04-18-01
H0045	Decker	GAS DRIVE AWAYS/ LICENSE SUSPENSION.	*HF	Postponed Indefinitely	03-22-01	10-03-02
H0137	Baddour	FINANCIAL RESPONSIBILITY.	H	Ref To Com On Judiciary II	02-15-01	
H0138	Baddour	JUVENILE CAPACITY TO PROCEED.	H	Ref To Com On Judiciary II	02-15-01	
H0168=	Culpepper	CORPORATE ASSET TRANSFERS/RELIEF	*HR	Ch. SL 2001-508	02-20-01	02-27-01
H0178	Decker	DRUNK DRIVING DEATH IS FELONY MURDER.	HF	Postponed Indefinitely	02-20-01	10-03-02
H0182=	Culpepper	AMEND ANTI-LAPSE STATUTE.	HR	Ch. SL 2001-83	02-20-01	02-27-01
$ H0241=	**Warner**	**FAMILY DRUG TREATMENT COURT PROGRAM.**	***HF**	**Postponed Indefinitely**	**03-08-01**	**05-22-01**
H0274	Haire	AMEND JUVENILE JUSTICE TERMINOLOGY.	*HR	Ch. SL 2001-95	02-27-01	04-03-01
H0275=	Haire	INFANT HOMICIDE PREVENTION ACT.	*HR	Ch. SL 2001-291	02-27-01	03-21-01
H0277	Haire	JUVENILE EXTENDED COMMITMENT PROCEDURE.	*H	Re-ref Com On Judiciary II	02-27-01	03-21-01
H0277	Haire	JUVENILE EXTENDED COMMITMENT PROCEDURE.	*H	Re-ref Com On Judiciary II	04-04-01	
H0311	Redwine	INDIAN TRIBE UNEMPLOYMENT OPTION.	*HR	Ch. SL 2001-184	03-22-01	04-04-01
H0372=	Haire	AMEND RULE 68 OFFER OF JUDGMENT.	H	Ref To Com On Judiciary II	03-01-01	
H0377=	Culpepper	DEPARTMENT OF SOCIAL SERVICES CHANGES 2.	*HR	Ch. SL 2001-237	03-01-01	04-23-01
H0385=	Culpepper	CONSOLIDATE BUSINESS PROVISIONS.	*HR	Ch. SL 2001-358	03-01-01	03-07-01
H0385=	Culpepper	CONSOLIDATE BUSINESS PROVISIONS.	*HR	Ch. SL 2001-358	07-16-01	07-17-01
H0434	Haire	AMEND RULE 9(J).	*HR	Ch. SL 2001-121	03-01-01	04-19-01
H0439=	Haire	CIVIL PROCEDURE RULE CHANGES.	*HR	Ch. SL 2001-379	03-01-01	04-02-01
H0440	Weiss	EMBALMERS AND FUNERAL DIRECTORS.	*HR	Ch. SL 2001-294	03-06-01	04-04-01
H0442	Gibson	CONCEALED HANDGUN PERMIT RECIPROCITY.	*H	Ref To Com On Judiciary II	03-01-01	04-24-01
H0495	Hensley	LEFT TURN ON RED.	*H	Ref To Com On Rules and Operations of the Senate	03-06-01	03-26-01
H0533	Ellis	FUQUAY-VARINA RED LIGHT CAMERAS.	H	Re-ref Com On Judiciary II	03-29-01	
H0534	Ellis	KNIGHTDALE RED LIGHT CAMERAS.	H	Re-ref Com On Judiciary II	03-29-01	
H0535	Ellis	GARNER RED LIGHT CAMERAS.	H	Re-ref Com On Judiciary II	03-29-01	
H0536	Ellis	LRC/STUDY USE OF RED LIGHT CAMERAS.	*HF	Postponed Indefinitely	03-08-01	04-16-01
H0567=	Ellis	WAKE COUNTY RED LIGHT CAMERAS.	*HF	Failed 2nd Reading	03-12-01	04-18-01
H0668	Baddour	SETTLEMENT PROCEDURES	*HR	Ch. SL 2001-320	03-19-01	03-28-01

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2001-2002 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		IN DISTRICT COURT ACTIONS.				
H0689	Haire	TENNESSEE VALLEY AUTHORITY OFFICERS' AUTHORITY.	*HR	Ch. SL 2001-257	03-19-01	03-22-01
H0705	Rogers	GREENVILLE SPEED ENFORCEMENT CAMERAS.	H	Re-ref Com On Judiciary II	04-03-01	
H0716	Haire	CASINO NIGHTS.	*H	Re-ref Com On Finance	03-21-01	04-24-01
H0737=	Earle	AMEND ADOPTION LAWS.	H	Ref To Com On Judiciary II	03-22-01	
H0849	Culpepper	JUDICIAL & EXECUTION SALES PROCEDURE-2	H	Ref To Com On Judiciary II	03-29-01	
H0862	Shubert	UNION COUNTY/ ALBEMARLE RED LIGHT CAMERAS.	HF	Postponed Indefinitely	03-29-01	10-03-02
H0902=	Baddour	STATE JUDICIAL COUNCIL MEMBERSHIP.	*HR	Ch. SL 2001-96	03-29-01	04-18-01
H0906=	Weiss	DURHAM TECH. CORR./ EXP ABC BD./SINGLE-PRIME.	*HR	Ch. SL 2001-350	03-29-01	04-03-01
H0918	Luebke	DURHAM RED LIGHT CAMERAS.	H	Ref To Com On Judiciary II	03-29-01	
H0946	Eddins	POSSESSION/ MANUFACTURE OF FRAUDULENT IDS.	*H	Ref To Com On Judiciary II	10-04-01	
H0953	Eddins	UTTER/POSSESS COUNTERFEIT U.S. CURRENCY.	*H	Re-ref Com On Judiciary II	04-03-01	04-18-01
H0967	Russell	COLLATERAL SOURCE EVIDENCE RULE.	HF	Postponed Indefinitely	04-04-01	10-03-02
H0971	Capps	DSS WORKER - RIGHT OF ENTRY.	HF	Postponed Indefinitely	04-04-01	10-03-02
H0989=	Michaux	JUDICIAL APPOINTMENT/ VOTER RETENTION.	H	Ref To Com On Judiciary II	04-05-01	
H0998	Pope	STATE PRIVACY ACT.	*HR	Ch. SL 2001-256	04-05-01	04-11-01
H1053=	McMahan	ACTION ON CONSTRUCTION PAYMENT BOND.	HR	Ch. SL 2001-177	04-10-01	04-17-01
H1070	Haire	TRUSTEES AND ESTATE LAW CHANGES	*HR	Ch. SL 2001-413	04-10-01	06-06-01
H1099	Church	FINANCIAL INSTITUTIONS ASSET SECURITIZATION.	*HR	Ch. SL 2002-88	04-11-01	04-17-01
H1100	Baddour	COUNTERFEITING/ NEGOTIABLE INSTRUMENTS.	*H	Pres. To Gov. 10/ 4/2002	04-11-01	04-18-01
H1100	Baddour	COUNTERFEITING/ NEGOTIABLE INSTRUMENTS.	*H	Pres. To Gov. 10/ 4/2002	09-25-02	10-01-02
H1117	Baddour	DA DISCRETION	*HR	Ch. SL 2001-81	04-12-01	04-24-01
H1118	Church	FRAUD AGAINST FINANCIAL INSTITUTIONS.	H	Ref To Com On Judiciary I	04-12-01	04-19-01
H1129	Decker	GRANDPARENT VISITATION.	HF	Postponed Indefinitely	04-12-01	10-03-02

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H1146	Hurley	PRESUMPTIVE FINES FOR SPEEDING.	H	Ref To Com On Judiciary II	04-12-01	
H1164	Baddour	POSTADOPTION PRIVILEGES.	H	Ref To Com On Judiciary II	04-12-01	
H1166	Baddour	STATE EMPLOYEES' HEALTH PLAN/WORKERS COMP.	H	Ref To Com On Judiciary II	04-12-01	
H1174	Miller	INCREASE PENALTY/DRUG SALES @ PARKS.	HR	Ch. SL 2001-307	04-12-01	04-19-01
H1244	Baddour	FAMILY COURT PILOT DISTRICTS.	H	Ref To Com On Judiciary II	04-12-01	
H1245	Baddour	NCDL/SELECTIVE SERVICE REGISTRATION.	*HR	Ch. SL 2002-162	04-12-01	04-24-01
H1270	Haire	EASTERN BAND OF CHEROKEES' FULL FAITH AND CREDIT	*HR	Ch. SL 2001-456	04-12-01	04-24-01
H1281	Carpenter	EAST. BAND CHEROKEES' FULL FAITH AND CREDIT.	H	Ref To Com On Judiciary II	04-12-01	
$ H1282	**Weiss**	**CRIMINAL BACKGROUND CHECKS LONG-TERM CARE.**	**H**	**Ref To Com On Judiciary II**	**04-12-01**	
H1284	Weiss	OPENNESS OF COURT RECORDS AND PROCEEDINGS.	*HR	Ch. SL 2001-516	04-12-01	04-24-01
H1284	Weiss	OPENNESS OF COURT RECORDS AND PROCEEDINGS.	*HR	Ch. SL 2001-516	04-26-01	06-19-01
H1314	Baddour	COUNTY APPEAL OF JUVENILE ORDERS.	H	Ref To Com On Judiciary II	04-12-01	
H1317	Easterling	RESTRICTIVE COVENANTS-CHILD CARE	*H	Re-ref Com On Judiciary II	04-25-01	
H1340	Mitchell	LRC TO STUDY POST-TOWING PROCEDURES.	*HF	Postponed Indefinitely	04-12-01	04-24-01
H1402	Jeffus	ADDRESS CONFIDENTIALITY PROGRAM.	*H	Pres. To Gov. 10/3/2002	04-26-01	08-15-02
H1468		CERTAIN WEAPONS OF MASS DESTRUCTION.	*HR	Ch. SL 2001-470	10-18-01	10-24-01
H1472		BIOLOGICAL AGENTS REGISTRY.	*HR	Ch. SL 2001-469	10-30-01	11-06-01
H1503=		MISC. BUSINESS CHANGES.	*HR	Ch. SL 2002-58	06-04-02	06-12-02
H1504		REPEAL OBSOLETE ATTESTATION REQ'T.	HR	Ch. SL 2002-26	06-04-02	06-11-02
H1505=		MEMBER APPROVAL OF BYLAW AMENDMENT.	HR	Ch. SL 2002-27	06-04-02	06-11-02
H1508=		PUBLIC HEALTH BIOTERRORISM PREPAREDNESS.	*H	Pres. To Gov. 10/4/2002	06-12-02	07-23-02
H1512=		AMEND CONDOMINIUM AND PLANNED COMMUNITY ACTS.	H	Ref To Com On Judiciary II	06-04-02	
H1513=		JUDICIAL AND EXECUTION SALES CLARIFICATION.	HR	Ch. SL 2002-28	06-04-02	06-11-02
H1538=		DISTRIBUTION TO UNLOCATED DEVISEES.	*HR	Ch. SL 2002-62	06-06-02	06-18-02

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
539=		REPEAL OBSOLETE BANKING LAW.	HR	Ch. SL 2002-29	06-06-02	06-18-02
H1556=		2002 TECHNICAL CORRECTIONS.	H	Ref To Com On Judiciary II	06-06-02	
$ H1612=	**Baddour**	**STOP UNWANTED TELEPHONE SOLICITATIONS.**	**H**	**Ref to the Com on Judiciary II and, if favorable, to the Com on Appropriations**	**06-11-02**	
H1638		CRIM. HIST. CHECK/ CONFORM SEC. OFF. REG.	*HR	Ch. SL 2002-147	06-13-02	08-27-02
$ H1641		**OFFENDER SUPERVISION COMPACT/TRANSFER.**	***H**	**Pres. To Gov. 10/ 4/2002**	**06-13-02**	**09-26-02**
H1738		DNA BANK/DNA ANALYSIS FEE.	H	Ref To Com On Judiciary II	06-17-02	
$ H1764		**FINANCIAL IDENTITY FRAUD.**	**H**	**Ref To Com On Judiciary II**	**06-17-02**	
H1767		DNA TESTING.	HF	Postponed Indefinitely	06-17-02	10-03-02
S0007	Luther H. Jordan	ADD JUVENILE MEMBERS.	*HR	Ch. SL 2001-199	03-01-01	05-23-01
S0067	Luther H. Jordan	JUVENILE JUSTICE UNDER CORRECTIONS OVERSIGHT.	HR	Ch. SL 2001-138	03-01-01	05-22-01
S0068	Luther H. Jordan	CRIMINAL JUSTICE STANDARDS COMMISSION CHANGE.	*HR	Ch. SL 2001-490	04-26-01	06-06-01
S0093	Tony Rand	NC EDUCATION LOTTERY ADVISORY REFERENDUM.	*HF	Postponed Indefinitely	04-26-01	07-03-02
119	Walter H. Dalton	DISTRICT COURT ELECTIONS NONPARTISAN.	*HR	Ch. SL 2001-403	03-01-01	08-15-01
S0220	Fletcher L. Hart	DEFINE TIME STOCK ABANDONED FOR ESCHEATS.	*HR	Ch. SL 2001-226	04-09-01	05-31-01
S0241	Walter H. Dalton	HEALTH INSURANCE TERMINATION NOTICE.	*HR	Ch. SL 2001-422	05-16-01	08-15-01
S0243	Aaron W. Plyler	RED LIGHT CAMERAS/ CERTAIN CITIES.	*HR	Ch. SL 2001-286	04-02-01	04-16-01
S0243	Aaron W. Plyler	RED LIGHT CAMERAS/ CERTAIN CITIES.	*HR	Ch. SL 2001-286	05-16-01	06-11-01
S0257	Fletcher L. Hart	UCC ARTICLE 9 AMENDMENTS.	*HR	Ch. SL 2001-231	04-04-01	05-29-01
S0258	Fletcher L. Hart	RESCISSION OFFER FILING PROCEDURE.	HR	Ch. SL 2001-183	03-22-01	05-29-01
S0259	Fletcher L. Hart	ABOLISH CHURCH BOND DEALER RESTRICTION.	HR	Ch. SL 2001-182	03-26-01	05-29-01
S0277	Fletcher L. Hart	COMMUNITY DEVELOPMENT EXEMPTION.	*HR	Ch. SL 2001-197	03-22-01	05-29-01
S0278	Kay R. Hagan	THEFT OF GASOLINE/ LICENSE SUSPENSION.	*HR	Ch. SL 2001-352	04-25-01	07-10-01
S0280=	Charlie S. Danne	LAW ENFORCEMENT PROTECTION FOR SOCIAL WORKERS.	H	Ref To Com On Judiciary II	04-30-01	
S0352	John H. Kerr III	EXTEND LIEN FOR PUBLIC HEALTH NUISANCE.	*HR	Ch. SL 2001-448	04-25-01	06-04-01
S0370	John H. Kerr III	STATE MH JOINT	HR	Ch. SL 2001-125	04-02-01	05-14-01

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2001-2002 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		SECURITY FORCE JURISD.				
0390	James Forrester	PHYSICIAN-ASSISTED SUICIDE/EDUCATION & CRIME.	*H	Re-ref Com On Judiciary I	05-24-01	06-04-01
S0397	Frank W. Ballanc	GED CREDIT FOR INMATES.	*HR	Ch. SL 2001-200	04-02-01	05-22-01
S0416=	Daniel G. Clodfe	AMEND RULE 68 OFFER OF JUDGMENT.	H	Ref To Com On Judiciary II	04-30-01	
S0499=	Fletcher L. Hart	AMEND ADOPTION LAWS.	*HR	Ch. SL 2001-150	04-26-01	05-14-01
S0532	Walter H. Dalton	CLARIFY SCH. BD. APPS./NONCERT. E'EES NOTICE.	*HR	Ch. SL 2001-260	06-05-01	06-19-01
S0626=	Daniel G. Clodfe	DOMESTIC VIOLENCE FATALITY REVIEW TEAM.	*HF	Postponed Indefinitely	04-26-01	05-02-01
S0681	Fletcher L. Hart	JUDICIAL & EXECUTION SALES/REVISE PROCEDURE.	*HR	Ch. SL 2001-271	04-19-01	06-13-01
S0746	Brad Miller	SENTENCING ENHANCEMENT CHANGES/ SENT. COMM..	*H	Re-ref Com On Judiciary II	04-23-01	06-13-01
S0746	Brad Miller	SENTENCING ENHANCEMENT CHANGES/ SENT. COMM..	*H	Re-ref Com On Judiciary II	07-02-01	
S0751	Scott Thomas	NO DRUGS AT CHILD CARE CENTERS.	*HR	Ch. SL 2001-332	04-26-01	07-10-01
S0752=	Frank W. Ballanc	STATE JUDICIAL COUNCIL MEMBERSHIP.	*H	Ref To Com On Judiciary II	04-24-01	
S0780	Fletcher L. Hart	AMEND PHYSICIANS' LIENS STATUTES.	*HR	Ch. SL 2001-377	04-26-01	07-25-01
0787=	T. LaFontine Odo	JUDICIAL APP./VOTER RETENTION.	*H	Ref To Com On Judiciary II	04-26-01	
S0790	Fletcher L. Hart	GOOD FUNDS SETTLEMENT ACT REVISIONS.	*HR	Ch. SL 2001-420	06-04-01	08-28-01
S0826	Tony Rand	CRIMINAL RECORD CHECK CHANGE/LONG-TERM CARE.	*HR	Ch. SL 2001-465	07-10-01	10-24-01
S0829	Tony Rand	GOVERNMENT SECURITY INTERESTS CLARIFIED.	*HR	Ch. SL 2001-218	04-25-01	06-04-01
S0833=	Tony Rand	POSSESSING FRAUDULENT ID TO GET LIQUOR.	*HR	Ch. SL 2001-461	10-04-01	10-10-01
S0842	Daniel G. Clodfe	BUSINESS ENTITY CHANGES.	*HR	Ch. SL 2001-387	07-03-01	07-26-01
S0866=	Brad Miller	PERSONS WITH DISABILITIES CHANGES.-AB	*HR	Ch. SL 2002-163	05-29-01	06-20-01
S0881	R. C. Soles, Jr.	WORKERS' COMP AWARDS FILED AS JUDGMENTS.	*HR	Ch. SL 2001-477	04-18-01	11-06-01
S0887	Daniel G. Clodfe	MAGISTRATES & CLERKS' AUTH/EXPUNGE RECORDS	*H	Placed On Cal For 10/2/2002	07-25-02	10-01-02
S0912	Tony Rand	PENALTY FOR FILING FALSE STATUTORY LIEN.	*HR	Ch. SL 2001-495	04-26-01	06-04-01
S1014	Charles W. Alber	STRENGTHEN LITTERING LAWS.	*HR	Ch. SL 2001-512	06-19-01	07-23-01
S1154=		AMEND CONDOMINIUM AND PLANNED COMMUNITY ACTS.	HR	Ch. SL 2002-112	07-15-02	08-14-02
S1394		CHARLOTTE	HR	Ch. SL 2002-79	07-31-02	08-14-02

'$' indicates the bill is an appropriation bill.
A bold line indicates the bill is an appropriation bill.
'*' indicates that the text of the original bill was changed by some action.
'=' indicates that the original bill is identical to another bill.

2001-2002 Biennium

Bill	Introducer	Short Title	Latest Action	In Date	Out Date
		GOVERNMENTAL IMMUNITY.			

'$' indicates the bill is an appropriation bill.
A bold line indicates the bill is an appropriation bill.
'*' indicates that the text of the original bill was changed by some action.
'=' indicates that the original bill is identical to another bill.

AGENDA
Judiciary II

Tuesday, June 11, 2002
10:00 a.m.
Room 421 LOB

Rep. Phil Baddour, Chair

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD

HB 1504	**Repeal Obsolete Attestation Req't** Rep. Culpepper
HB 1505	**Member Approval of Bylaw Amendment** Rep. Culpepper
HB 1512	**Amend Condominium and Planned Community** Rep. Culpepper
HB 1513	**Judicial and Execution Sales Clarification** Rep. Culpepper
HB 1503	**Special Meeting of Shareholders** Rep. Culpepper

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

June 11, 2002

The House Committee on Judiciary II met on Tuesday, June 11, 2002 in room 421 LOB at 10:00 a.m. The following members were present: Chairman Baddour and Representatives Bowie, Culpepper, Gulley, Haire, Hall, Jeffus, Justus, Miller, Pope, Sherrill, Weiss and Willingham. Staff including Tracy Dixon, Robin Johnson and Esther Manheimer were additionally in attendance. Ann Lassiter, Donnell Leathers, Tom Wilder and Jim Womack served as Sergeant–at–Arms. A Visitor Registration sheet is attached and made part of these minutes.

Chairman Baddour called the meeting to order. Alicia Davis (Rep. Blue) and Megan Hutchins of Wake County (Rep. Hunter) served as pages. The following bills were considered:

Rep. Culpepper, bill sponsor, was recognized to explain, HB 1513, A BILL TO BE ENTITLED AN ACT TO CLARIFY THAT THE RECENT ESTABLISHMENT OF A ROLLING UPSET BID PROCEDURE FOR JUDICIAL AND EXECUTION SALES DID NOT AFFECT THE REQUIREMENT THAT SALES BE CONFIRMED BY THE APPROPRIATE JUDICIAL OFFICIAL, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION. Rep. Culpepper introduced Floyd Lewis, Ex Officio Secretary to the General Statutes Commission and asked him to give an overview of the bill. Mr. Lewis and Rep. Baddour answered the questions of Reps. Bowie and Justus. Upon the motion of Rep. Haire the bill was given a favorable report. A copy of the bill and memorandum on the bill are attached as part of these minutes.

HB 1504, A BILL TO BE ENTITLED AN ACT TO REPEAL AN OBSOLETE ATTESTATION REQUIREMENT THAT CONVEYANCES BY BANKS MUST BE EXECUTED BY THE SECRETARY OR THE CASHIER AND TO VALIDATE CONVEYANCES BY BANKS THAT OTHERWISE COMPLY WITH THE STATUTE ON EXECUTION OF CORPORATE CONVEYANCES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, was next on the order of business. Rep. Culpepper again stated that Mr. Lewis would present a brief overview of the bill. Rep. Haire motioned for a favorable report and the motion passed. Copies of the bill and bill memo are made part of these minutes.

Upon the motion of Rep. Culpepper, the PCS for HB 1503, A BILL TO BE ENTITLED AND ACT TO AMEND THE LAW RELATING TO SPECIAL MEETINGS OF SHAREHOLDERS UNDER THE NORTH CAROLINA BUSINESS CORPORATION ACT, AS RECOMMENDED BY THE GENERAL STATUES COMMISSION, was adopted for discussion.

Bly Hall, General Statutes Commission, explained section 1 of the bill and answered Reps. Hall and Sherrill's questions of what changes are taking place and why the bill was necessary. Ms. Hall additionally explained to Rep. Miller how the time limit of 60 days was set. Sections 2–6 were explained by Steve Lynch, representing the Bar Association. Rep. Haire motioned to give a favorable report to the PCS, unfavorable to the original bill. Motion carried. Copies of the PCS, original bill and bill memo are attached as part of these minutes.

Rep. Culpepper was recognized to present HB 1505, A BILL TO BE ENTITLED AN ACT TO AMEND THE VOTING REQUIREMENT FOR MEMBER APPROVAL OF AMENDMENTS TO BYLAWS TO CONFORM TO THE VOTING REQUIREMENT FOR MEMBER APPROVAL OF AMENDMENTS TO ARTICLES OF INCORPORATION, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION. Following Mr. Lewis' explanation of the bill, Rep. Culpepper's motion for a favorable report carried. A copy of the bill and bill memo are made part of these minutes.

No action was taken on HB 1512, A BILL TO BE ENTITLED AN ACT TO EXPAND THE LIST OF SECTIONS OF THE NORTH CAROLINA CONDOMINIUM ACT THAT APPLY TO CONDOMINIUMS CREATED ON OR BEFORE OCTOBER 1, 1986, AND TO CODIFY AN APPLICABILITY PROVISION RELATING TO THE NORTH CAROLINA PLANNED COMMUNITY ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The meeting adjourned at 10:40 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Tracy Dixon
Committee Assistant

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1513 A BILL TO BE ENTITLED AN ACT TO CLARIFY THAT THE RECENT ESTABLISHMENT OF A ROLLING UPSET BID PROCEDURE FOR JUDICIAL AND EXECUTION SALES DID NOT AFFECT THE REQUIREMENT THAT SALES BE CONFIRMED BY THE APPROPRIATE JUDICIAL OFFICIAL, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 1513*

Short Title:	Judicial and Execution Sales Clarification.	(Public)
Sponsors:	Representative Culpepper.	
Referred to:	Judiciary II.	

June 4, 2002

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT THE RECENT ESTABLISHMENT OF A ROLLING UPSET BID PROCEDURE FOR JUDICIAL AND EXECUTION SALES DID NOT AFFECT THE REQUIREMENT THAT SALES BE CONFIRMED BY THE APPROPRIATE JUDICIAL OFFICIAL, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-339.25(a) reads as rewritten:

"(a) An upset bid is an advanced, increased, or raised bid in a public sale by auction whereby a person offers to purchase real property theretofore sold for an amount exceeding the reported sale price or the last upset bid by a minimum of five percent (5%) thereof, but in any event with a minimum increase of seven hundred fifty dollars ($750.00). Subject to the provisions of subsection (b) of this section, an upset bid shall be made by delivering to the clerk of superior court, with whom the report of the sale or the last notice of upset bid was filed, a deposit in cash or by certified check or cashier's check satisfactory to the clerk in an amount greater than or equal to five percent (5%) of the amount of the upset bid but in no event less than seven hundred fifty dollars ($750.00). The deposit required by this section shall be filed with the clerk of the superior court with whom the report of sale or the last notice of upset bid was filed, by the close of normal business hours on the tenth day after the filing of the report of sale or the last notice of upset bid, and if the tenth day falls upon a Sunday or legal holiday or upon a day in which the office of the clerk is not open for the regular dispatch of its business, the deposit may be made and the notice of upset bid may be filed on the day following when the office is open for the regular dispatch of its business. Except as provided in G.S. 1-339.27A and G.S. 1-339.30, there shall be no resales; however, there may be successive upset bids, each of which shall be followed by a period of 10 days for a further upset bid. If a timely motion for resale is filed under G.S. 1-339.27A, no upset bids may be filed while the motion is pending. ~~If an upset bid or a motion for~~

~~resale under G.S. 1-339.27A is not filed within 10 days following a sale, resale, or prior upset bid, the rights of the parties to the sale or resale become fixed.~~"

SECTION 2. G.S. 1-339.64(a) reads as rewritten:

"(a) An upset bid is an advanced, increased, or raised bid whereby a person offers to purchase real property theretofore sold for an amount exceeding the reported sale price or last upset bid by a minimum of five percent (5%) thereof, but in any event with a minimum increase of seven hundred fifty dollars ($750.00). Subject to the provisions of subsection (b) of this section, an upset bid shall be made by delivering to the clerk of superior court, with whom the report of sale or the last notice of upset bid was filed, a deposit in cash or by certified check or cashier's check satisfactory to the clerk in an amount greater than or equal to five percent (5%) of the amount of the upset bid but in no event less than seven hundred fifty dollars ($750.00). The deposit required by this section shall be filed with the clerk of the superior court, with whom the report of sale or the last notice of upset bid was filed, by the close of normal business hours on the tenth day after the filing of the report of sale or the last notice of upset bid and if the tenth day falls upon a Sunday or legal holiday or upon a day in which the office of the clerk is not open for the regular dispatch of its business, the deposit may be made and the notice of upset bid may be filed on the day following when the office is open for the regular dispatch of its business. Except as provided in G.S. 1-339.66A and G.S. 1-339.69, there shall be no resales; however, there may be successive upset bids, each of which shall be followed by a period of 10 days for a further upset bid. If a timely motion for resale is filed under G.S. 1-339.66A, no upset bids may be filed while the motion is pending. ~~If an upset bid or a motion for resale under G.S. 1-339.66A is not filed within 10 days following a sale, resale, or prior upset bid, the rights of the parties to the sale or resale become fixed.~~"

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

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

MEMORANDUM

TO: House Judiciary II Committee

FROM: General Statutes Commission

DATE: June 7, 2002

RE: HB 1513 (Judicial and Execution Sales Clarification)

G.S. 1-339.25 and G.S. 1-339.64 authorize a rolling upset bid procedure for judicial sales and execution sales of real property that is similar to the procedure authorized for foreclosure sales under a deed of trust. Under the rolling upset bid procedure, the submission of an upset bid does not require a subsequent resale of the property but only requires the filing of a notice of upset bid and the required deposit with the clerk of superior court. Upon submission of the upset bid, the clerk is required to notify the person holding the sale who is then required to mail a written notice of upset bid to the last prior bidder and the owners of the property. The upset bid is followed by a period of 10 days to allow for the submission of a subsequent upset bid.

HB 1513 amends G.S. 1-339.25 and G.S. 1-339.64 to delete language referring to the rights of the parties as "fixed" if an upset bid or motion for resale is not filed within 10 days following a sale, resale, or prior upset bid. This language was derived from the comparable provision in the foreclosure sales statutes; however, when the provision was added to the foreclosure sales statutes the requirement that the sale be confirmed was repealed. The confirmation requirement was intentionally retained for judicial sales and execution sales of real property. The purpose of the amendments in HB 1513 is to clarify that authorization of the rolling upset procedure for judicial sales and execution sales of real property does not affect the necessity that such sales be confirmed by the appropriate judicial official under G.S. 1-339.28 and G.S. 1-339.67.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1504 A BILL TO BE ENTITLED AN ACT TO REPEAL AN OBSOLETE ATTESTATION REQUIREMENT THAT CONVEYANCES BY BANKS MUST BE EXECUTED BY THE SECRETARY OR THE CASHIER AND TO VALIDATE CONVEYANCES BY BANKS THAT OTHERWISE COMPLY WITH THE STATUTE ON EXECUTION OF CORPORATE CONVEYANCES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 1504*

Short Title:	Repeal Obsolete Attestation Req't.	(Public)
Sponsors:	Representative Culpepper.	
Referred to:	Judiciary II.	

June 4, 2002

A BILL TO BE ENTITLED

AN ACT TO REPEAL AN OBSOLETE ATTESTATION REQUIREMENT THAT CONVEYANCES BY BANKS MUST BE EXECUTED BY THE SECRETARY OR THE CASHIER AND TO VALIDATE CONVEYANCES BY BANKS THAT OTHERWISE COMPLY WITH THE STATUTE ON EXECUTION OF CORPORATE CONVEYANCES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47-42 reads as rewritten:

"**§ 47-42. Attestation of bank conveyances by secretary or cashier.**

~~(a) In all forms of proof and certificates for deeds and conveyances executed by banking corporations, either the secretary or the cashier of said banking corporation shall attest such instruments.~~

(b) All deeds and conveyances executed prior to February 14, 1939, by banking corporations, where the cashier of said banking corporation has attested said instruments, which deeds and conveyances are otherwise regular, are hereby validated.

(c) All deeds and conveyances executed by a banking corporation on or after October 1, 1999, that complied with G.S. 47-18.3 are hereby validated."

SECTION 2. This act is effective when it becomes law. This act does not apply to litigation pending on that date or to any instrument directly or indirectly involved in litigation pending on that date.

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

MEMORANDUM

TO: House Judiciary II Committee

FROM: General Statutes Commission

DATE: June 7, 2002

RE: HB 1504 (Repeal Obsolete Attestation Requirement)

G.S. 47-42(a) provides that "[i]n all forms of proof and certificates for deeds and conveyances executed by banking corporations, either the secretary or the cashier of said banking corporation shall attest such instruments." This attestation requirement has become obsolete because G.S. 47-18.3(a) (dealing with the execution of corporate instruments generally) was amended in 1999 to eliminate the attestation requirement for corporate instruments. Prior to October 1, 1999, G.S. 47-18.3(a) established a presumption in favor of third persons that a corporate instrument was executed pursuant to authorization from the board of directors if the instrument was executed by one of several specified corporate officers "and attested or countersigned by another person who is [the corporation's] secretary or an assistant secretary, (or, in the case of a bank, its secretary, assistant secretary, cashier, or assistant cashier)." At the request of the North Carolina Bankers Association, the General Statutes Commission recommends the repeal of the attestation requirement in G.S. 47-42(a).

Therefore, HB 1504 amends G.S. 47-42 to repeal the attestation requirement for deeds and conveyances executed by banking corporations. The bill also validates all deeds and conveyances executed by banking corporations in compliance with G.S. 47-18.3 on or after October 1, 1999.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1503 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW RELATING TO SPECIAL MEETINGS OF SHAREHOLDERS UNDER THE NORTH CAROLINA BUSINESS CORPORATION ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill , ☒ which changes the title, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1503
PROPOSED COMMITTEE SUBSTITUTE H1503-CSRH-60 [v.3]

6/10/2002 5:58:52 PM

Short Title: Misc. Business Changes. (Public)

Sponsors:

Referred to:

June 4, 2002

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW RELATING TO SPECIAL MEETINGS OF SHAREHOLDERS UNDER THE NORTH CAROLINA BUSINESS CORPORATION ACT, TO AMEND THE LAW RELATING TO DISSENTERS' RIGHTS UNDER THE NORTH CAROLINA BUSINESS CORPORATION ACT, TO CLARIFY THAT A GENERAL PARTNER MUST EXECUTE DOCUMENTS FOR FILING BY THE SECRETARY OF STATE, AND TO CLARIFY THE LAW RELATING TO REGISTRATION OF GENERAL PARTNERSHIPS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

THE GENERAL ASSEMBLY OF NORTH CAROLINA ENACTS:

SECTION 1. G.S. 55-7-02(a) reads as rewritten:

"(a) A corporation shall hold a special meeting of shareholders:

(1) On call ~~by~~ of its board of directors or ~~by one or more officers of the corporation authorized to do so by the articles of incorporation or bylaws or, in the case of a corporation that is not a public corporation, by any other~~the person or persons authorized to do so by the articles of incorporation or the bylaws; or

(2) ~~Within~~ In the case of a corporation that is not a public corporation, within 30 days after the holders of at least ten percent (10%) of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be ~~held; except however that, unless otherwise provided in the articles of incorporation, the call of a special meeting by shareholders is not available to the shareholders of a public corporation.~~held. The written demand shall cease to be effective on the sixty-first day after the date of signature appearing on the demand unless prior to the sixty-first day the corporation has

received effective written demands from holders sufficient to call the special meeting."

SECTION 2. G.S. 55-13-20(b) reads as rewritten:

"(b) If corporate action creating dissenters' rights under G.S. 55-13-02 is taken without a vote of shareholders or is taken by shareholder action without meeting under G.S. 55-7-04, the corporation shall no later than 10 days thereafter notify in writing all shareholders entitled to assert dissenters' rights that the action was taken and send them the dissenters' notice described in G.S. 55-13-22. A shareholder who consents to shareholder action taken without meeting under G.S. 55-7-04 approving a corporate action is not entitled to payment for the shareholder's shares under this Article with respect to that corporate action."

SECTION 3. G.S. 55-13-22(a) reads as rewritten:

"(a) If proposed corporate action creating dissenters' rights under G.S. 55-13-02 is approved at a shareholders' meeting, the corporation shall mail by registered or certified mail, return receipt requested, a written dissenters' notice to all shareholders who satisfied the requirements of G.S. 55-13-21. ~~If proposed corporate action creating dissenters' rights under G.S. 55-13-02 is approved by shareholder action without meeting pursuant to G.S. 55-7-04, the corporation shall mail by registered or certified mail, return receipt requested, a written dissenters' notice to each shareholder entitled to assert dissenters' rights. A shareholder who consents to such action taken without meeting pursuant to G.S. 55-7-04 approving a proposed corporate action is not entitled to payment for the shareholder's shares under this Article with respect to that corporate action.~~"

SECTION 4. G.S. 59-35.1(b) reads as rewritten:

"(b) A document submitted ~~under this Act~~ for filing by the Secretary of State on behalf of a general partnership must be executed by a general partner of the partnership."

SECTION 5. G.S. 59-84.2 is amended by adding the following new subsection to read:

"(k) If a registered limited liability partnership is dissolved but its business is continued by some of its partners with or without others in a new partnership under the same name, then (i) the new partnership shall automatically succeed to the registration of the dissolved original partnership as a registered limited liability partnership and (ii) the dissolved original partnership shall be deemed to be registered as a registered limited liability partnership until the registration is cancelled or revoked."

SECTION 6. Sections 2-4 of this act are effective January 1, 2002. Section 5 of this act is effective October 1, 1993. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 1503*

Short Title:	Special Meeting of Shareholders.	(Public)
Sponsors:	Representative Culpepper.	
Referred to:	Judiciary II.	

June 4, 2002

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW RELATING TO SPECIAL MEETINGS OF SHAREHOLDERS UNDER THE NORTH CAROLINA BUSINESS CORPORATION ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 55-7-02(a) reads as rewritten:

"(a) A corporation shall hold a special meeting of shareholders:

(1) On call ~~by~~ of its board of directors or ~~by one or more officers of the corporation authorized to do so by the articles of incorporation or bylaws or, in the case of a corporation that is not a public corporation, by any other~~the person or persons authorized to do so by the articles of incorporation or the bylaws; or

(2) ~~Within~~ In the case of a corporation that is not a public corporation, within 30 days after the holders of at least ten percent (10%) of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be ~~held; except however that, unless otherwise provided in the articles of incorporation, the call of a special meeting by shareholders is not available to the shareholders of a public corporation.~~held. The written demand shall cease to be effective on the sixty-first day after the date of signature appearing on the demand unless prior to the sixty-first day the corporation has received effective written demands from holders sufficient to call the special meeting."

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

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

MEMORANDUM

TO: House Judiciary II Committee

FROM: General Statutes Commission

DATE: June 7, 2002

RE: HB 1503 (Special Meeting of Shareholders)

General Comments

The proposed committee substitute for HB 1503 (Special Meeting of Shareholders) (i) amends G.S. 55-7-02(a) on special meetings of a corporation's shareholders as described below, (ii) moves a notice provision from G.S. 55-13-22 to G.S. 55-13-20 and conforms it to a similar existing provision, (iii) amends G.S. 59-35.1 to reflect the fact that business entities other than partnerships can now file documents under the North Carolina Uniform Partnership Act, and (iv) fixes a potential problem faced by limited liability partnerships when one partner leaves or dies.

Specific Comments

Section 1. Before June 14, 2001, G.S. 55-7-02(a) required a corporation to hold a special meeting of shareholders on call (1) by the board of directors, (2) by the person or persons authorized to do so by the articles of incorporation or the bylaws, or (3) in the case of a nonpublic corporation, by the holders of at least 10% of the votes entitled to be cast at the meeting (which had to be held within 30 days after the demand). The shareholders of a public corporation had this right only if authorized by the articles of incorporation or bylaws.

Effective June 14, 2001, S.L. 2001-201 amended G.S. 55-7-02(a)(1) to require a public corporation to hold a special meeting on call only by the board of directors or by one or more officers of the corporation (rather than the person or persons) authorized to do so by the articles of incorporation or the bylaws. In addition, G.S. 55-7-02(a)(2) was amended to allow the shareholders of a public corporation to call a special meeting only if authorized to do so by the articles of incorporation (the reference to bylaws was deleted).

Section 1 replaces the excepting clause at the end of G.S. 55-7-02(a)(2) with a clause at the beginning of the subdivision that states merely that the subdivision is applicable only to a nonpublic corporation. It then puts G.S. 55-7-02(a)(1) back to where it was before last year's amendment. The result is that G.S. 55-7-02(a)(1) will self-sufficiently and independently say that any corporation, public or nonpublic, can confer any rights it wishes to call a special meeting of shareholders; and G.S. 55-7-02(a)(2) will likewise self-sufficiently and independently give the 10% holders of voting shares in a nonpublic corporation an absolute statutory right to require a special meeting to be held within 30 days after demand. As a result, Section 1 simplifies and clarifies the intent of G.S. 55-7-02(a) as a whole.

Section 1 also amends G.S. 55-7-02(a)(2) to put a time limit on the effective life of a written demand by a shareholder for a special meeting by requiring demands representing the necessary percentage of votes to be received within a 60-day period.

Sections 2 and 3. S.L. 2001-387 amended G.S. 55-7-04 to permit shareholder action without a meeting by majority consent (prior law required unanimous consent). That act also made a conforming amendment to G.S. 55-13-22 to require a corporation to send a dissenters' notice to nonconsenting shareholders if corporate action giving rise to dissenters' rights is approved in this manner; however, this amendment did not also require that the corporation notify these shareholders that the corporate action has occurred. In comparison, G.S. 55-13-20 requires a corporation to send a notice of corporate action and a dissenter's notice to shareholders where corporate action giving rise to dissenters' rights is taken without shareholder approval—as is the case in a short-form merger under G.S. 55-11-04. Sections 2 and 3 amend G.S. 55-13-20 and G.S. 55-13-22, respectively, by moving the requirement that a corporation send a dissenters' notice to nonconsenting shareholders from G.S. 55-13-22 to G.S. 55-13-20 and adding a requirement that these shareholders also be sent a notice that the corporate action has been taken, thus essentially conforming the notice requirement in the case of action without a meeting by majority consent with the law under G.S. 55-13-20 for action without shareholder approval.

Section 4. Section 4 amends G.S. 59-35.1(b) to require that any document submitted by a general partnership to the Secretary of State's office under any of the business entity acts must be signed by a general partner. The amendment also removes any implication that documents submitted under the North Carolina Uniform Partnership Act by an entity other than a general partnership must be signed by a general partner.

Section 5. The withdrawal or death of a partner dissolves a general partnership. It is common for the remaining partners to continue the partnership's business under the same name, although technically they have a new partnership. Existing statutory law does not explicitly address whether registration as a limited liability partnership (LLP) continues in this situation. Section 5 adds new G.S. 59-84.2(k) to provide explicitly that (i) the new partnership succeeds to the registration and (ii) the old partnership also is considered covered by the registration until it is cancelled or revoked.

Section 6. Section 1 is effective on becoming law, Sections 2 through 4, on the effective date of S.L. 2001-387, and Section 5, on the effective date of the act originally authorizing LLPs.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1505 A BILL TO BE ENTITLED AN ACT TO AMEND THE VOTING REQUIREMENT FOR MEMBER APPROVAL OF AMENDMENTS TO BYLAWS TO CONFORM TO THE VOTING REQUIREMENT FOR MEMBER APPROVAL OF AMENDMENTS TO ARTICLES OF INCORPORATION, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 1505*

Short Title:	Member Approval of Bylaw Amendment.	(Public)
Sponsors:	Representative Culpepper.	
Referred to:	Judiciary II.	

June 4, 2002

A BILL TO BE ENTITLED

AN ACT TO AMEND THE VOTING REQUIREMENT FOR MEMBER APPROVAL OF AMENDMENTS TO BYLAWS TO CONFORM TO THE VOTING REQUIREMENT FOR MEMBER APPROVAL OF AMENDMENTS TO ARTICLES OF INCORPORATION, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 55A-10-21(a) reads as rewritten:

"(a) If the corporation has members entitled to vote thereon, then, unless this Chapter, the articles of incorporation, bylaws, the members (acting pursuant to subsection (b) of this section), or the board of directors (acting pursuant to subsection (c) of this section) require a greater vote or voting by class, an amendment to a corporation's bylaws to be adopted shall be approved:

(1) By the board or in lieu thereof in writing by the number or proportion of members entitled under G.S. 55A-7-02(a)(2) to call a special meeting to consider such amendment;

(2) By the members ~~by~~ entitled to vote thereon by two-thirds of the votes cast or a majority of the votes entitled to be cast on the ~~amendment;~~amendment, whichever is less; and

(3) In writing by any person or persons whose approval is required by a provision of the articles of incorporation authorized by G.S. 55A-10-30."

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

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

MEMORANDUM

TO: House Judiciary II Committee

FROM: General Statutes Commission

DATE: June 7, 2002

RE: HB 1505 (Member Approval of Bylaw Amendment)

The North Carolina Nonprofit Corporation Act currently imposes a greater voting requirement for member approval of amendments to the bylaws than it does for member approval of amendments to the articles of incorporation. Specifically, G.S. 55A-10-21(a)(2) requires amendments to the bylaws to be approved "by a majority of the votes entitled to be cast on the amendment," whereas G.S. 55A-10-03(a)(2) requires amendments to the articles of incorporation to be approved "by two-thirds of the votes cast or a majority of the votes entitled to be cast on the amendment, whichever is less."

Prior to October 1, 1995, both statutes required approval by a majority of the votes entitled to be cast on the amendment. However, in 1995 the voting requirement for member approval of amendments to the articles of incorporation was conformed to the voting requirement for member approval of other fundamental corporate changes, e.g., mergers and sales of assets other than in the regular course of activities. It is believed that the failure at that time to conform the voting requirement for member approval of amendments to the bylaws was inadvertent.

The General Statutes Commission believes the statutory voting requirement for member approval of amendments to the bylaws should not be greater than the statutory voting requirement for member approval of amendments to the articles of incorporation. Therefore, HB 1505 amends G.S. 55A-10-21(a)(2) to require amendments to the bylaws to be approved "by two-thirds of the votes cast or a majority of the votes entitled to be cast on the amendment, whichever is less." This is the same voting requirement for member approval of amendments to the articles of incorporation. Please note, however, that the articles of incorporation or the bylaws can impose greater voting requirements.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 1512*

Short Title:	Amend Condominium and Planned Community Acts.	(Public)
Sponsors:	Representative Culpepper.	
Referred to:	Judiciary II.	

June 4, 2002

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE LIST OF SECTIONS OF THE NORTH CAROLINA CONDOMINIUM ACT THAT APPLY TO CONDOMINIUMS CREATED ON OR BEFORE OCTOBER 1, 1986, AND TO CODIFY AN APPLICABILITY PROVISION RELATING TO THE NORTH CAROLINA PLANNED COMMUNITY ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47C-1-102(a) reads as rewritten:

"(a) This ~~chapter~~ Chapter applies to all condominiums created within this State after October 1, 1986. ~~Sections~~ G.S. 47C-1-105 (Separate Titles and Taxation), 47C-1-106 (Applicability of Local Ordinances, Regulations, and Building Codes), 47C-1-107 (Eminent Domain), 47C-2-103 (Construction and Validity of Declaration and Bylaws), 47C-2-104 (Description of Units), 47C-2-121 (Merger or Consolidation of Condominiums), 47C-3-102(a)(1) through (6) and (11) through (16) (Powers of Unit Owners' Association), 47C-3-107A (Charges for Late Payment, Fines), 47C-3-111 (Tort and Contract Liability), 47C-3-112 (Conveyance or Encumbrance of Common Elements), 47C-3-116 (Lien for Assessments), 47C-3-118 (Association Records), and 47C-4-117 (Effect of Violation on Rights of Action; Attorney's Fees), and G.S. 47C-1-103 (Definitions), to the extent necessary in construing any of those sections, apply to all condominiums created in this State on or before October 1, 1986; but those sections apply only with respect to events and circumstances occurring after October 1, ~~1986~~ 1986, and do not invalidate existing provisions of the declarations, bylaws, or plats or plans of those condominiums."

SECTION 2. G.S. 47F-1-102 reads as rewritten:

"**§ 47F-1-102. Applicability.**

(a) This Chapter applies to all planned communities ~~within this State except as provided in subsection (b) of this section.~~created within this State on or after January 1, 1999, except as otherwise provided in this section.

(b) This Chapter does not apply to a planned community created within this ~~State:~~State on or after January 1, 1999:

(1) Which contains no more than 20 lots (including all lots which may be added or created by the exercise of development rights) unless the declaration provides or is amended to provide that this Chapter does apply to that planned community; or

(2) In which all lots are restricted exclusively to nonresidential purposes, unless the declaration provides or is amended to provide that this Chapter does apply to that planned community.

(c) ~~This Chapter does not apply to planned communities or lots located outside this State.~~Notwithstanding the provisions of subsection (a) of this section, G.S. 47F-3-102(1) through (6) and (11) through (17) (Powers of owners' association), G.S. 47F-3-107(a), (b), and (c) (Upkeep of planned community; responsibility and assessments for damages), G.S. 47F-3-115 (Assessments for common expenses), and G.S. 47F-3-116 (Lien for assessments), apply to all planned communities created in this State before January 1, 1999. These sections apply only with respect to events and circumstances occurring on or after January 1, 1999, and do not invalidate existing provisions of the declaration, bylaws, or plats and plans of those planned communities. G.S. 47F-1-103 (Definitions) also applies to all planned communities created in this State before January 1, 1999, to the extent necessary in construing any of the preceding sections.

(d) ~~Any~~ Notwithstanding the provisions of subsections (a) and (c) of this section, any planned community created prior to ~~the effective date of this Chapter~~ January 1, 1999, may elect to make the provisions of this Chapter applicable to it by amending its declaration to provide that this Chapter shall apply to that planned community. The amendment may be made by affirmative vote or written agreement signed by lot owners of lots to which at least sixty-seven percent (67%) ~~percent~~ of the votes in the association are allocated or any smaller majority the declaration specifies. To the extent the procedures and requirements for amendment in the declaration conflict with the provisions of this subsection, this subsection shall control with respect to any amendment to provide that this Chapter applies to that planned community.

(e) This Chapter does not apply to planned communities or lots located outside this State."

SECTION 3. Section 3 of S.L. 1998-199 reads as rewritten:

"Section 3. This act becomes effective January 1, ~~1999, and applies to planned communities created on or after that date. G.S. 47E-3-102(1) through (6) and (11) through (17), G.S. 47E-3-107(a),(b), and (c), G.S. 47E-3-115, and G.S. 47E-3-116 as enacted by Section 1 of this act apply to planned communities created prior to the effective date, except that the provisions of G.S. 47E-3-116(e) as enacted by Section 1 of this act, apply to actions arising on or after the effective date.~~1999."

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

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

MEMORANDUM

TO: House Judiciary II Committee

FROM: General Statutes Commission

DATE: June 7, 2002

RE: HB 1512 (Amend Condominium and Planned Community Acts)

HB 1512 amends G.S. 47C-1-102(a) to add G.S. 47C-2-121, which authorizes the merger or consolidation of condominiums, to the list of sections of the North Carolina Condominium Act that apply to condominiums created on or before October 1, 1986. The amendment is necessitated by the lack of a merger or consolidation statute applicable to condominiums created on or before October 1, 1986. Please note that the merger or consolidation agreement must be approved by the same vote of the unit owners of each condominium that is necessary to terminate that condominium.

The bill also amends G.S. 47F-1-102 to codify an applicability provision that was enacted when the North Carolina Planned Community Act was enacted in 1998 and to conform the section to the style of G.S. 47C-1-102, the comparable section in the North Carolina Condominium Act. Many of the provisions of the North Carolina Planned Community Act were adapted from the North Carolina Condominium Act.

VISITOR REGISTRATION SHEET

J II
Name of Committee

6/11/02
Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
DB Powell	AOC
Tim Minton	NC Home Builders Assn
Geoff Gaskins	Edgecombe Co.
Erica Stanley	Baddour for House Campaign - Goldsboro, NC
Katie Mill	Intern for Rep. Culp
Cameron Ratliff	NC Statewatch
Paul Stock	NC Builders Assn.
Margaret Westbrook	KCLH
Michelle Frazier	NC Bar Ass'n
Steve Lynch	NC Bar Association
Michael Horser	The Insider
T Jernigan	NCPA
Steve Wood	NC Farm Bureau
Reginald Reid	Intern Rep Miller
P Miller	NAACP

AGENDA
Judiciary II

Tuesday, June 18, 2002
10:00 a.m.
Room 421 LOB

Rep. Phil Baddour, Chair

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD

HB 1538 **Distribution to Unlocated Devisees.**
Reps. Culpepper & Gibson

HB 1539 **Repeal Obsolete Banking Law.**
Rep. Culpepper

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

June 18, 2002

The House Committee on Judiciary II met on Tuesday, June 11, 2002 in room 421 LOB at 10:00 a.m. The following members were present: Rep. Baddour, Chair and Reps. Bowie, Culpepper, Decker, Gulley, Haire, Hall, Jeffus, Justus, Miller, Sherrill, Weiss and Willingham. Staff including Tracy Dixon, Jeff Hudson, Robin Johnson and Esther Manheimer were additionally in attendance. Donnell Leathers, Matt Myers and Jim Womack served as Sergeant–at–Arms. A Visitor Registration sheet is attached and made part of these minutes.

Chairman Baddour called the meeting to order. Candace Allen or Johnston County (Rep. Creech), Garry Campbell of Scotland County (Rep. Yongue), Lauren Ferguson of Mecklenburg County (Rep. McMahan) and Curtis McLawhorn of Pitt County (Rep. McLawhorn) served as pages. The following bills were considered:

Rep. Culpepper, bill sponsor, was recognized to explain HB 1538, A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW RELATING TO DISTRIBUTION TO KNOWN BUT UNLOCATED DEVISEES OR HEIRS TO CONFORM TO THE NORTH CAROLINA UNCLAIMED PROPERTY ACT, AS RECOMMENDED BY THE GENERAL STATUES COMMISSION. In response to Rep. Hall's question, Pamela Best, Administrative Office of the Courts, explained what was addressed by the bill and stated they usually know who the heirs are but cannot locate them. Rep. Decker motioned for a favorable report. Rep. Culpepper responded to Rep. Miller's question by stating heirs were sent mailings if current addresses were available. Rep. Baddour added that he thought most of the unclaimed list in Durham County was likely unclaimed bank accounts. Rep. Haire noted that the list tells the sources of funds. Reps. Justus, Baddour and Culpepper discussed the idea of putting a time limit on the principal in regards to the interest it accrues. Rep. Baddour commented that the committee would invite a member of the Treasurer's office to speak about this issue. Rep. Culpepper stated the Treasurer's Office could answer the more detailed questions of Reps. Bowie and Sherrill. The motion on the floor to give the bill a favorable report was granted. A copy of the bill and bill memo is attached and made part of these minutes.

HB 1539, A BILL TO BE ENTITLED AND ACT TO REPEAL AN OBSOLETE PROHIBITION ON THE ESTABLISHMENT OF AUTOMATED TELLER MACHINES OR OTHER INFORMATION–PROCESSING DEVICES OR MACHINES BY OUT–OF–STATE FINANCIAL INSTITUTIONS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, was explained by bill sponsor, Rep. Culpepper. He stated this bill was at the request of the N.C. Commission of Banks and the N.C. Bankers Association and was a recommendation by the General Statutes Commission. Upon the motion of Rep. Weiss the bill was given a favorable report. The bill and bill memo are attached as part of these minutes.

Rep. Baddour announced that he hopes to present the "No Call" bill during next Tuesday's meeting.

The meeting adjourned at 10:20 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Tracy Dixon
Committee Assistant

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1538 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW RELATING TO DISTRIBUTION TO KNOWN BUT UNLOCATED DEVISEES OR HEIRS TO CONFORM TO THE NORTH CAROLINA UNCLAIMED PROPERTY ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 1538*

Short Title:	Distribution to Unlocated Devisees.	(Public)
Sponsors:	Representatives Culpepper; and Gibson.	
Referred to:	Judiciary II.	

June 6, 2002

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW RELATING TO DISTRIBUTION TO KNOWN BUT UNLOCATED DEVISEES OR HEIRS TO CONFORM TO THE NORTH CAROLINA UNCLAIMED PROPERTY ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 28A-22-9 reads as rewritten:

"**§ 28A-22-9. Distribution to known but unlocated devisees or heirs.**

(a) If there are known but unlocated devisees or heirs, the personal representative may deliver the share of such devisee or heir to the clerk of superior court immediately prior to filing of the final account. If the devisee or heir is located after the final account has been filed, he may present a claim for the share to the clerk. If the clerk determines that the claimant is entitled to the share, he shall deliver the share to the devisee or claimant. If the clerk denies the claim, the claimant may take an appeal as in a special proceeding.

(b) The clerk shall hold the share without liability for profit or interest. If no claim has been presented within a period of ~~five years~~ one year after the filing of the final account, the clerk shall deliver the share to the State Treasurer as abandoned property.

(c) The clerk shall not be required to publish any notice to such devisee or heir and shall not be required to report such share to the State Treasurer. If the devisee or heir is located, the clerk shall inform the devisee or heir that he is entitled to file a claim with the State Treasurer for the share under the provisions of ~~G.S. 116B-38(a).~~ G.S. 116B-67."

SECTION 2. This act becomes effective October 1, 2002.

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

MEMORANDUM

TO: House Judiciary II Committee

FROM: General Statutes Commission

DATE: June 7, 2002

RE: HB 1538 (Distribution to Unlocated Devisees)

G.S. 28A-22-9 allows a personal representative to deliver the share of a known but unlocated devisee or heir to the clerk of superior court immediately prior to the filing of the final account. If the share is not claimed within five years after the filing of the final account, the clerk must deliver the share to the State Treasurer as abandoned property under the North Carolina Unclaimed Property Act.

G.S. 28A-22-9 was enacted at the same time that Chapter 116B of the General Statutes was amended to provide a five-year abandonment period for property held for the owner by a court. On January 1, 2000, the five-year abandonment period for property held by a court was reduced to one year. However, no conforming change was made to G.S. 28A-22-9.

HB 1538 amends G.S. 28A-22-9 to reduce the five-year period to one year to conform to the one-year abandonment period under the North Carolina Unclaimed Property Act. The bill also updates the statutory cross reference to the section of the Act which allows a person to file a claim for property paid or delivered to the State Treasurer. Please note that there is no time limit on filing these claims.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1539 A BILL TO BE ENTITLED AN ACT TO REPEAL AN OBSOLETE PROHIBITION ON THE ESTABLISHMENT OF AUTOMATED TELLER MACHINES OR OTHER INFORMATION-PROCESSING DEVICES OR MACHINES BY OUT-OF-STATE FINANCIAL INSTITUTIONS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 1539*

Short Title:	Repeal Obsolete Banking Law.	(Public)
Sponsors:	Representative Culpepper.	
Referred to:	Judiciary II.	

June 6, 2002

A BILL TO BE ENTITLED

AN ACT TO REPEAL AN OBSOLETE PROHIBITION ON THE ESTABLISHMENT OF AUTOMATED TELLER MACHINES OR OTHER INFORMATION-PROCESSING DEVICES OR MACHINES BY OUT-OF-STATE FINANCIAL INSTITUTIONS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-62(dl) reads as rewritten:

"(dl) Subject to such rules and regulations as may be prescribed by the State Banking Commission with regard to their use, maintenance and supervision, any bank may establish off the premises of any principal office, branch or limited service facility a customer-bank communications terminal, point-of-sale terminal, automated teller machine, automated banking facility or other direct or remote information-processing device or machine, whether manned or unmanned, through or by means of which information relating to any financial service or transaction rendered to the public is stored and transmitted, instantaneously or otherwise, to or from a bank or other nonbank terminal; and the establishment and use of such a device or machine shall not be deemed a branch or limited service facility, and the capital requirements and standards for approval of a branch or limited service facility, all as set forth in subsections (b) and (c) ~~above,~~ of this section, shall not be applicable to the establishment of any such off-premises terminal device or ~~machine; provided, however, that no bank, savings and loan association, savings bank, credit union or any other financial institution which is not domiciled in North Carolina may establish in North Carolina any information processing device or machine described in this subsection.~~ machine."

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

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

MEMORANDUM

TO: House Judiciary II Committee

FROM: General Statutes Commission

DATE: June 7, 2002

RE: HB 1539 (Repeal Obsolete Banking Law)

G.S. 53-62(d1) allows banks to establish a customer-bank communications terminal, point-of-sale terminal, automated teller machine, automated banking facility or other direct or remote information-processing device or machine off the premises of any principal office, branch or limited service facility. However, the statute expressly prohibits the establishment of such devices or machines by banks, savings and loan associations, savings banks, credit unions, or other financial institutions that are not "domiciled in North Carolina."

At the request of the North Carolina Commissioner of Banks and the North Carolina Bankers Association, the General Statutes Commission recommends that this prohibition be repealed. The prohibition is believed to be obsolete and arguably unconstitutional, because the Commission is informed that foreign federally-chartered financial institutions as well as foreign and domestic nonbank entities can establish such devices or machines in this State. Foreign federally-chartered financial institutions can establish them because of federal preemption, and foreign and domestic nonbank entities are not prohibited from establishing them.

Therefore, HB 1539 amends G.S. 53-62(d1) to repeal the prohibition on the establishment of automated teller machines or other information-processing devices or machines by out-of-state financial institutions. The bill also makes a technical amendment by changing "subsections (b) and (c) above" to "subsections (b) and (c) of this section."

VISITOR REGISTRATION SHEET

J II
Name of Committee

6/18/02
Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ashley Heaton	NC Bar Assoc.
Susan Valaun	Nationwide
Paul Stock	NC Bankers
Katie Mills	Rep. Culpepper
Omid Nagab	Hunton & Williams
Bob Price	Jordan Price
Drew Nelson	Gen Stat. Comm. - DOJ
Daniel Johnson	General Statutes Commission
McNeil Chestnut	Sp. Dep. A.G. For the Comm Bldg.
Kristie Hite	NC State Water
Pamela Best	AOC
R. Paul Wilms	NCHBA
Tommy Hyrnes	Lobbyist
Mark Benson	Capitol Group
DAVID BARNES	Poyner Spruill LLP
Brian Francis	Meck Cnty
Elizabeth Dorton	Bond & Assoc
BILL SCOGGIN	KENNEDY COVINGTON

AGENDA
Judiciary II

Tuesday, July 2 2002
10:00 a.m.
Room 421 LOB

Rep. Phil Baddour, Chair

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD

HB 1508 **Public Health Bioterrorism Preparedness**
Rep. Edwards

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

July 2, 2002

The House Committee on Judiciary II met on Tuesday, July 2, 2002 in room 421 LOB at 10:00 a.m. The following members were present: Rep. Baddour, Chair and Reps. Bowie, Culpepper, Gulley, Haire, Hall, Jeffus, Justus, Miller, Pope, Sherrill, Weiss and Willingham. Bill sponsor, Rep. Edwards was additionally present. Staff including Tracy Dixon, Jeff Hudson and Robin Johnson were in attendance. A Visitor Registration sheet is attached and made part of these minutes.

Chairman Baddour called the meeting to order and explained the continuation of this meeting would take place at 12:00 noon in 1425 LB. Lynwood Ebron, II of Wake County (Speaker Black), Jonathan Grice of Guilford County (Rep. Bowie), Katie Peralta or Johnston County (Rep. Daughtry) and Jane Stuart Ramsey of Durham County (Rep. Allen), served as pages. The following bill was considered:

Rep. Edwards was recognized to explain HB 1508, A BILL TO BE ENTITLED AN ACT TO PROMOTE READINESS FOR AND TO IMPROVE MANAGEMENT OF A PUBLIC HEALTH THREAT THAT MAY RESULT FROM AN ACT OF TERRORISM USING NUCLEAR, BIOLOGICAL, OR CHEMICAL AGENTS AS RECOMMENDED BY THE NORTH CAROLINA PUBLIC HEALTH STUDY COMMISSION. Upon the motion by Rep. Hall, the PCS was adopted for discussion. Rep. Edwards turned the floor over to Dr. Leah Devlin, State Health Director. Dr. Devlin explained the basis of the bill and what projects had been done to this point in relation to bioterrorism. She noted that this bill came out of the Public Health Study Commission and was the final piece of legislation to help prevent the impact of bioterrorism in North Carolina. She recognized and thanked those people who had helped bring the bill to its current form. Dr. Devlin conducted an overview of what the bill does, what it amends and its specificity to bioterrorism events.

Rep. Baddour asked the committee to hold all detailed questions until the bill presentation was complete. In response to Rep. Miller's question of state and federal overlap, Dr. Devlin stated North Carolina works in partnership with the federal government where the federal government acts as consultants but it is up to the state to identify specific problems.

Dr. Devlin responded to Rep. Pope's questions of search and seizure authority and the judicial protection for victims.

Rep. Baddour introduced Chris Hoke, attorney with the Division of Public Health, who explained the bill section by section. Mr. Hoke answered Rep. Bowie's question by stating that under current law, the State Health Director is required to report all communicable diseases. Mr. Hoke additionally addressed Rep. Pope's earlier question of search and seizure authority and victims rights by noting that bill drafters looked closely at the constitutionality of this issue and they believe the power of the State Health Director would be upheld. Rep. Pope asked about time limits in which the State Health Director could maintain quarantine before going before the

judiciary. Mr. Hoke said that this provision was modeled after the temporary restraining order language and directed members to section 5.

In response to Rep. Miller's question as to the definition of reasonable suspicion, Dr. Devlin and Mr. Hoke spoke to the difficulty in devising a law with broad powers but narrow jurisdiction that covers any event that may happen and stated that the term was not defined. Rep. Miller followed up by stating if there was no definition, then he would like to see another person in the path of the authority to determine what is reasonable.

Rep. Bowie affirmed she was impressed by the bill but asked that the committee go through it line by line. Rep. Baddour reminded the committee that they would be taken through the bill section by section.

Rep. Justus expressed his opinion that the first people involved in this type of situation should be emergency management personnel and spoke on the notification from the State Health Director to emergency management. Mr. Hoke highlighted the joint effort between the two organizations and directed members to section 1 (b). Reps. Baddour and Justus and Mr. Hoke discussed who ultimately would be in charge during an emergency.

Rep. Culpepper commented that the concerns raised by Reps. Pope and Miller were good and suggested the same time limit as used to limit access to a place (10–days) be used for quarantine. Rep. Baddour noted that staff was drafting an amendment.

Reps. Haire and Baddour and Mr. Hoke discussed the need to tighten up language dealing with necessary immediate action.

Rep. Pope referred to the need for safeguards and limitation in section 4. Robin Johnson, Committee Counsel, stated the quarantine authority is in existing law with the second sentence being the only difference.

The meeting adjourned at 10:50 a.m. to reconvene at 12:00 noon.

The House Committee on Judiciary II reconvened on Tuesday, July 2, 2002 in room 1425 LB at 12:00 noon. The following members were present: Rep. Baddour, Chair and Reps. Bowie, Hall, Jeffus, Justus, Miller, Pope, Sherrill, Weiss and Willingham. Staff including Tracy Dixon, Jeff Hudson and Robin Johnson were additionally in attendance.

Rep. Baddour called the meeting to order and recognized the following pages: Ricky Bennett of Wake County (Rep. Capps), Ken Powell of Wake County (Rep. Ellis) and Stuart Ramsey of Durham County (Rep. Allen).

Rep. Baddour asked Dr. Devlin to make a few more introductory remarks. Dr. Devlin made three points: firstly, the Division of Public Health was created to control communicable disease. Secondly, this bill provides the legal basis for an investigation and thirdly, if anthrax had been detected, the governor would have been asked to invoke his emergency powers.

Rep. Baddour reiterated that the bill amends the communicable disease statutes to give the state the ability to deal with bioterrorism events: bioterrorism is just one piece under the communicable disease statutes.

Reps. Sherrill, Baddour, Pope and Justus and Dr. Devlin discussed implications of time limits within the bill. Rep. Baddour reminded the committee that no vote would be taken on the bill today; he was just allowing members to air their concerns.

Mr. Hoke explained sections 3,4 and 5 of the bill. Dr. David Marshall, state veterinarian, responded to Rep. Sherrill's question of who was in charge during an emergency by stating that there was some overlay in authority. He referred to a bill on foot and mouth disease that was passed last session but noted it was not prudent to compare the two. Dr. Marshall stated he would work together with the public health director in support of the bill. Rep. Baddour commented that the governor had ultimate authority of Emergency Management and that all personnel work for the governor. Reps. Sherrill, Justus and Baddour, Dr. Devlin and Mr. Hoke continued to discuss the need for clarity as to who would be in charge during an emergency.

In response to Rep. Bowie, Mr. Hoke stated the state health director would override the state veterinarian if an animal disease were deemed a threat to human health. Rep. Bowie suggested an amendment to create joint authority. Rep. Baddour stated he welcomed amendments but encouraged Rep. Bowie to consult with the Department of Agriculture staff.

Mr. Hoke explained section 7. In response to an inquiry by Rep. Miller, Mr. Hoke explained the origin of the language in section 7A lines 33–34.

Rep. Pope noted the possible difficulty in striking a balance with lawsuits in section 7A, line 26. Dick Taylor, N.C. Academy of Trial Lawyers, Mr. Hoke, Steve Keen and Rep. Sherrill discussed the statutes dealing with immunity.

Reps. Justus, Baddour & Pope spoke with Mr. Hoke about the may/shall wording in section 7A line 27. Following Mr. Hoke's explanation of the remainder of the PCS, Rep. Baddour announced a meeting on this bill might be called for tomorrow.

Copies of the PCS, original bill and bill summary are made part of these minutes.

The meeting adjourned at 1:00 p.m.

Phil Baddour

Representative Philip A. Baddour, Jr.
Chairman

Tracy Dixon
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1508

Committee Substitute Favorable 6/12/02

PROPOSED COMMITTEE SUBSTITUTE H1508-CSRH-61 [v.3]

7/1/2002 2:16:25 PM

Short Title: Public Health Bioterrorism Preparedness. (Public)

Sponsors:

Referred to:

June 4, 2002

A BILL TO BE ENTITLED

AN ACT TO PROMOTE READINESS FOR AND TO IMPROVE MANAGEMENT OF A PUBLIC HEALTH THREAT THAT MAY RESULT FROM AN ACT OF TERRORISM USING NUCLEAR, BIOLOGICAL, OR CHEMICAL AGENTS AND TO AMEND THE NORTH CAROLINA MEDICAL CARE COMMISSION'S RULEMAKING AUTHORITY REGARDING STANDARDS AND CRITERIA FOR THE EDUCATION AND CREDENTIALING OF PERSONS TO ADMINISTER TREATMENT FOR ANAPHYLAXIS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 130A of the General Statutes is amended by adding the following new Article to read:

"Article 22.

"Bioterrorism.

"**§ 130A-475. Suspected terrorist attack.**

(a) If the State Health Director reasonably suspects that a public health threat may exist and that the threat may have been caused by an act of terrorism using nuclear, biological, or chemical agents, the State Health Director shall conduct an investigation. The State Health Director is authorized to:

(1) Require any person or animal to submit to examinations and tests to determine possible exposure to the nuclear, biological, or chemical agents;

(2) Test any real or personal property necessary to determine the presence of nuclear, biological, or chemical agents;

(3) Order the evacuation or closure of any real property, including any building, structure, or land when necessary to investigate suspected contamination of the property. The period of closure during an investigation shall not exceed 10 calendar days. If the State Health

Director determines that a longer period of closure is necessary to complete the investigation, the Director may institute an action in superior court to order the property to remain closed until the investigation is completed;

(4) Limit the freedom of movement or action of a person or animal that is contaminated with, or reasonably suspected of being contaminated with, a biological, chemical or nuclear agent that may be conveyed to other persons or animals, until the risk of conveyance is eliminated; and

(5) Limit access by any person or animal to an area or facility that is contaminated with, or reasonably suspected of being contaminated with, a biological, chemical or nuclear agent that may be conveyed to other persons or animals.

(b) If the State Health Director determines that there exists a public health threat that may have been caused by an act of terrorism using nuclear, biological, or chemical agents, the State Health Director shall notify the Secretary of Crime Control and Public Safety.

(c) Nothing in this section shall limit any authority otherwise granted to local or State public health officials under this Chapter."

SECTION 2.(a) G.S. 130A-149, "Biological Agents Registry; Rules; Penalties," is recodified as G.S. 130A-476.

SECTION 2.(b) G.S. 130A-29(c)(10) reads as rewritten:

"(10) Pertaining to the biological agents registry in accordance with ~~G.S. 130A-149~~ G.S. 130A-476."

SECTION 3. G.S. 130A-133 is repealed.

SECTION 4. G.S. 130A-2 reads as rewritten:

"**§ 130A-2. Definitions.**

The following definitions shall apply throughout this Chapter unless otherwise specified:

(1) "Commission" means the Commission for Health Services.

(1a) "Communicable condition" means the state of being infected with a communicable agent but without symptoms.

(1b) "Communicable disease" means an illness due to an infectious agent or its toxic products which is transmitted directly or indirectly to a person from an infected person or animal through the agency of an intermediate animal, host or vector, or through the inanimate environment.

(2) "Department" means the Department of Health and Human Services.

(3) "Imminent hazard" means a situation ~~which~~ that is likely to cause an immediate threat to human life, an immediate threat of serious physical injury, an immediate threat of serious adverse health effects, or a serious risk of irreparable damage to the environment if no immediate action is taken.

(3a) "Isolation authority" means the authority to limit the freedom of movement or action of a person or animal with a communicable disease or communicable condition for the period of communicability to prevent the direct or indirect conveyance of the infectious agent from the person or animal to other persons or animals who are susceptible or who may spread the agent to others.

(4) "Local board of health" means a district board of health or a public health authority board or a county board of health.

(5) "Local health department" means a district health department or a public health authority or a county health department.

(6) "Local health director" means the administrative head of a local health department appointed pursuant to this Chapter.

(6a) "Outbreak" means an occurrence of a case or cases of a disease in a locale in excess of the usual number of cases of the disease.

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

(7a) "Quarantine authority" means the authority to limit the freedom of movement or action of persons or animals which have been exposed to or are reasonably suspected of having been exposed to a communicable disease or communicable condition for a period of time as may be necessary to prevent the spread of that disease. Quarantine authority also means the authority to limit access by any person or animal to an area or facility that may be contaminated with an infectious agent. The term also means the authority to limit the freedom of movement or action of persons who have not received immunizations against a communicable disease when the State Health Director or a local health director determines that the immunizations are required to control an outbreak of that disease.

(8) "Secretary" means the Secretary of Health and Human Services.

(9) "Unit of local government" means a county, city, consolidated city-county, sanitary district or other local political subdivision, authority or agency of local government.

(10) "Vital records" means birth, death, fetal death, marriage, annulment and divorce records registered under the provisions of Article 4 of this Chapter."

SECTION 5. G.S. 130A-145 reads as rewritten:

"**§ 130A-145. ~~Local health director has quarantine~~ Quarantine and isolation authority.**

(a) The State Health Director and a~~A~~ local health director ~~and the State Health Director~~ are empowered to exercise quarantine and isolation authority. Quarantine and isolation authority shall be exercised only when and so long as the public health is endangered, all other reasonable means for correcting the problem have been exhausted, and no less restrictive alternative exists.

(b) No person other than a person authorized by the State Health Director or local health director shall enter quarantine or isolation premises. Nothing in this subsection shall be construed to restrict the access of authorized health care, law enforcement or emergency medical services personnel to quarantine or isolation premises as necessary in conducting their duties."

SECTION 6. G.S. 130A-20 reads as rewritten:

"**§ 130A-20. Abatement of an imminent hazard.**

(a) If the Secretary or a local health director determines that an imminent hazard exists, the Secretary or a local health director may order the owner, lessee, operator or other person in control of the property to abate the imminent hazard or may, after notice to or reasonable attempt to notify the owner, lessee, operator, or other person in control of the property enter upon any property and take any action necessary to abate the imminent hazard. If the Secretary or a local health director abates the imminent hazard, the ~~The~~ Department or the local health department shall have a lien on the property for the cost of the abatement of the imminent hazard in the nature of a mechanic's and materialmen's lien as provided in ~~Chapter 44A~~ Chapter 44A of the General Statutes, and the lien may be enforced as provided ~~therein.~~in that Chapter. The lien may be defeated by a showing that an imminent hazard did not exist at the time the Secretary or the local health director took the action.

(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Articles 8, 9, 10, 11, and 12 of this Chapter."

SECTION 7. Article 1 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"**§ 130A-12.1. Access to health information.**

(a) Notwithstanding any other provision of law, a health care provider, a person in charge of a health care facility, or a unit of State or local government may report to the State Health Director or a local health director any events that may indicate the existence of a case or outbreak of an illness, condition or health hazard that may have been caused by an act of terrorism using nuclear, biological or chemical agents. Events that may be reported include unusual types or numbers of symptoms or illnesses presented to the provider, unusual trends in health care visits, or unusual trends in prescriptions or purchases of over-the-counter pharmaceuticals. A person disclosing or not disclosing information pursuant to this subsection is immune from any civil or criminal liability that might otherwise be incurred or imposed based on the disclosure or lack of disclosure provided that the health care provider was acting in good faith and without malice. In any proceeding involving liability, good faith and lack of malice are presumed.

(b) The State Health Director may issue a temporary order requiring health care providers to report symptoms, diseases, conditions, trends in use of health care services, or other health-related information when necessary to conduct a public health investigation or surveillance of an illness, condition or health hazard that may have been caused by an act of terrorism using nuclear, biological or chemical agents. The order shall specify which health care providers must report, what information is to be

reported, and the period of time for which reporting is required. The period of time for which reporting is required pursuant to a temporary order shall not exceed 90 days. The rule-making provisions of Chapter 150B of the General Statutes shall not apply to the State Health Director's temporary order. The Commission may adopt rules to continue the reporting requirement when necessary to protect the public health.

(c) The State Health Director and a local health director may examine, review, and obtain a copy of records containing confidential or protected health information, or a summary of pertinent portions of those records, that:

(1) Pertain to a report authorized by subsection (a) or required by subsection (b) of this section;

(2) Pertain to the diagnosis, treatment, or prevention of a communicable disease or communicable condition for a person infected, exposed, or reasonably suspected of being infected or exposed to such a disease or condition; or

(3) The State Health Director determines is necessary for investigating a disease or health hazard that presents a clear danger to the public health.

(d) A person who makes a report pursuant to subsection (b) of this section or permits examination, review or copying of medical records pursuant to subsection (c) is immune from any civil or criminal liability that otherwise might be incurred or imposed as a result of complying with those subsections.

(e) Confidential or protected health information received by the State Health Director or a local health director pursuant to this section shall be confidential and shall not be released, except when the release is:

(1) Made pursuant to any other provision of law;

(2) To another federal, state, or local public health agency for the purpose of preventing or controlling a public health threat; or

(3) To a court or law enforcement official for the purpose of enforcing the provisions of this chapter or G.S. 14-288.22. A law enforcement official who receives the information shall not disclose it further, except (i) when necessary to enforce the provision of this chapter or GS 14-288.22, or (ii) when the State Health Director or a local health director seeks the assistance of the law enforcement official in preventing or controlling the public health threat and expressly authorizes the disclosure as necessary for that purpose.

(f) In this section the following terms shall include:

(1) "Health care provider" includes a physician licensed to practice medicine in North Carolina or a person who is licensed, certified, or credentialed to practice or provide health care services, including, but not limited to, pharmacists, dentists, physician assistants, registered nurses, licensed practical nurses, chiropractors, respiratory care therapists, and emergency medical technicians; and

(2) "Health care facility" includes hospitals, skilled nursing facilities, intermediate care facilities, psychiatric facilities, rehabilitation

facilities, home health agencies, ambulatory surgical facilities, or any other health care related facility, whether publicly or privately owned."

SECTION 8. G.S. 130A-5 reads as rewritten:

"**§ 130A-5. Duties of the Secretary.**

The Secretary shall have the authority:

(1) To enforce the State health laws and the rules of the Commission;

(2) To investigate the causes of epidemics and of infectious, communicable and other diseases affecting the public health in order to control and prevent these diseases; to provide, under the rules of the Commission, for the prevention, detection, reporting and control of communicable, infectious or any other diseases or health hazards considered harmful to the public health; ~~to obtain, notwithstanding the provisions of G.S. 8-53, a copy or a summary of pertinent portions of privileged patient medical records deemed necessary for investigating a disease or health hazard that may present a clear danger to the public health. Records shall be identified as necessary by joint agreement of a Department physician and the patient's attending physician. However, if the Department is unable to contact the attending physician after reasonable attempts to do so, or if the Department determines that contacting all attending physicians of patients involved in an investigation would be impractical or would unreasonably delay the inquiry and thereby endanger the public health, the records shall be identified as necessary by joint agreement of a Department physician and the health care facility's chief of staff. For a facility with no chief of staff, the facility's chief administrator may consent to the Department's review of the records. Any person, authorized to have or handle such records, providing copies or summaries of privileged patient medical records pursuant to this subdivision shall be immune from civil or criminal liability that might otherwise be incurred or imposed based upon invasion of privacy or breach of physician-patient confidentiality arising out of the furnishing of or agreement to furnish such records;~~

(3) To develop and carry out reasonable health programs that may be necessary for the protection and promotion of the public health and the control of diseases. The Commission is authorized to adopt rules to carry out these programs;

(4) To make sanitary and health investigations and inspections;

(5) To investigate occupational health hazards and occupational diseases and to make recommendations for the elimination of the hazards and diseases. The Secretary shall work with the Industrial Commission and shall file sufficient reports with the Industrial Commission to enable it to carry out all of the provisions of the Workers' Compensation Act with respect to occupational ~~disease.~~disease;

(6) To receive donations of money, securities, equipment, supplies, realty or any other property of any kind or description which shall be used by the Department for the purpose of carrying out its public health programs;

(7) To acquire by purchase, devise or otherwise in the name of the Department equipment, supplies and other property, real or personal, necessary to carry out the public health programs;

(8) To use the official seal of the Department. Copies of documents in the possession of the Department may be authenticated with the seal of the Department, attested by the signature or a facsimile of the signature of the Secretary, and when authenticated shall have the same evidentiary value as the originals;

(9) To disseminate information to the general public on all matters pertaining to public health; to purchase, print, publish, and distribute free, or at cost, documents, reports, bulletins and health informational materials. Money collected from the distribution of these materials shall remain in the Department to be used to replace the materials;

(10) To be the health advisor of the State and to advise State officials in regard to the location, sanitary construction and health management of all State institutions; to direct the attention of the State to health matters which affect the industries, property, health and lives of the people of the State; to inspect at least annually State institutions and facilities; to make a report as to the health conditions of these institutions or facilities with suggestions and recommendations to the appropriate State agencies. It shall be the duty of the persons in immediate charge of these institutions or facilities to furnish all assistance necessary for a thorough inspection;

(11) To establish a schedule of fees based on income to be paid by a recipient for services provided by Migrant Health Clinics and Development Evaluation Centers;

(12) To establish fees for the sale of specimen containers, vaccines and other biologicals. The fees shall not exceed the actual cost of such items, plus transportation costs;

(13) To establish a fee to cover costs of responding to requests by employers for industrial hygiene consultation services and occupational consultation services. The fee shall not exceed two hundred dollars ($200.00) per on site inspection; and

(14) To establish a fee for companion animal certificate of examination forms to be distributed, upon request, by the Department to licensed veterinarians. The fee shall not exceed the cost of the form and shipping costs."

SECTION 9. G.S. 130A-143 reads as rewritten:

"**§ 130A-143. Confidentiality of records.**

All information and records, whether publicly or privately maintained, that identify a person who has AIDS virus infection or who has or may have a disease or condition required to be reported pursuant to the provisions of this Article shall be strictly confidential. This information shall not be released or made public except under the following circumstances:

(1) Release is made of specific medical or epidemiological information for statistical purposes in a way that no person can be identified;

(2) Release is made of all or part of the medical record with the written consent of the person or persons identified or their guardian;

(3) Release is made to health care personnel providing medical care to the patient;

(4) Release is necessary to protect the public health and is made as provided by the Commission in its rules regarding control measures for communicable diseases and conditions;

(5) Release is made pursuant to other provisions of this Article;

(6) Release is made pursuant to subpoena or court order. Upon request of the person identified in the record, the record shall be reviewed in camera. In the trial, the trial judge may, during the taking of testimony concerning such information, exclude from the courtroom all persons except the officers of the court, the parties and those engaged in the trial of the ~~case.~~case;

(7) Release is made by the Department or a local health department to a court or a law enforcement ~~officer~~ official for the purpose of enforcing the provisions of this ~~Article pursuant to Article 1, Part 2 of this Chapter.~~ Article, Article 22 of this Chapter, or G.S. 14-288.22. A law enforcement official who receives the information shall not disclose it further, except (i) when necessary to enforce the provisions of this Article, Article 22 of this Chapter, or G.S. 14-288.22, or (ii) when the Department or a local health department seeks the assistance of the law enforcement official in preventing or controlling the spread of the disease or condition and expressly authorizes the disclosure as necessary for that purpose;

(8) Release is made by the Department or a local health department to another federal, state or local public health agency for the purpose of preventing or controlling the spread of a communicable disease or communicable condition;

(9) Release is made by the Department for bona fide research purposes. The Commission shall adopt rules providing for the use of the information for research purposes;

(10) Release is made pursuant to G.S. 130A-144(b); or

(11) Release is made pursuant to any other provisions of ~~law that specifically authorize or require the release of information or records related to AIDS.~~law."

SECTION 10. G.S. 106-24.1 reads as rewritten:

"**§ 106-24.1. Confidentiality of information collected and published.**

All information published by the Department of Agriculture and Consumer Services pursuant to this Part shall be classified so as to prevent the identification of information received from individual farm operators. All information received pursuant to this Part from individual farm operators shall be held confidential by the Department and its employees. Information collected by the Department from individual farm operators for the purposes of its animal health programs may be disclosed by the State Veterinarian when, in his judgment, the disclosure will assist in the implementation of these programs. Animal disease diagnostic tests that identify the owner of the animal shall not be disclosed without the permission of the owner unless the State Veterinarian determines that disclosure is necessary to prevent the spread of an animal disease or to protect the public health."

SECTION 11. G.S. 106-307.2 reads as rewritten:

"**§ 106-307.2. Reports of infectious disease in livestock and poultry to State Veterinarian.**

(a) All persons practicing veterinary medicine in North Carolina shall report promptly to the State Veterinarian the existence of any contagious or infectious disease in livestock and poultry.

(b) The State Veterinarian shall notify the State Health Director and the Director of the Division of Environmental Health in the Department of Environment and Natural Resources when the State Veterinarian receives a report indicating an occurrence or potential outbreak of anthrax, arboviral infections, brucellosis, epidemic typhus, hantavirus infections, murine typhus, plague, psittacosis, Q fever, hemorrhagic fever virus infections, and any disease or condition transmissible to humans that the State Veterinarian determines may have been caused by a terrorist act."

SECTION 12. G.S. 130A-152(b) is repealed.

SECTION 13. G.S. 143-518 reads as rewritten:

"**§ 143-518. Confidentiality of patient information.**

(a) Medical records compiled and maintained by the Department or EMS providers in connection with dispatch, response, treatment, or transport of individual patients or in connection with the statewide trauma system pursuant to Article 7 of Chapter 131E of the General Statutes may contain patient identifiable data which will allow linkage to other health care-based data systems for the purposes of quality management, peer review, and public health initiatives.

These medical records and data shall be strictly confidential and shall not be considered public records within the meaning of G.S. 132-1 and shall not be released or made public except under any of the following conditions:

(1) Release is made of specific medical or epidemiological information for statistical purposes in a way that no person can be identified.

(2) Release is made of all or part of the medical record with the written consent of the person or persons identified or their guardians.

(3) Release is made to health care personnel providing medical care to the patient.

(4) Release is made pursuant to a court order. Upon request of the person identified in the record, the record shall be reviewed in camera. In the trial, the trial judge may, during the taking of testimony concerning such information, exclude from the courtroom all persons except the officers of the court, the parties, and those engaged in the trial of the case.

(5) Release is made to a Medical Review Committee as defined in G.S. 131E-95, 90-21.22A, or 130A-45.7 or to a peer review committee as defined in G.S. 131E-108, 122C-30, or 131D-21.1.

(6) Release is made for use in a health research project under rules adopted by the North Carolina Medical Care Commission. The Commission shall adopt rules that allow release of information when an institutional review board, as defined by the Commission, has determined that the health research project:

a. Is of sufficient scientific importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

b. Is impracticable without the use or disclosure of identifying health information;

c. Contains safeguards to protect the information from redisclosure;

d. Contains safeguards against identifying, directly or indirectly, any patient in any report of the research project; and

e. Contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project.

(7) Release is made to a statewide data processor, as defined in Article 11A of Chapter 131E of the General Statutes, in which case the data is deemed to have been submitted as if it were required to have been submitted under that Article.

(8) Release is made pursuant to any other provisions of law.

(b) Charges, accounts, credit histories, and other personal financial records compiled and maintained by the Department or EMS providers in connection with the admission, treatment, and discharge of individual patients are strictly confidential and shall not be released."

SECTION 14. G.S. 166A-5(2) is amended by adding a new sub-subdivision to read:

"c1. To coordinate with the State Health Director to amend or revise the State Emergency Operations Plan regarding public health matters. At a minimum, the revisions to the Plan shall provide for the following:

1. The epidemiologic investigation of a known or suspected threat caused by nuclear, biological, or chemical agents;
2. The examination and testing of persons and animals that may have been exposed to a nuclear, biological, or chemical agent;
3. The procurement and allocation of immunizing agents and prophylactic antibiotics;
4. The allocation of the National Pharmaceutical Stockpile;
5. The appropriate conditions for quarantine and isolation in order to prevent further transmission of disease;
6. Immunization procedures; and
7. The issuance of guidelines for prophylaxis and treatment of exposed and affected persons."

SECTION 15. G.S. 143-508(d)(11) reads as rewritten:

"(11) Establish standards and criteria for the education and credentialing of persons trained to administer lifesaving treatment to a person who suffers a severe adverse reaction to ~~insect stings.~~agents that might cause anaphylaxis."

SECTION 16. This act becomes effective October 1, 2002.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 2

HOUSE BILL 1508

Committee Substitute Favorable 6/12/02

Short Title: Public Health Bioterrorism Preparedness. (Public)

Sponsors:

Referred to:

June 4, 2002

A BILL TO BE ENTITLED

AN ACT TO PROMOTE READINESS FOR AND TO IMPROVE MANAGEMENT OF A PUBLIC HEALTH THREAT THAT MAY RESULT FROM AN ACT OF TERRORISM USING NUCLEAR, BIOLOGICAL, OR CHEMICAL AGENTS AS RECOMMENDED BY THE NORTH CAROLINA PUBLIC HEALTH STUDY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 130A of the General Statutes is amended by adding the following new Article to read:

"Article 22.

"Bioterrorism.

"**§ 130A-475. Suspected terrorist attack.**

(a) If the State Health Director reasonably suspects that a public health threat may exist and that the threat may have been caused by an act of terrorism using nuclear, biological, or chemical agents, the State Health Director shall conduct an investigation. The State Health Director is authorized to:

(1) Require any person or animal to submit to examinations and tests to determine possible exposure to the nuclear, biological, or chemical agents;

(2) Test any real or personal property necessary to determine the presence of nuclear, biological, or chemical agents;

(3) Order the evacuation or closure of any real property, including any building, structure, or land when necessary to investigate suspected contamination of the property. The period of closure during an investigation shall not exceed 10 calendar days. If the State Health Director determines that a longer period of closure is necessary to complete the investigation, the Director may institute an action in superior court to order the property to remain closed until the investigation is completed;

(4) Limit the freedom of movement or action of a person or animal that is contaminated with, or reasonably suspected of being contaminated with, a chemical or nuclear agent that may be conveyed to other persons or animals, until the risk of conveyance is eliminated; and

(5) Limit access by any person or animal to an area or facility that is contaminated with, or reasonably suspected of being contaminated with, a chemical or nuclear agent that may be conveyed to other persons or animals.

(b) If the State Health Director determines that there exists a public health threat that may have been caused by an act of terrorism using nuclear, biological, or chemical agents, the State Health Director shall notify the Secretary of Crime Control and Public Safety.

(c) Nothing in this section shall limit any authority otherwise granted to local or State public health officials under this Chapter."

SECTION 2.(a) G.S. 130A-149, "Biological Agents Registry; Rules; Penalties," is recodified as G.S. 130A-476.

SECTION 2.(b) G.S. 130A-29(c)(10) reads as rewritten:

"(10) Pertaining to the biological agents registry in accordance with ~~G.S. 130A-149~~ G.S. 130A-476."

SECTION 3. G.S. 166A-5(2) is amended by adding a new sub-subdivision to read:

"c1. To coordinate with the State Health Director to amend or revise the State Emergency Operations Plan regarding public health matters. At a minimum, the revisions to the Plan shall provide for the following:

1. The epidemiologic investigation of a known or suspected threat caused by nuclear, biological, or chemical agents;
2. The examination and testing of persons and animals that may have been exposed to a nuclear, biological, or chemical agent;
3. The procurement and allocation of immunizing agents and prophylactic antibiotics;
4. The allocation of the National Pharmaceutical Stockpile;
5. The appropriate conditions for quarantine and isolation in order to prevent further transmission of disease;
6. Immunization procedures; and
7. The issuance of guidelines for prophylaxis and treatment of exposed and affected persons."

SECTION 4. G.S. 130A-133(4) reads as rewritten:

"(4) "Quarantine authority" means the authority to limit the freedom of movement or action of persons or animals which have been exposed to or are reasonably suspected of having been exposed to a communicable disease or communicable condition for a period of time as may be necessary to prevent the spread of that disease. Quarantine

authority also means the authority to limit access by any person or animal to an area or facility that may be contaminated with an infectious agent. The term also means the authority to limit the freedom of movement or action of persons who have not received immunizations against a communicable disease ~~listed in G.S. 130A-152~~ when the State Health Director or local health director determines that such immunizations are required to control an outbreak of that disease."

SECTION 5. G.S. 130A-145 reads as rewritten:

"**§ 130A-145. ~~Local health director has quarantine~~ Quarantine and isolation authority.**

(a) The State Health Director and a~~A~~ local health director ~~and the State Health Director~~ are empowered to exercise quarantine and isolation authority. Quarantine and isolation authority shall be exercised only when and so long as the public health is endangered, all other reasonable means for correcting the problem have been exhausted, and no less restrictive alternative exists.

(b) No person other than a person authorized by the State Health Director or local health director shall enter quarantine or isolation premises. Nothing in this subsection shall be construed to restrict the access of authorized health care, law enforcement or emergency medical services personnel to quarantine or isolation premises as necessary in conducting their duties."

SECTION 6. G.S. 130A-20 reads as rewritten:

"**§ 130A-20. Abatement of an imminent hazard.**

(a) If the Secretary or a local health director determines that an imminent hazard exists, the Secretary or a local health director may order the owner, lessee, operator or other person in control of the property to abate the imminent hazard or may, after notice to or reasonable attempt to notify the owner, lessee, operator, or other person in control of the property enter upon any property and take any action necessary to abate the imminent hazard. If the Secretary or a local health director abates the imminent hazard, the ~~The~~ Department or the local health department shall have a lien on the property for the cost of the abatement of the imminent hazard in the nature of a mechanic's and materialmen's lien as provided in ~~Chapter 44A~~ Chapter 44A of the General Statutes, and the lien may be enforced as provided ~~therein.~~ in that Chapter. The lien may be defeated by a showing that an imminent hazard did not exist at the time the Secretary or the local health director took the action.

(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Articles 8, 9, 10, 11, and 12 of this Chapter."

SECTION 7. Article 1 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"**§ 130A-12.1. Access to health information.**

(a) Notwithstanding any other provision of law, a health care provider or a unit of State or local government may report to the State Health Director or a local health director any events that may indicate the existence of a communicable disease or

condition, or a case or outbreak of an illness or condition that may have been caused by use of a nuclear, biological, or chemical weapon of mass destruction as defined in G.S. 14-288.21(c). Events that may be reported include unusual types or numbers of symptoms or illnesses presented to the provider, unusual trends in health care visits, or unusual trends in prescriptions or purchases of over-the-counter pharmaceuticals. A person disclosing or not disclosing information pursuant to this subsection is immune from any civil or criminal liability that might otherwise be incurred or imposed based on the disclosure or lack of disclosure provided that the health care provider was acting in good faith and without malice. In any proceeding involving liability, good faith and lack of malice are presumed.

(b) The State Health Director may issue a temporary order requiring health care providers to report symptoms, diseases, conditions, trends in use of health care services, or other health-related information when necessary to conduct public health investigations or surveillance of diseases or health hazards that may have been caused by use of a nuclear, biological, or chemical weapon of mass destruction as defined in G.S. 14-288.21(c) or that may indicate the existence of a communicable disease or condition. The order shall specify which health care providers must report, what information is to be reported, and the period of time for which reporting is required. The period of time for which reporting is required pursuant to a temporary order shall not exceed 90 days. The rule-making provisions of Chapter 150B of the General Statutes shall not apply to the State Health Director's temporary order. The Commission may adopt temporary or permanent rules to continue the reporting requirement when necessary to protect the public health.

(c) The State Health Director and a local health director may examine, review, and obtain a copy of records containing confidential or protected health information, or a summary of pertinent portions of those records, that:

(1) Pertain to a report authorized by subsection (a) or required by subsection (b) of this section;

(2) Pertain to the diagnosis, treatment, or prevention of a communicable disease or communicable condition, as defined in Article 6 of this Chapter, for a person infected, exposed, or reasonably suspected of being infected or exposed to such a disease or condition; or

(3) The State Health Director determines is necessary for investigating a disease or health hazard that presents a clear danger to the public health.

(d) A person who makes a report pursuant to subsection (a) or (b) of this section or permits examination, review or copying of medical records pursuant to subsection (c) is immune from any civil or criminal liability that otherwise might be incurred or imposed as a result of complying with those subsections.

(e) For purposes of this section, the term "health care provider" means a physician licensed to practice medicine in North Carolina or a person who is licensed, certified, or credentialed to practice or provide health care services, including, but not limited to, pharmacists, dentists, physician assistants, registered nurses, licensed practical nurses, chiropractors, and emergency medical technicians."

SECTION 8. G.S. 130A-5 reads as rewritten:

"**§ 130A-5. Duties of the Secretary.**

The Secretary shall have the authority:

(1) To enforce the State health laws and the rules of the Commission;

(2) To investigate the causes of epidemics and of infectious, communicable and other diseases affecting the public health in order to control and prevent these diseases; to provide, under the rules of the Commission, for the prevention, detection, reporting and control of communicable, infectious or any other diseases or health hazards considered harmful to the public health; ~~to obtain, notwithstanding the provisions of G.S. 8-53, a copy or a summary of pertinent portions of privileged patient medical records deemed necessary for investigating a disease or health hazard that may present a clear danger to the public health. Records shall be identified as necessary by joint agreement of a Department physician and the patient's attending physician. However, if the Department is unable to contact the attending physician after reasonable attempts to do so, or if the Department determines that contacting all attending physicians of patients involved in an investigation would be impractical or would unreasonably delay the inquiry and thereby endanger the public health, the records shall be identified as necessary by joint agreement of a Department physician and the health care facility's chief of staff. For a facility with no chief of staff, the facility's chief administrator may consent to the Department's review of the records. Any person, authorized to have or handle such records, providing copies or summaries of privileged patient medical records pursuant to this subdivision shall be immune from civil or criminal liability that might otherwise be incurred or imposed based upon invasion of privacy or breach of physician-patient confidentiality arising out of the furnishing of or agreement to furnish such records;~~

(3) To develop and carry out reasonable health programs that may be necessary for the protection and promotion of the public health and the control of diseases. The Commission is authorized to adopt rules to carry out these programs;

(4) To make sanitary and health investigations and inspections;

(5) To investigate occupational health hazards and occupational diseases and to make recommendations for the elimination of the hazards and diseases. The Secretary shall work with the Industrial Commission and shall file sufficient reports with the Industrial Commission to enable it to carry out all of the provisions of the Workers' Compensation Act with respect to occupational ~~disease.~~disease;

(6) To receive donations of money, securities, equipment, supplies, realty or any other property of any kind or description which shall be used by

the Department for the purpose of carrying out its public health programs;

(7) To acquire by purchase, devise or otherwise in the name of the Department equipment, supplies and other property, real or personal, necessary to carry out the public health programs;

(8) To use the official seal of the Department. Copies of documents in the possession of the Department may be authenticated with the seal of the Department, attested by the signature or a facsimile of the signature of the Secretary, and when authenticated shall have the same evidentiary value as the originals;

(9) To disseminate information to the general public on all matters pertaining to public health; to purchase, print, publish, and distribute free, or at cost, documents, reports, bulletins and health informational materials. Money collected from the distribution of these materials shall remain in the Department to be used to replace the materials;

(10) To be the health advisor of the State and to advise State officials in regard to the location, sanitary construction and health management of all State institutions; to direct the attention of the State to health matters which affect the industries, property, health and lives of the people of the State; to inspect at least annually State institutions and facilities; to make a report as to the health conditions of these institutions or facilities with suggestions and recommendations to the appropriate State agencies. It shall be the duty of the persons in immediate charge of these institutions or facilities to furnish all assistance necessary for a thorough inspection;

(11) To establish a schedule of fees based on income to be paid by a recipient for services provided by Migrant Health Clinics and Development Evaluation Centers;

(12) To establish fees for the sale of specimen containers, vaccines and other biologicals. The fees shall not exceed the actual cost of such items, plus transportation costs;

(13) To establish a fee to cover costs of responding to requests by employers for industrial hygiene consultation services and occupational consultation services. The fee shall not exceed two hundred dollars ($200.00) per on site inspection; and

(14) To establish a fee for companion animal certificate of examination forms to be distributed, upon request, by the Department to licensed veterinarians. The fee shall not exceed the cost of the form and shipping costs."

SECTION 9. G.S. 130A-143 reads as rewritten:

"**§ 130A-143. Confidentiality of records.**

All information and records, whether publicly or privately maintained, that identify a person who has AIDS virus infection or who has or may have a disease or condition required to be reported pursuant to the provisions of this Article shall be strictly

confidential. This information shall not be released or made public except under the following circumstances:

(1) Release is made of specific medical or epidemiological information for statistical purposes in a way that no person can be identified;

(2) Release is made of all or part of the medical record with the written consent of the person or persons identified or their guardian;

(3) Release is made to health care personnel providing medical care to the patient;

(4) Release is necessary to protect the public health and is made as provided by the Commission in its rules regarding control measures for communicable diseases and conditions;

(5) Release is made pursuant to other provisions of this Article;

(6) Release is made pursuant to subpoena or court order. Upon request of the person identified in the record, the record shall be reviewed in camera. In the trial, the trial judge may, during the taking of testimony concerning such information, exclude from the courtroom all persons except the officers of the court, the parties and those engaged in the trial of the ~~case.~~case;

(7) Release is made by the Department or a local health department to a court or a law enforcement ~~officer~~ official for the purpose of enforcing the provisions of this ~~Article pursuant to Article 1, Part 2 of this Chapter.~~ Article, Article 22 of this Chapter, or G.S. 14-288.22. A law enforcement official who receives the information shall not disclose it further, except (i) when necessary to enforce the provisions of this Article, Article 22 of this Chapter, or G.S. 14-288.22, or (ii) when the Department or a local health department seeks the assistance of the law enforcement official in preventing or controlling the spread of the disease or condition and expressly authorizes the disclosure as necessary for that purpose;

(8) Release is made by the Department or a local health department to another federal, state or local public health agency for the purpose of preventing or controlling the spread of a communicable disease or communicable condition;

(9) Release is made by the Department for bona fide research purposes. The Commission shall adopt rules providing for the use of the information for research purposes;

(10) Release is made pursuant to G.S. 130A-144(b); or

(11) Release is made pursuant to any other provisions of law that specifically authorize or require the release of information or records related to AIDS."

SECTION 10. G.S. 106-24.1 reads as rewritten:

"**§ 106-24.1. Confidentiality of information collected and published.**

All information published by the Department of Agriculture and Consumer Services pursuant to this Part shall be classified so as to prevent the identification of information

received from individual farm operators. All information received pursuant to this Part from individual farm operators shall be held confidential by the Department and its employees. Information collected by the Department from individual farm operators for the purposes of its animal health programs may be disclosed by the State Veterinarian when, in his judgment, the disclosure will assist in the implementation of these programs. Animal disease diagnostic tests that identify the owner of the animal shall not be disclosed without the permission of the owner unless the State Veterinarian determines that disclosure is necessary to prevent the spread of an animal disease or to protect the public health."

SECTION 11. G.S. 106-307.2 reads as rewritten:

"**§ 106-307.2. Reports of infectious disease in livestock and poultry to State Veterinarian.**

(a) All persons practicing veterinary medicine in North Carolina shall report promptly to the State Veterinarian the existence of any contagious or infectious disease in livestock and poultry.

(b) The State Veterinarian shall notify the State Health Director and the Director of the Division of Environmental Health in The Department of Environment and Natural Resources when the State Veterinarian receives a report indicating a potential outbreak of a disease or condition that can be transmitted to humans including communicable diseases or conditions required to be reported by G.S. 130A-134."

SECTION 12. G.S. 130A-152(b) is repealed.

SECTION 13. G.S. 143-518 reads as rewritten:

"**§ 143-518. Confidentiality of patient information.**

(a) Medical records compiled and maintained by the Department or EMS providers in connection with dispatch, response, treatment, or transport of individual patients or in connection with the statewide trauma system pursuant to Article 7 of Chapter 131E of the General Statutes may contain patient identifiable data which will allow linkage to other health care-based data systems for the purposes of quality management, peer review, and public health initiatives.

These medical records and data shall be strictly confidential and shall not be considered public records within the meaning of G.S. 132-1 and shall not be released or made public except under any of the following conditions:

(1) Release is made of specific medical or epidemiological information for statistical purposes in a way that no person can be identified.

(2) Release is made of all or part of the medical record with the written consent of the person or persons identified or their guardians.

(3) Release is made to health care personnel providing medical care to the patient.

(4) Release is made pursuant to a court order. Upon request of the person identified in the record, the record shall be reviewed in camera. In the trial, the trial judge may, during the taking of testimony concerning such information, exclude from the courtroom all persons except the officers of the court, the parties, and those engaged in the trial of the case.

(5) Release is made to a Medical Review Committee as defined in G.S. 131E-95, 90-21.22A, or 130A-45.7 or to a peer review committee as defined in G.S. 131E-108, 122C-30, or 131D-21.1.

(6) Release is made for use in a health research project under rules adopted by the North Carolina Medical Care Commission. The Commission shall adopt rules that allow release of information when an institutional review board, as defined by the Commission, has determined that the health research project:

a. Is of sufficient scientific importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

b. Is impracticable without the use or disclosure of identifying health information;

c. Contains safeguards to protect the information from redisclosure;

d. Contains safeguards against identifying, directly or indirectly, any patient in any report of the research project; and

e. Contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project.

(7) Release is made to a statewide data processor, as defined in Article 11A of Chapter 131E of the General Statutes, in which case the data is deemed to have been submitted as if it were required to have been submitted under that Article.

(8) Release is made to the State Health Director for the purpose of protecting the public health.

(b) Charges, accounts, credit histories, and other personal financial records compiled and maintained by the Department or EMS providers in connection with the admission, treatment, and discharge of individual patients are strictly confidential and shall not be released."

SECTION 14. This act becomes effective October 1, 2002.

HOUSE BILL 1508:
Public Health Bioterrorism Preparedness

BILL ANALYSIS

Committee: House Judiciary II
Date: July 2, 2002
Version: Second Edition
H1508-CSRH-61(v.3)

Introduced by: Rep. Zeno Edwards
Summary by: Robin Johnson
Committee Counsel

SUMMARY: ***Recommended by the Public Health Study Commission, Sections 1-14 of this bill would amend North Carolina's communicable disease control laws to allow public health officials to prepare for and respond to suspected public heath threats that may be caused by an act of terrorism using nuclear, biological, or chemical agents. The bill would expand the authority of the State Health Director and local public health officials to conduct surveillance and investigate cases of an illness or condition caused by a suspected communicable disease outbreak or an illness, disease or other health hazard resulting from a suspected terrorist attack. The bill also would provide for coordination between the Secretary of Crime Control and Public Safety and the State Health Director regarding emergency operations and public health matters. The bill also would require the State Veterinarian to notify the State Health Director and the Director of the Division of Environmental Health in DENR of any reports indicating a potential outbreak of a disease or condition that can be transmitted to humans. Finally the bill would authorize the release of confidential emergency medical data to the State Health Director for the purposes of protecting public health.***

The PCS makes clarifying changes and adds a new Section 15, which would direct the North Carolina Medical Care Commission to adopt rules to establish education standards and criteria of persons trained to administer lifesaving treatment for adverse reactions to agents that might cause anaphylaxis.

The bill, if enacted, would become effective October 1, 2002.

CURRENT LAW: North Carolina public health laws provide the State Health Director and local health directors with legal authority to control and prevent reportable communicable diseases and to protect against environmental hazards in partnership with hospitals, nursing homes, schools, physicians, laboratories, emergency medical services providers, and other health care providers. Subsequent to the terrorist attacks of September 11, 2001, and the subsequent release of anthrax spores through the mail in October of 2001, the State's public health laws were reviewed and evaluated as to whether the laws provide sufficient legal authority to the State Health Director and other public health officials to investigate and respond to suspected public heath threats resulting from the use of biological, nuclear or chemical agents. Despite the fact that all of the infectious agents identified by the Centers for Disease Control as agents for bioterrorism planning (e.g., anthrax, botulism, plague, smallpox, tularemia, and certain viral hemorrhagic fevers) fall within the scope of North Carolina's current communicable disease control law, it was determined that the laws are not broad enough to cover public health threats and other health hazards that may result from use of biological, chemical or nuclear agents.

Gaps in the current law were identified and legislation was presented to the Public Health Study Commission, which then recommended the bill to the General Assembly. The proposed legislation is based on The Model State Emergency Health Powers Act, prepared last Fall by the Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities for the Centers for Disease Control and Prevention and in collaboration with the National Governors Association, National Conference of State Legislatures, Association of State and Territorial Health Officials, National Association of City and County Health Officers, and National Association of Attorneys General.

The PCS includes clarifying changes proposed by the Department of Health and Human Services.

BILL ANALYSIS: The following is a Section-by-Section analysis of this PCS. A bolded notation i made where the PCS is different from the Second Edition.

Section 1 – Reasonable Suspicion of Bioterrorism: Under current communicable disease control laws, the Commission for Health Services adopts rules as to which communicable diseases must be reported by which entities. Physicians, schools, clinical laboratories, etc., are required to report all cases of a communicable disease or condition to the local health director. The legal definition of "communicable disease" is an illness caused by an infectious agent such as a virus or bacterium, that can be transmitted from person to person, from an animal to a person, through an intermediate host or vector, or through the inanimate environment. Currently the list of reportable diseases includes 61 communicable diseases and conditions. A "communicable condition" is when a person has been infected with a communicable agent but does not have symptoms of disease. Local health directors then investigate reported cases and ensure that control measures are in place to prevent the spread of the disease. The State Health Director and local health directors have the authority to examine patient records pertaining to reportable communicable diseases and may exercise isolation or quarantine authority in appropriate circumstances.

Section 1 would authorize the State Health Director to undertake an investigation upon a reasonable suspicion that a public health threat may exist as a result of an act of terrorism using nuclear, biological, or chemical agents. It would authorize the State Health Director to take steps to determine the possible exposure to nuclear, biological or chemical agents of persons, property or animals and may restrict access to persons, animals or property suspected of being infected or contaminated. If the State Health Director determines that a threat does in fact exist, the State Health Director must notify the Secretary of Crime Control and Public Safety.

The PCS inserts "biological" on page 2, lines 7 and 12.

Section 2(a) and Section 2(b) make conforming changes to current law to conform to the addition of a new Article 22 "Bioterrorism".

Sections 3, 4 and 5 – Quarantine Authority: Currently, local health directors and the State Health Director have isolation and quarantine authority in order to prevent the spread of communicable diseases or conditions. Isolation applies to persons who actually have a communicable disease or condition, and quarantine applies to persons who have been or are reasonably suspected of having been exposed to a communicable disease or condition. Quarantine also applies to individuals who have not received legally required immunizations when the local health director determines that immunizations are required to control the outbreak. Isolation and quarantine authority may only be exercised when and for so long as the public health is endangered, and only when all other reasonable means for correcting the problem have been exhausted and no less restrictive alternative exists. When a person or animal is quarantined, their freedom of movement is restricted. An area of land or a facility is quarantined by restricting access by persons or animal to the area of land or facility.

These sections would repeal G.S. 130A-133 and move its definitions to G.S. 130A-2 in order to expand their applicability to the entire Chapter. The sections would also amend G.S. 130A-2(7a) and G.S. 130A-145 to expand the public health quarantine and isolation authority with respect to communicable disease control by (1) providing that an area of land or a facility that is suspected of being contaminated with an infectious agent may be quarantined and (2) by allowing an individual that is not immunized against any communicable disease to be quarantined if the State Health Director or a local health director determines that such immunizations are required to control an outbreak of that disease. In the event of such

quarantine, the bill would provide that only persons authorized by the State Health Director or who are otherwise authorized to enter may access the quarantined area or facility. **The PCS extends the applicability of definitions under the Article governing communicable diseases.**

Section 6- Abatement Authority: Current law authorizes the Secretary of DHHS or a local health director to enter upon property after a reasonable attempt to notify the owner of the property and take any action necessary to abate an imminent hazard. The law places an automatic lien on the property to allow DHHS to recover the costs associated with the abatement.

The bill would expand abatement authority by authorizing the Secretary or local health director to order the owner, lessee, operator or other person in control of the property to abate the hazard. Failure to comply with the order may result in a civil action in superior court.

Section 7 - Access to Confidential Health Information: Currently access to confidential health information, including confidential medical records, is limited to investigations of reportable communicable diseases or conditions.

The bill would amend current law to add a new section to provide the State Health Director or local health directors access to a broader array of confidential health information related to any communicable disease or condition or if necessary to investigate a suspected public health threat that may be caused by an act of terrorism using biological, chemical or nuclear weapons. Specifically, this section will:

1. Encourage health care providers, **persons in charge of a health care facility (added by the PCS),** and units of State and local government to report events that might indicate the existence of an illness, condition, or health hazard that may have been caused by an act of terrorism using nuclear, biological or chemical agents.
2. Authorize the State Health Director to issue a temporary order (no longer than 90 days) requiring certain health care providers to make reports for a specific period of time that might indicate a suspected illness, condition, or health hazard that may have been caused by an act of terrorism using nuclear, biological or chemical agents.
3. Authorize the State Health Director or local health director to obtain and review copies of confidential medical records that pertain to (1) a report of a suspected outbreak of a communicable disease or an illness or condition that may have resulted from use of a nuclear, biological or chemical weapon of mass destruction or (2) the prevention or treatment of a communicable disease or condition, or (3) to the investigation of a disease or health hazard that presents a clear danger to the public health as determined by the State Health Director.
4. Protect the confidentiality of health information received by the State Health Director or local health director and prohibit release unless authorized by law, made to another federal, state, or local public health agency for the purpose of preventing or controlling a public health threat, or made to a court or law enforcement official for that purpose. **The PCS adds this provision.**

The PCS also makes several technical changes to Section 7 and adds the definition of "health care facility" in subsection (f).

Section 8 – Secretary of DHHS Duties: Section 8 makes conforming changes to the powers and duties of the Secretary of DHHS and deletes a limitation in current law that limits the Secretary of DHHS access to only those records identified by joint agreement between a DHHS physician and the patient's attending physician or the health care facility's chief of staff or chief administrator.

Section 9- Confidentiality of Records of Reportable Diseases: This Section would amend current law regarding when disclosure of confidential health information that includes the identity of a person who has or may have a reportable disease is allowable. The bill clarifies that such disclosure by DHHS or a local health department is **allowable when made under any law (PCS adds this)** and is allowable to law enforcement officials when necessary to assist with the enforcement of G.S. 14-288.22 (unlawful use of a weapon of mass destruction), or when law enforcement assistance is sought to prevent or control the spread of a particular disease or condition.

Section 10 – Confidentiality of Information Published by the Department of Agriculture: This section would amend current law pertaining to cooperation between federal, State and local governments in agricultural work to restrict disclosure to the public of animal diagnostic tests that identify the owner of the animal without the permission of the owner *unless* the State Veterinarian determines that the disclosure is necessary to prevent the spread of an animal disease or to protect public health.

Section 11 – Control of Animal Disease:Current law requires veterinarians to report to the State Veterinarian the existence of infections diseases in livestock and poultry. Section 11 would require the State Veterinarian to notify the State Health Director and the Director of the Division of Environment Health in DENR when a report is received that indicates an occurrence or potential outbreak of specified diseases that may be transmitted to humans and that may have been caused by a terrorist act. **The PCS enumerates the specific diseases that must be reported.**

Section 12-Measles Immunization: The bill would delete an outdated statute that requires a second measles immunization when a child is immunized before the child's first birthday.

Section 13 – Confidentiality of Patient Information: Section 13 would amend current law governing the release of medical records compiled and maintained in connection with emergency medical services or the statewide trauma system to authorize the release of such information **when authorized by any law. (The PCS authorized this release when made to the State Health Director for the purpose of protecting the public health.)**

Section 14 – State Emergency Management Act: The bill would add a new provision to this Act to require coordination between the State Health Director and the Secretary of Crime Control and Public Safety in revising the State Emergency Operations Plan to address public health matters in emergency management activities. **The PCS moves this provision from Section 3 to Section 14.**

Section 15 – Standards for Lifesaving Treatment: Currently, the North Carolina Medical Care Commission is required to adopt rules to establish education standards and criteria of persons trained to administer lifesaving treatment for adverse reactions to insect stings. **The PCS adds Section 15, to amend this directive so that these rules apply to training for persons trained to administer lifesaving treatment for adverse reactions to agents that might cause anaphylaxis.** Anaphylaxis is an allergic reaction that usually is associated with an inability to breathe.

Section 16 makes the bill effective October 1, 2002.

H1508-SMRH-03: Linda Attarian, Research Division Staff Attorney, substantially contributed to this summary.

VISITOR REGISTRATION SHEET

Judiciary II — 7-2-02
Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Alice Garland	EC
Bill Scoggin	Kennedy Covington
Dennis McSurely	Personal Legal Plans, Inc
Richard Berman	CCPS
Amy Mc	CCPS
J. Hyman	FOP
Phil Telfer	Gov's Office
Bob Lawing	HHS
J. R. Macormack	DHHS
Amy Wynne	ACLU-NC
John Nicholl	Law Student
Steve Tepper	NC Med Society
Kim Westbrook	UTU
Glenn Lamm	UTU
Joanne Stevens	nursing
Wm C McKinney	NC Dog J
Ann Lore	OUHS
Roz Savell	NCCCC
Jerry M. Wossio	PFFP-NC
Richard L. O'Brien	Prof. Fire Fighters & Paramedics of NC
Andy Romanet	NCLM
Jim Lowry	NC Utility Contractors Assn
Amy To Horne	NCMS
Rob Schofield	NCJ CDC

VISITOR REGISTRATION SHEET

Judiciary II — Name of Committee

7-2-02 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	NCBA
	City of Hickory
David McCoy	NCDA&CS
David Marshall	NCDA+CS
Bill Welsh	NCATL
Katie Hunter	NC StateWatch
	DJJDP
	NCFPC
Michelle Frazier	NC Bar Ass'n
	NC Bar Assn
Katie Mills	Rep. Culpepper
Dean Shatley	Speaker Blake
Ken Melton	Alley Associates, Inc
Dick Taylor	NCATL
Tye Hunter	IDS
Doug Lassiter	NCSTA
Deborah Rowe	NCALHD / NCPHA
Brad Krehely	NC Gen Assembly - Research
	AP
	Agriculture
Thomas A Yates	WYETH PHARMACEUTICALS
	Wyeth Pharmaceuticals
Matt Bennett	Americans for Gun Safety
BRUCE THOMPSON	PARKER POE ADAMS & BERNSTEIN
David Munday	SHP - Zone Operations Raleigh

AGENDA
Judiciary II

Tuesday, July 9, 2002
10:00 a.m.
Room 1228 LB

Rep. Phil Baddour, Chair

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD

HB 1612 **Stop Unwanted Telephone Solicitations**
Representative Baddour

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

July 9, 2002

The House Committee on Judiciary II met on Tuesday, July 9, 2002 in room 1228 LB at 10:00 a.m. The following members were present: Rep. Baddour, Chair and Reps. Bowie, Culpepper, Decker, Gulley, Haire, Hall, Jeffus, Justus, Miller, Miner, Pope, Sherrill, Weiss and Willingham. Rep. Redwine, bill co–sponsor was additionally present. Staff including Tracy Dixon, Jeff Hudson and Robin Johnson were in attendance. A Visitor Registration sheet is attached and made part of these minutes.

Chairman Baddour called the meeting to order. John Doah or Orange County (Rep. Hackney) and Philip Boyne of Wake County (Rep. Hensley) served as pages. The following bill was considered:

The PCS for HB 1612, A BILL TO BE ENTITLED AN ACT TO ESTABLISH AND MAINTAIN A NO-CALL REGISTRY FOR CONSUMERS WHO WISH TO STOP UNWANTED TELEPHONE SOLICITATION CALLS AND TO INCREASE THE PROTECTIONS FOR CONSUMERS IN TRANSACTIONS INITIATED BY TELEMARKETERS was adopted upon the motion of Rep. Weiss. Rep. Redwine, bill co–sponsor with Rep. Baddour, explained his personal experience that lead to his support of the bill. Rep. Baddour noted the good work done by Josh Stein of the Attorney General's Office on this bill and recognized Attorney General, Roy Cooper. AG Cooper told his story of receiving a telemarketing call in less than five minutes of having a phone line connected to his new home. He noted it was time for North Carolina to following the 26 other states in establishing this no call registry.

Rep. Baddour introduced Ralph Campbell, State Auditor, who explained his story of receiving numerous telemarketer calls during surgery recovery. Upon Rep. Baddour's request, Jeff Hudson, Committee Counsel, explained the PCS. Following this explanation Rep. Baddour stated each person who had signed the sheet indicating their interest in speaking on the bill would have three minutes to state their position and recommended changes to the committee.

Orage Quarles, publisher of the *News & Observer*, stated his concern that the part of the bill dealing with newspapers violated the constitution. Rep. Pope and Mr. Quarles both asked for a complete exemption for newspapers from the bill.

Eddie Spaes, N.C. Association of Realtors spoke in opposition to the bill, as written. He noted his concern with the inability of realtors to call preexisting customers under this bill and asked for an exemption to calls that create a face–to–face meeting. He additionally spoke to what he believed were steep fees and asked for a provision accommodating human error.

Robin Warren, Bank of America, stated they support workable do not call legislation but they do not support HB 1612 as written. She spoke on the link between good customer service and legitimate business calls.

Richard Hatch of the AARP spoke in support of the bill.

The meeting adjourned at 10:50 a.m. to reconvene at 1:00 p.m.

The House Committee on Judiciary II reconvened on Tuesday, July 9, 2002 in room 1228 LB at 1:00 p.m. The following members were present: Rep. Baddour, Chair and Reps. Bowie, Decker, Gulley, Haire, Hall, Jeffus, Justus, Miller, Miner, Pope, Sherrill, Weiss and Willingham. Staff including Tracy Dixon, Jeff Hudson and Robin Johnson were additionally in attendance.

Rep. Baddour called the meeting to order and continued to recognize speakers. Ann Johnson, Governor's Advisory Commission on Aging and delegate to the Senior Tar Heel Legislature, spoke in support of the bill and told a story of a stroke victim's caregiver experiencing distraction from telemarketers.

Rep. Baddour urged the committee to keep their remarks to two to three minutes.

Kevin Patterson, United Way, spoke in support of the bill and the nonprofit exemption.

Michael Loyak of Gryphon Networks took a neutral position on the bill but suggested a fee for the service of being added to the no call list.

Dwight Allen, N.C. Telephone Cooperative Commission stated they do not support the bill in its current form and asked for an exemption for existing business relationships. He additionally noted his concern over the authority given to the Attorney General in the bill.

On behalf of the N.C. Consumer's Council, Brad Lamb stated he favored a strong comprehensive bill for consumers to choose what comes in their home.

Ed Turlington of Brooks Pierce law firm, representing the Magazine Publishers Association of America among others, noted the existing state laws that dealt with telemarketing. He stated the position of those he represents was not to fight a no call list but that he thought the state and federal laws were enough. He stated opposition to the bill as currently written and suggested an existing business exemption.

Dorothy Crocker, Speaker of the Senior Tar Heel Legislature, spoke on the irritation of telemarketing calls and the susceptibility of the elderly to telemarketer scams.

Leslie Bevacqua, NCCBI, noted that the legislation as written was business unfriendly.

Dennis McGary, Personal Legal Plans, stated he used the phone to arrange meetings not to sell products and stated this bill would put him out of business. He asked for an exemption for appointment–setting calls.

With little time remaining for the committee meeting, Rep. Baddour asked the remaining speakers to keep their comments and suggestions to one or two sentences to accommodate all those who would like to be heard on the bill.

Ben Douglas, N.C. Senior Association stated consumers needed the protection of the bill. David Wornoff, publisher of *the Pilot*, stated opposition to the bill and suggested an exemption for newspapers. Karen McGuirt of Personal Legal Plans referred to the impact this bill would have in putting people out of work. David Bell, First Protective Insurance Providers, pointed to the fact that his business could not survive without new clients. As a consumer, Noreen Esposito, stated that telemarketers do not respond to the consumer's wishes to stop calling. David Anders of the Professional Firefighters Association spoke in opposition to the bill. Jane Feather, Consumer Protection Specialist, CPD of AGO talked about the passion consumers had regarding this issue. Andy Ellen, N.C. Retail Merchants Association, stated his concern over the provisions for an existing business relationship with regards to the required signed contracts. He also noted that the violations were set too high. On behalf of his wife who had hip surgery, Bob Jackson, stated the need to protect citizens from intrusive calls.

Rep. Baddour recognized AG Cooper to make closing remarks. Attorney General Cooper stated he recognized the cry to stop unwanted telemarketing and stated he would continue to work with everyone on this bill.

As part of these minutes copies of the PCS, original bill, bill summary, list of exemptions by state, comparison of no–call list by state and a newspaper article are attached. Additionally attached are comments from AG Cooper, Errol Copilevitz on behalf of Copilevitz & Canter, LLC, the N.C. Senior Tar Heel Legislature, the N.C. Press Association and the Professional Firefighters of Greensboro.

The meeting adjourned at 1:53 p.m.

Representative Philip A. Baddour, Jr.
Chairman

Tracy Dixon
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1612
PROPOSED COMMITTEE SUBSTITUTE H1612-PCS4254-SB-62

Short Title: Stop Unwanted Telephone Solicitations. (Public)

Sponsors:

Referred to:

June 11, 2002

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH AND MAINTAIN A NO-CALL REGISTRY FOR CONSUMERS WHO WISH TO STOP UNWANTED TELEPHONE SOLICITATION CALLS AND TO INCREASE THE PROTECTIONS FOR CONSUMERS IN TRANSACTIONS INITIATED BY TELEMARKETERS.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly of North Carolina makes the following findings:

(1) The use of the telephone to market goods and services to the home is now pervasive due to the increased use of cost-effective telemarketing technologies and techniques.

(2) While some consumers enjoy and benefit from unsolicited telemarketing contacts from legitimate telemarketers, many others object to these contacts as an intrusive invasion of an individual's right of privacy in the home.

(3) In addition, the proliferation of unsolicited telemarketing calls, especially during the evening hours, creates a nuisance and a disturbance upon the home and family life of North Carolina residents during a time of day used by many families for traditional family activities.

(4) North Carolina residents should have the freedom to choose whether or not to permit telemarketers to contact them.

(5) Individual privacy rights, personal safety, prevention of fraud, and commercial freedom of speech and trade must be balanced in a way that protects the privacy of individuals and permits legitimate telemarketing practices.

(6) Legitimate telemarketers have no interest in continuing to invade the privacy of those consumers who affirmatively express their objections to such contact.

(7) Many North Carolina consumers who have transacted business with firms that employ telemarketing have experienced problems with their checking and credit card accounts being debited before they can evaluate the terms and conditions of the transaction, before they can evaluate the merchandise or service to be delivered, or without their agreement to enter into the transaction or authorize such transactions in the first place.

(8) New technologies that make telemarketing more cost-effective also allow for the creation of a State No-Call Registry through which North Carolina consumers can easily register their desires not to receive further telemarketing calls and telemarketers can easily access and employ lists of consumers who have registered those desires.

(9) The public interest requires an efficient mechanism for North Carolina residents to notify telemarketers that their telephone numbers cannot be called and additional protections for North Carolina residents who enter into consumer transactions initiated through telemarketing calls.

SECTION 2. G.S. 75-30.1 reads as rewritten:

"**§ 75-30.1. Restrictions on telephone solicitations.**

(a) For purposes of this section:

(1) 'Residential telephone subscriber' means a person who subscribes to residential telephone service from a local exchange company and uses that service primarily for residential purposes, or the persons living or residing with that person.

(2) 'Telephone solicitation' means a voice ~~communication~~ communication, whether prerecorded or live, or a facsimile over a telephone line to a residential telephone subscriber for the purpose of soliciting or encouraging the purchase or rental of, or investment in, property, goods, or ~~services, or~~ services; for the purpose of obtaining information that will or may be used for that ~~purpose,~~ purpose; for the purpose of soliciting or encouraging a residential telephone subscriber's participation in any contest, sweepstakes, raffle, or lottery, whether legal or illegal; or for the purpose of obtaining a charitable donation.

(2a) Notwithstanding subdivision (2) of this subsection, 'telephone solicitation' ~~but~~ does not include any of the following telephonic communications:

a. To any person with that person's prior express invitation or ~~permission;~~ permission.

b. To any person ~~with whom the telephone solicitor has an established business relationship; or~~ in connection with an

existing debt or contract for which payment or performance has not been completed at the time of the call.

c. By or on behalf of a tax-exempt nonprofit ~~organization.~~ organization when calls are being placed by direct employees of the organization, or volunteers without remuneration from the organization.

d. To any person when the sole purpose of the call is to obtain a reference on someone other than the intended recipient of the call.

e. By or on behalf of a person, business, or other legal entity that employs fewer than 10 full or part-time direct employees; provided that the telephonic communications are made by the direct employees and the direct employees collectively make or attempt to make no more than 10 unsolicited telephonic communications to residential telephone subscribers per week.

(3) 'Telephone solicitor' means any ~~business~~ person, business, or other legal entity doing business in this State ~~that~~ that, directly or through salespersons or agents, makes or attempts to make telephone solicitations or causes telephone solicitations to be made.

(4) 'Doing business in this State' means to make or cause to be made any telephone solicitation to residential telephone subscribers, whether the telephone solicitations are made from a location inside North Carolina or outside North Carolina.

(b) No telephone solicitor shall place any calls to a residential telephone subscriber's number if that residential telephone subscriber's telephone number appears on the latest edition of the No-Call Registry under G.S. 75-30.2 or if the residential telephone subscriber previously has communicated to that telephone solicitor a desire to receive no further telephone solicitations from that telephone solicitor.

(b1) Any person who makes a telephonic communication described in subdivision (2a) of subsection (a) of this section or ~~Any~~ any telephone solicitor who makes a telephone solicitation to a residential telephone subscriber whose telephone number is not listed in the latest edition of the No-Call Registry or who previously has not communicated to the telephone solicitor a desire to receive no further telephone solicitations from that telephone solicitor shall:

(1) At the beginning of the call, state clearly the identity of the business, individual, or other legal entity initiating the call, and identify the person making the call by that person's name.

(2) Upon request, provide the telephone subscriber with the telephone number or address at which the person or entity may be contacted.

(3) Terminate the call if the person does not consent to the ~~call.~~call, unless the call is in connection with an existing debt or contract for which payment or performance has not been completed at the time of the call.

(4) If the person called requests to be taken off the contact list of the telephone solicitor, take all steps necessary to remove within 30

business days that person's name and telephone number from the contact records of the business, individual or other legal entity initiating the ~~call.~~call, unless the call is in connection with an existing debt or contract for which payment or performance has not been completed at the time of the call.

(c) Every telephone solicitor who makes telephone solicitations in this State shall implement in-house systems and procedures designed to prevent further calls to ~~persons~~ any person who ~~have~~ has asked not to be called ~~again. Compliance with 47 C.F.R. § 64.1200(e) of the Federal Communications Commission's Restrictions on Telephone Solicitation constitutes compliance with this subsection:~~ again or who has placed a telephone number in the No-Call Registry.

~~(d) No telephone solicitor shall initiate a call to a residential telephone subscriber who has communicated to that telephone solicitor a desire to be taken off the contact list of that solicitor.~~

(e) No telephone solicitor shall initiate a call to a residential telephone subscriber after 9:00 P.M. or before 8:00 A.M. at the called party's location.

(f) No telephone solicitor who makes a telephone solicitation to the telephone line of a residential telephone subscriber in this State shall knowingly use any method to block or otherwise circumvent that subscriber's use of a caller identification service. A telephone solicitor who makes a telephone solicitation to the telephone line of a residential subscriber through the use of a private branch exchange (PBX) or other call-generating system that is not capable of transmitting caller identification information shall not be in violation of this subsection. No provider of telephone caller identification services shall be held liable for violations of this subsection committed by other persons or entities.

(g) Every telephone solicitor who makes telephone solicitations in this State shall keep a record for a period of 24 months from the date a call is placed of the legal name and any fictitious name used, resident address, telephone number, and job title of each person who places a telephone solicitation for that telephone solicitor. If callers for a telephone solicitor use fictitious names, each fictitious name shall be traceable to only one specific caller.

(g1) Nothing in this section prohibits a telephone solicitor from contacting by letter, telegram, e-mail message, or other nontelephonic notice a residential telephone subscriber whose telephone number appears on the No-Call Registry to obtain the residential telephone subscriber's express written permission allowing the telephone solicitor to make telephone solicitations. Express invitation or permission does not include any consent or permission included in a contract of adhesion. Such invitation or permission must be registered by the residential telephone subscriber on an independent form. In any dispute regarding whether a residential telephone subscriber has provided this express written permission, the telephone solicitor has the burden of proving that the residential telephone subscriber has provided this permission by producing the original or a facsimile document, signed by the residential telephone subscriber, evidencing that permission.

(g2) Nothing in this section prohibits a telephone solicitor from advertising in a general medium or contacting by letter, telegram, e-mail message or other nontelephonic notice a residential telephone subscriber whose telephone number appears on the No-Call Registry to encourage the person to initiate telephonic communications to the telephone solicitor.

(h) The Attorney General may investigate any complaints received alleging violations of ~~subsections (b) through (g) of this section.~~section, G.S. 75-30, or G.S. 75-30.2. If, after investigating a complaint, the Attorney General finds that there has been a violation of ~~subsections (b) through (g) of this section,~~section, G.S. 75-30, or G.S. 75-30.2, the Attorney General may bring an action to impose ~~a civil penalty~~ civil penalties and to seek any other appropriate ~~relief,~~ relief pursuant to this Chapter, including equitable relief to restrain the ~~violation pursuant to G.S. 75-14.~~ violation. Actions for civil penalties under this section shall be consistent with the provisions of ~~G.S. 75-15.2~~ this Chapter except that the penalty imposed for a violation of this section shall ~~not exceed five hundred dollars ($500.00) per violation.~~ be:

(1) Five hundred dollars ($500.00) for the first violation, one thousand dollars ($1,000) for the second violation, and five thousand dollars ($5,000) for the third and each subsequent violation, or

(2) One hundred dollars ($100.00) for each violation; provided that it can be shown that a telephone solicitor has established and implemented in-house systems and procedures designed to prevent further calls in compliance with G.S. 75-30.1(c) or G.S. 75-30.2, has trained its employees and independent contractors in those in-house systems and procedures, has maintained and recorded lists or persons who may not be contacted, and the violations are rare and a result of mistake.

(i) A ~~person~~ residential telephone subscriber who has received ~~more than one~~ a telephone solicitation ~~within any 12-month period by~~ from or on behalf of ~~the same~~ a telephone solicitor in violation of ~~subsections (b) through (g) of this section~~ section, G.S. 75-30, or G.S. 75-30.2 may bring any of the following actions in the General Court of Justice:

(1) An action to enjoin further ~~violations.~~ violations by the telephone solicitor.

(2) An action to ~~recover~~ recover: ~~five hundred dollars ($500.00) in damages for each violation;~~

a. Five hundred dollars ($500.00) for the first violation, one thousand dollars ($1,000) for the second violation, and five thousand dollars ($5,000) for the third and each subsequent violation, or

b. One hundred dollars ($100.00) for each violation; provided that it can be shown that a telephone solicitor has established and implemented in-house systems and procedures designed to prevent further calls in compliance with G.S. 75-30.1(c) or G.S. 75-30.2, has trained its employees and independent contractors in those in-house systems and procedures, has maintained and

recorded lists of persons who may not be contacted, and the violations are rare and a result of mistake.

In an action brought pursuant to this ~~section,~~section, G.S. 75-30, or G.S. 75-30.2, a prevailing plaintiff shall be entitled to recover reasonable attorneys' fees and the court may award reasonable attorneys' fees to a prevailing defendant if the court finds that the plaintiff knew, or should have known, that the action was frivolous and malicious.

(j) A citizen of this State is also entitled to bring an action in the General Court of Justice to enforce the private rights of action established by federal law under 47 U.S.C. § 227(b)(3) and 47 U.S.C. § 227(c)(5).

(k) Actions brought by residential telephone subscribers pursuant to ~~subsections (i) and (j) of~~ this ~~section~~ section, G.S. 75-30, or G.S. 75-30.2 shall be tried in the county where the plaintiff resides at the time of the commencement of the action."

SECTION 3. G.S. 75-30.1(f) reads as rewritten:

"(f) No telephone solicitor who makes a telephone solicitation to the telephone line of a residential telephone subscriber in this State shall knowingly use any method to block or otherwise circumvent that subscriber's use of a caller identification service. ~~A telephone solicitor who makes a telephone solicitation to the telephone line of a residential subscriber through the use of a private branch exchange (PBX) or other call-generating system that is not capable of transmitting caller identification information shall not be in violation of this subsection.~~ No provider of telephone caller identification services shall be held liable for violations of this subsection committed by other persons or entities."

SECTION 4. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-30.2. No-Call Registry.**

The Attorney General shall establish and maintain a No-Call Registry containing the telephone numbers of residential telephone subscribers who do not wish to receive telephone solicitations at those numbers. The No-Call Registry shall be operated as follows:

(1) The telephone number of a residential telephone subscriber shall be placed in the No-Call Registry immediately upon receipt of a request submitted by the residential telephone subscriber pursuant to registration procedures established by the Attorney General. The residential telephone subscriber's number shall remain in the No-Call Registry until the residential telephone subscriber notifies the Attorney General, in accordance with these registration procedures, that it should be removed, or until a local exchange company, as defined in G.S. 62-3, or a competing local provider, as defined in G.S. 62-3, has notified the Attorney General that the telephone number has been disconnected.

(2) Not less than 10 days before commencing telephone solicitations in this State, a telephone solicitor shall register pursuant to G.S. 66-261 and obtain from the Attorney General a copy of the most up-to-date quarterly edition of the No-Call Registry. On the first business day

following each January 1, April 1, July 1, and October 1 of each year, the Attorney General shall produce and make available to registered telephone solicitors a revised, quarterly edition of the No-Call Registry. A telephone solicitor has 30 days to use the updated No-Call Registry to remove residential telephone subscribers from its telemarketing list. A telephone solicitor that relies upon any version of the No-Call Registry beyond the quarter for which it was produced and issued is in violation of this section.

(3) The Attorney General shall make the latest edition of the No-Call Registry available to the registered telephone solicitor in written form upon request, or in whatever electronic form that the Attorney General deems appropriate and cost-effective.

(4) The Attorney General may contract with an agent to establish and operate the No-Call Registry under this section so long as all of the following are satisfied:

a. The agent has demonstrated the capacity to maintain and operate such a registry.

b. The Attorney General, upon entering into a contract under this section, has ultimate authority over the agent for the approval of procedures for the establishment, maintenance, and dissemination of the listings in the No-Call Registry.

(5) The Attorney General shall arrange, if the Attorney General determines it is technically feasible and economically practicable, to transfer into the No-Call Registry the numbers of all residential telephone subscribers who have enrolled in any national do-not-call registries that may be established and operated by agencies of the United States government. The Attorney General shall also arrange to transfer information from the No-Call Registry under this section to such federal agencies so that the wishes of the residential telephone subscribers are recorded in those national do-not-call registries.

(6) No telephone solicitor shall sell, assign, transfer, or convey any copy of the No-Call Registry to parties other than its employees, its wholly owned subsidiaries, or any independent contractors operating within one location or franchise with whom the telephone solicitor has a business relationship. If a telephone solicitor utilizes other telephone solicitors to make telephone solicitations for it in North Carolina on a subcontract, commission, partnership, or similar basis, that other telephone solicitor shall register under G.S. 66-261 and shall procure and utilize its own copy of the current No-Call Registry from the Attorney General in accordance with the provisions of this section. No telephone solicitor may use the information on the No-Call Registry for any purpose other than to remove residential telephone subscribers from telephone call lists and to prevent calls from being placed to telephone numbers listed in the No-Call Registry.

(7) No information compiled and maintained in the No-Call Registry is a public record under Chapter 132 of the General Statutes. Information contained in the No-Call Registry shall be used only for complying with or enforcing the requirements of this section.

(8) The Attorney General shall produce a bill insert, pamphlet, or other document that notifies consumers of the existence of the No-Call Registry and provides information to consumers on how to use it to object to receiving telephone solicitations. Local exchange companies shall distribute the insert, pamphlet, or other document pursuant to G.S. 62-54."

SECTION 5. G.S. 62-54 reads as rewritten:

"**§ 62-54. Notification of opportunity to object to telephone solicitation.**

The Commission shall require each local exchange company and each competing local exchange company certified to do business in North Carolina to notify all persons who subscribe to residential service from that company of the provisions of ~~G.S. 75-30.1,~~G.S. 75-30.1 and G.S. 75-30.2, of the federal laws and regulations allowing consumers to object to receiving telephone solicitations, and of programs made available ~~by private industry~~ that allow consumers to have their names removed from telemarketing lists, by ~~enclosing that information,~~ enclosing, at least ~~annually,~~two times per calendar year, information to residential telephone subscribers about the existence of and the opportunity to subscribe to the No-Call Registry established pursuant to G.S. 75-30.2. ~~in every telephone bill mailed to residential customers.~~ This information shall be disseminated once each year by a carrier in the form of a bill insert, pamphlet, or other document drafted pursuant to G.S. 75-30.2(8) and reprinted at the local exchange company's or competing local exchange company's expense. This information shall also be disseminated once each year by the carrier via bill messages or inserts in a manner chosen by the carrier with the approval of the Attorney General and not expressly prohibited by the Commission. The Commission shall also ensure that this information is printed in a clear, conspicuous manner in the consumer information pages of each telephone directory distributed to residential customers."

SECTION 6. G.S. 75-30 reads as rewritten:

"**§ 75-30. Automatic dialing and recorded message players; restriction on use of.**

(a) No person may make an unsolicited telephone call by the use of an automatic dialing and recorded message player ~~unless:~~unless all of the following conditions are satisfied:

(1) Such calling person is a ~~charitable, civic, political or~~ tax-exempt charitable or civic organization; a political party or political candidate; a governmental official; or is an opinion polling ~~organization~~ organization, ~~or a~~ radio station, television ~~station~~ station, or broadcast rating service conducting a public opinion ~~poll required by law; and~~ poll.

(1a) No part of the call is used to solicit or encourage the purchase or rental of, or investment in, property, goods, or services or to obtain

information that will or may be used to solicit or encourage the purchase or rental of, or investment in, property, goods, or services.

(2) Such calling person clearly identifies the nature of the call and the name and address of the calling organization.

(b) As an exception to subsection ~~(a)~~ (a) of this section, an unsolicited telephone call may be made by the use of an automatic dialing and recorded message player if the recorded message is preceded by an announcement made by a ~~human~~ live operator ~~who:~~who does all of the following:

(1) States the nature and length in minutes of the recorded ~~message; and~~message.

(2) Identifies the individual, business, group, or organization ~~calling; and~~calling.

(3) Asks ~~the called party whether he is willing to listen to the recorded message; and~~ for and receives the called party's prior approval to play the recorded message.

(4) ~~Disconnects~~ Promptly disconnects from the called party's line ~~if~~ once the called party ~~is unwilling to listen to the recorded message.~~hangs up or otherwise attempts to terminate the call.

(c) For the purpose of this ~~section~~ section, an automatic dialing and recorded message player shall be defined as any automatic equipment which incorporates a storage capability of telephone numbers to be called or a random or sequential number generator capable of producing numbers to be called and the capability, working alone or in conjunction with other equipment, of disseminating a prerecorded message to the telephone number called.

(d) For the purpose of this section, a telephone call shall be deemed to be unsolicited unless pursuant to a prior agreement between the parties the person called has agreed to accept such calls from the person ~~calling.~~ calling, and the person called has not subsequently expressed to the caller a desire not to receive further telephone solicitations in accordance with provisions of G.S. 75-30.1.

~~(e) Violation of this section shall be a Class 3 misdemeanor, punishable only by a fine of one hundred dollars ($100.00), for each occurrence.~~

(f) This section does not apply to calls made in connection with an existing debt or contract for which payment or performance has not been completed at the time of the call."

SECTION 7. Article 33 of Chapter 66 of the General Statutes reads as rewritten:

"Article 33.

"~~Telephonic Seller~~Telephone Solicitor Registration and Bond Requirement.

"**§ 66-260. Definitions.**

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

(1) 'Gift or prize' means any premium, bonus, award, or any other thing of value.

(1a) 'Inbound telephone solicitation' means a voice communication over a telephone line that is initiated by a prospective purchaser in response

to any unsolicited letter, telegram, e-mail message, or other notice that states any one or more of the following:

a. That the prospective purchaser has won, may have won, or may win any contest, sweepstakes, raffle, or lottery.

b. That the prospective purchaser may obtain or qualify for credit by contacting the telephone solicitor unless the telephone solicitor is a federally chartered bank, savings institution, or credit union or any bank, savings institution, or credit union properly licensed by the State or subject to federal regulating authorities.

(2) 'Item' means any good or any service. 'Item' includes coupon books, vouchers, or certificates that are to be used with businesses other than the ~~seller's~~telephone solicitor's business.

~~(3) 'Owner' means a person who owns or controls ten percent (10%) or more of the equity of, or otherwise has a claim to ten percent (10%) or more of the net income of, a telephonic seller.~~

(4) 'Person' includes any individual, firm, association, corporation, partnership, joint venture, or any other business entity.

(5) 'Principal' means an owner, a part-owner holding or controlling ten percent (10%) or more of the equity of, or otherwise having a claim to ten percent (10%) or more of the net income of, a telephone solicitor, an executive officer of a corporation, a general partner of a partnership, a sole proprietor of a sole proprietorship, a trustee of a trust, or any other individual with similar supervisory functions with respect to any person.

(6) 'Purchaser' or 'prospective purchaser' means ~~a person who is solicited to become obligated to a telephonic seller or to make any donation or gift to any person represented by the telephonic seller.~~ the residential telephone subscriber, as defined in G.S. 75-30.1(a)(1), whose telephone number is called or used in a telephone solicitation, and includes any member of the residential telephone subscriber's household who is a party to any telephone solicitation transaction.

~~(7) 'Room operator' means any principal, employee, or agent responsible for the operational management and supervision of facilities from which telephonic sales calls are made or received.~~

~~(8) 'Salesperson' means any individual employed, appointed, or authorized by a telephonic seller, whether referred to by the telephonic seller as an agency, representative, or independent contractor, who attempts to solicit or solicits a sale on behalf of the telephonic seller.~~

~~(9) 'Secretary' means the Office of the Secretary of State.~~

(10) 'Telephone solicitation' or 'attempted telephone solicitation' ~~means any telephonic communication designed to persuade any person to purchase goods or services, to enter a contest, or to contribute to a charity or a person represented to be a charity, regardless of whether~~

~~the telephone call initiating the solicitation is placed by the (i) telephonic seller or (ii) a person responding to any unsolicited notice or notices sent or provided by or on behalf of the seller, which notice or notices represent to the recipient that he or she has won a gift or prize, that the recipient may obtain or qualify for credit by contacting the seller, or that the seller has buyers interested in purchasing the recipient's property.~~ has the same meaning as telephone solicitation in G.S. 75-30.1.

(11) ~~'Telephonic seller' or 'seller' means a person who, directly or through salespersons, causes a telephone solicitation or attempted telephone solicitation to occur. 'Telephonic seller' and 'seller' do not include any of the following:~~

~~a. A securities 'dealer' within the meaning of G.S. 78A-2(2) or a person excluded from the definition of 'dealer' by that provision; a 'salesman' within the meaning of G.S. 78A-2(9); an 'investment adviser' within the meaning of G.S. 78C-2(1) or a person excluded from the definition of 'investment adviser' by that provision; or an 'investment adviser representative' within the meaning of G.S. 78C-2(3); provided that such persons shall be excluded from the terms 'telephonic seller' and 'seller' only with respect to activities regulated by Chapters 78A and 78C.~~

~~b. Any person conducting sales or solicitations on behalf of a licensee of the Federal Communications Commission or holder of a franchise or certificate of public convenience and necessity from the North Carolina Utilities Commission.~~

~~c. Any insurance agent or broker who is properly licensed by the Department of Insurance and who is soliciting within the scope of the agent's or broker's license or any employee or independent contractor of an insurance company licensed by the Department of Insurance conducting sales or solicitations on behalf of that company.~~

~~d. Any federally chartered bank, savings institution, or credit union or any bank, savings institution, or credit union properly licensed by the State or subject to federal regulating authorities.~~

~~e. Any organization that is exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section, or that is organized exclusively for one or more of the purposes specified in section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section and that upon dissolution shall distribute its assets to an entity that is exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section, the United States, or a state; any "charitable solicitor" properly licensed under Article 2 of Chapter 131F of~~

~~the General Statutes, or any person exempt from Chapter 131F of the General Statutes under G.S. 131F-3.~~

~~f. A person who periodically issues and delivers catalogs to potential purchasers and the catalog:~~

~~1. Includes a written description or illustration and the sales price of each item offered for sale;~~

~~2. Includes at least 24 full pages of written material or illustrations;~~

~~3. Is distributed in more than one state; and~~

~~4. Has an annual circulation of not less than 250,000 customers.~~

~~g. A person engaging in a commercial telephone solicitation where the solicitation is an isolated transaction and not done in the course of a pattern of repeated transactions of a like nature.~~

~~h. A person primarily soliciting the sale of a newspaper of general circulation, a publisher of a magazine or other periodical of general circulation, or an agent of such a publisher acting pursuant to a written agency agreement.~~

~~i. A person soliciting the sale of services provided by a cable television system operating under the authority of a local franchise.~~

~~j. Any passenger airline licensed by the Federal Aviation Administration.~~

~~k. Any person holding a real estate broker's or sales agent's license under Chapter 93A of the General Statutes and who is soliciting within the scope of the broker's or agent's license.~~

~~l. Any person soliciting a transaction regulated by the Commodities Futures Trading Commission, provided the person is registered or temporarily licensed by the Commodities Futures Trading Commission under the Commodity Exchange Act, 7 U.S.C. § 1, et seq.~~

~~m. Any person soliciting a purchase from a business, provided the person soliciting makes reasonable efforts to ensure that the person solicited has actual authority to bind the business to a purchase agreement.~~

~~n. A foreign corporation, limited liability company, or limited partnership that has obtained and maintained a certificate of authority to transact business or conduct affairs in this State pursuant to Chapter 55, 55A, or 57C or Article 5 of Chapter 59 of the General Statutes and that only transacts business or conducts affairs in this State using the name set forth in the certificate of authority.~~

~~o. An issuer or a subsidiary of an issuer that has a class of securities which is subject to section 12 of the Securities~~

~~Exchange Act of 1934 (15 U.S.C. § 781) and which is either registered or exempt from registration under paragraph (A), paragraph (B), paragraph (C), paragraph (E), paragraph (F), paragraph (G), or paragraph (H) of subsection (g)(2) of that section.~~

~~p. A person soliciting the sale of food, seeds, or plants when a sale does not involve an amount in excess of one hundred dollars ($100.00) directed to a single address.~~

~~q. A person soliciting:~~

~~1. Without intent to complete or obtain provisional acceptance of a sale during the telephone solicitation;~~

~~2. Who does not make the major sales presentation during the telephone solicitation but arranges for the major sales presentation to be made at a later face-to-face meeting between the salesperson and the purchaser;~~

~~3. Who does not cause an individual to go to the prospective purchaser to collect payment for the purchase or to deliver any item purchased directly following the telephone solicitation; or~~

~~4. Who offers to send the purchaser descriptive literature and does not require payment prior to the purchaser's review of the descriptive literature.~~

~~r. A person soliciting the purchase of contracts for the maintenance or repair of items previously purchased from the person making the solicitation or on whose behalf the solicitation is made.~~

~~s. A book, video, recording, or multimedia club or contractual plan or arrangement:~~

~~1. Under which the seller provides the consumer with a form with which the consumer can instruct the seller not to ship the offered merchandise.~~

~~2. Which is regulated by the Federal Trade Commission trade regulation concerning "use of negative option plans by sellers in commerce".~~

~~3. Which provides for the sale of books, recordings, multimedia products or goods, or videos which are not covered under paragraphs 1. or 2. of this sub-subdivision, including continuity plans, subscription arrangements, standing order arrangements, supplements, and series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive such merchandise on a periodic basis.~~

~~t. A person who for at least two years has been operating under the same name as that used in connection with its telemarketing operations and retail establishment in North Carolina where consumer goods are displayed and offered for sale on a continuing basis if a majority of the person's business involves the buyers obtaining services or products at the person's retail establishment.~~

~~u. A person:~~

~~1. Who provides telephone solicitation services under contract to sellers;~~

~~2. Who has been operating continuously for at least three years under the same business name; and~~

~~3. For whom at least seventy-five percent (75%) of the person's contracts are performed on behalf of other persons exempt under this section.~~

~~v. A person soliciting political contributions in accordance with Article 22A of Chapter 163 of the General Statutes.~~

~~w. The seller of a "business opportunity" as defined in G.S. 66-94, while engaged in activities subject to regulation under Article 19 of Chapter 66 of the General Statutes, provided that such seller has complied with the provisions of G.S. 66-97.~~

~~x. A "loan broker" as defined in G.S. 66-106, while engaged in activities subject to regulation under Article 20 of Chapter 66 of the General Statutes, provided that such loan broker has complied with the provisions of G.S. 66-109.~~

~~y. A "membership camping operator" as defined in G.S. 66-232(10) or a "salesperson" as defined in G.S. 66-232(16), while engaged in activities subject to regulation under Article 31 of Chapter 66 of the General Statutes, provided that such persons have complied with the provisions of G.S. 66-234 and 66-237, as applicable.~~

'Telephone solicitor' or 'solicitor' has the same meaning as 'telephone solicitor' in G.S. 75-30.1 and includes any person, business, or other legal entity that receives inbound telephone solicitations.

"**§ 66-261. Registration of ~~telephonic sellers.~~telephone solicitors.**

(a) Not less than 10 days before commencing telephone solicitations in this State, a ~~telephonic seller~~ telephone solicitor shall register with the ~~Secretary~~ Attorney General by filing the information required in G.S. 66-262 and paying a filing fee of ~~one hundred dollars ($100.00).~~one thousand dollars ($1,000) if the telephone solicitor has 500 or more employees and independent contractors operating within one location or franchise; seven hundred fifty dollars ($750.00) if the telephone solicitor has between 50 and 500 employees and independent contractors operating within one location or franchise; five hundred dollars ($500.00) if the telephone solicitor has between five and 51 employees and independent contractors operating within one location or franchise; and two

hundred fifty dollars ($250.00) if the telephone solicitor has five or fewer employees and independent contractors operating within one location or franchise. A ~~telephonic seller~~ telephone solicitor is doing business in this State if it ~~solicits or attempts to solicit prospective purchasers from locations in this State or solicits or attempts to solicit prospective purchasers who are located in this State.~~makes or causes to be made any telephone solicitation to prospective purchasers, whether the telephone solicitations are made from a location inside North Carolina or outside North Carolina.

(b) The information required in G.S. 66-262 shall be submitted on a form provided by the ~~Secretary~~ Attorney General and shall contain the notarized signatures of ~~each~~ an authorized principal of the ~~telephonic seller.~~telephone solicitor.

(c) Registration of a ~~telephonic seller~~ telephone solicitor shall be valid for one year from the effective date thereof and may be annually renewed by making the filing required in G.S. 66-262 and paying the filing fee required by subsection (a) of this section.~~of one hundred dollars ($100.00).~~ Registration shall not be deemed effective unless all required information is provided and any deficiencies or errors noted by the ~~Secretary~~ Attorney General have been corrected to the satisfaction of the ~~Secretary.~~Attorney General.

(d) Whenever, prior to expiration of a ~~seller's~~ telephone solicitor's annual registration, there is a change in the information required by G.S. 66-262, the ~~seller~~ telephone solicitor shall, within ~~10~~ 30 days after the change, file an addendum with the ~~Secretary~~ Attorney General updating the information.

"**§ 66-262. Filing information.**

(a) Each filing submitted to the ~~Secretary~~ Attorney General shall contain all of the following information:

(1) The name or names, including any assumed names, under which the ~~telephonic seller~~ telephone solicitor is doing or intends to do business in this State.

(2) The ~~telephonic seller's~~ telephone solicitor's business form and place of ~~organization and, if the seller is a corporation, copies of its articles of incorporation and bylaws and amendments thereto, or if a partnership, a copy of the partnership agreement.~~organization.

(3) Complete street address of the ~~telephonic seller's~~ telephone solicitor's principal place of business.

~~(4) The complete street address of each location from which telephone solicitations are placed by the telephonic seller.~~

~~(5) A listing of all telephone numbers to be used by the telephonic seller, including area codes, and the complete street address of the business premises served by each number.~~

(6) The name and title of each principal.

~~(7) The complete street address of the residence, the date of birth, and the social security number of each principal.~~

~~(8) The true name, street address, date of birth, and the social security number of each room operator, together with the room operator's full employment history during the preceding two years.~~

~~(9) The name and address of all banks or savings institutions where the telephonic seller maintains deposit accounts.~~

~~(10) The name and address of each long-distance telephone carrier used by the telephonic seller.~~

(10a) The name, title, telephone number, fax number (if any), electronic mail address (if any), and mailing address of the party to whom all notices, information regarding changes in North Carolina telemarketing regulations, and current copies of the No-Call Registry established under G.S. 75-30.2 shall be delivered.

(11) A summary of each ~~civil or criminal proceeding~~ civil, criminal, or administrative proceeding, including a consent judgment or consent decree without litigation and including an assurance of discontinuance or an assurance of voluntary compliance in order to resolve any allegation that has been brought by any federal, state, or local government agency or local official within the United States or any federal, provincial, or local government agency or official in Canada, ~~brought against the telephonic seller,~~ in which the telephone solicitor, any of its principals, ~~or any of its room operators~~ subsidiaries, or corporate predecessors has been a party during the ~~preceding five years~~10-year period preceding registration or renewal of registration, ~~by federal, State, or local officials relating to telephonic sales practices of each.~~ and which proceeding involves allegations that regulations, agency rules, ordinances, or statutes pertaining to telephone solicitations have been violated by the telephone solicitor or that the telephone solicitor or any of its principals, subsidiaries, or corporate predecessors have violated any criminal statute prohibiting mail fraud, wire fraud, money laundering, obtaining property by false pretenses, or other forms of fraud. The summary shall include the date each ~~action~~ proceeding was commenced, the ~~criminal or civil charges~~criminal, civil, or administrative violations alleged, the case caption, the court or agency proceeding file number, the ~~court venue,~~ venue of the proceeding, and the disposition or current status of the ~~action.~~ proceeding. ~~For purposes of this section, a 'civil proceeding includes' means assurances of voluntary compliance, assurances of discontinuance, consent judgments, and similar agreements executed with federal, State, or local officials.~~ The summary of settlement agreements, assurances of discontinuance, and assurances of voluntary compliance shall include the date each was executed, the violations alleged or resolved, and the name and address of the agency or official that executed the document with the telephone solicitor.

(b) For purposes of this section, 'street address' does not include a private mail service ~~address.~~address, 'Commercial Mail Receiving Agency' ('CMRA') or 'private mailbox' ('PMB'), as those terms are defined by the United States Postal Service.

"**§ 66-263. Bond requirement; prizes and gifts.**

(a) At least 10 days before the commencement of any promotion offering any gift or prize with an actual or represented market value of five hundred dollars ($500.00) or more, the ~~telephonic seller~~ telephone solicitor shall notify the ~~Secretary~~ Attorney General in writing of the details of the promotion, fully describing the nature and number of all gifts or prizes and their current market value, the ~~seller's~~ telephone solicitor's rules and regulations governing the promotion, and the date the gifts or prizes are to be awarded. All gifts or prizes offered shall be awarded. Concurrent with notifying the ~~Secretary~~ Attorney General under this subsection, the ~~telephonic seller~~ telephone solicitor shall post a bond with the ~~Secretary~~ Attorney General for the market value or the represented value, whichever is greater, of all gifts or prizes represented as available under the promotion. The bond must be issued by a surety company authorized to do business in this State. The bond shall be in favor of the State of North Carolina for the benefit of any person entitled to receive a gift or prize under the promotion who did not receive it within 30 days of the specified date of award. The amount recoverable by any person under the bond shall not exceed the market value, the represented value of the gift or prize, or the amount of any consideration or contribution paid by that person in response to the telephone solicitation, whichever is greatest.

(b) Within 45 days after the specified date of the award of the gift or prize, the ~~seller~~ telephone solicitor shall provide, in writing, to the ~~Secretary,~~Attorney General, proof that the gifts or prizes were awarded. The writing shall include the name, address, and telephone number of all persons receiving awards or prizes. The bond shall be maintained until the ~~Secretary~~ Attorney General receives reliable proof that the gifts or prizes have been delivered to the intended recipients.

(c) The Attorney General, on behalf of any injured purchaser, or any purchaser who is injured by the bankruptcy of the ~~telephonic seller~~ telephone solicitor or its breach of any agreement entered into in its capacity as a ~~telephonic seller,~~telephone solicitor, may initiate a civil action to recover against the bond.

"§ 66-264. Calls made to minors.

A ~~telephonic seller~~ telephone solicitor must inquire as to whether the prospective purchaser it is contacting is under 18 years of age. If the prospective purchaser purports to be under 18 years of age, the ~~telephonic seller~~ telephone solicitor must discontinue the call immediately.

"§ 66-265. Offers of gifts or prizes.

(a) It shall be unlawful for any ~~telephonic seller~~ telephone solicitor to make a telephone solicitation or attempted telephone solicitation involving any gift or prize when the solicitation or attempted solicitation:

(1) Requests or directs the consumer to further the transaction by calling a 900 number or a pay-per-call number.

(2) Requests or directs the consumer to send any payment or make a donation in order to collect the gift or prize.

(3) Does not comply fully with G.S. 75-30, 75-32, 75-33, or 75-34.

(b) Notwithstanding subsection (a) of this section, a ~~telephonic seller~~ telephone solicitor may offer a gift or prize in connection with the bona fide sale of a product or service.

"**§ 66-265.1. Regulation of contracts secured during telephone solicitations.**

(a) In all transactions involving prospective purchasers, no contract or purchase agreement secured during a telephone solicitation is valid, and no money from the prospective purchaser is due thereunder, unless all of the following conditions are satisfied:

(1) The contract is reduced to writing and signed by the consumer.

(2) The contract complies with all other applicable laws.

(3) The contract contains the name, address, and business telephone number of the seller, the total price of the contract, and a detailed description of the goods or services being sold.

(4) The goods or services subject to the contract comply with the description principally used in the telephone solicitation.

(5) The contract contains, in bold, conspicuous type, immediately preceding the signature, the words: 'You are not obligated to pay any money unless you sign this contract and return it to the seller.'

(6) The contract does not exclude from its terms any oral or written representations made by the telephone solicitor to the consumer in connection with the transaction.

(b) A telephone solicitor or a merchant who engages a telephone solicitor to make or cause to be made a telephone solicitation to a prospective purchaser shall not do any of the following until the merchant receives from the prospective purchaser a copy of the written contract, signed by the consumer, that complies with this section:

(1) Make or submit a charge to a consumer's credit card account, debit card account, checking account, savings account, or other account.

(2) Make or cause to be made any electronic transfer of funds.

"**§ 66-266. Penalties.**

(a) Any violation of ~~this Article~~ G.S. 66-262(a)(11), 66-263, 66-264, 66-265, or 66-265.1 shall constitute an unfair and deceptive trade practice in violation of G.S. 75-1.1.

(b) In an action by the Attorney General against a ~~telephonic seller~~ telephone solicitor for violation of ~~this Article,~~ G.S. 66-262(a)(11), 66-263, 66-264, 66-265, or 66-265.1, or for any other act or practice by a ~~telephonic seller~~ telephone solicitor constituting a violation of G.S. 75-1.1, the court may impose civil penalties of up to twenty-five thousand dollars ($25,000) for each violation involving North Carolina purchasers or prospective purchasers who are 65 years of age or older.

(c) The remedies and penalties available under this section shall be supplemental to others available under the law, both civil and criminal.

(d) Compliance with this Article does not satisfy or substitute for any other requirements for license, registration, or conduct imposed by law.

(e) In any civil proceeding alleging a violation of this Article, the burden of proving an exemption or an exception from a definition is upon the person claiming it, and in any criminal proceeding alleging a violation of this Article, the burden of producing evidence to support a defense based upon an exemption or an exception from a definition is upon the person claiming it."

SECTION 8. Should one or more of the terms or provisions of this act or any application thereof be held or declared unenforceable or invalid to any extent, the remainder of this act, and the applications thereof that have not been held or declared unenforceable or invalid, shall remain in effect.

SECTION 9. Consistent with protected speech rights of businesses that engage in telephone solicitations, the provisions of this act shall be given broad construction so as to protect residential telephone subscribers from unwanted telephone solicitations and from problematic sales techniques and payment procedures often associated with these solicitations.

SECTION 10. Section 3 of this act becomes effective January 1, 2006. G.S. 62-54, as amended by Section 5 of this act, applies to all telephone directories printed on or after April 1, 2003. All other sections of this act become effective January 1, 2003, and apply to telephone solicitations made on or after that date.

SECTION 11. Notwithstanding Section 10 of this act, Sections 1 through 10 of this act become effective only if a bill to modify the current operations appropriations for the 2002-2003 fiscal year becomes law and that bill contains a provision that is equivalent to Section 15.2(a) of the Senate Bill 1115, Third Edition Engrossed 6/19/02.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 1612*

Short Title:	Stop Unwanted Telephone Solicitations.	(Public)
Sponsors:	Representatives Baddour, Redwine (Primary Sponsors); Smith, Adams, Alexander, Barefoot, Boyd-McIntyre, Coates, Cox, Dedmon, Easterling, Goodwin, Hackney, Hensley, Insko, Jarrell, Jeffus, Lucas, McLawhorn, Rogers, Tolson, Tucker, Underhill, Warren, Warwick, Willingham, and Womble.	
Referred to:	Judiciary II, if favorable, Appropriation.	

June 11, 2002

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH AND MAINTAIN A NO-CALL REGISTRY FOR CONSUMERS WHO WISH TO STOP UNWANTED TELEPHONE SOLICITATION CALLS AND TO INCREASE THE PROTECTIONS FOR CONSUMERS IN TRANSACTIONS INITIATED BY TELEMARKETERS.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly of North Carolina makes the following findings:

(1) The use of the telephone to market goods and services to the home and to other businesses is now pervasive due to the increased use of cost-effective telemarketing technologies and techniques.

(2) While some consumers enjoy and benefit from unsolicited telemarketing contacts from legitimate telemarketers, many others object to these contacts as an intrusive invasion of an individual's right of privacy in the home.

(3) In addition, the proliferation of unsolicited telemarketing calls, especially during the evening hours, creates a nuisance and a disturbance upon the home and family life of North Carolina residents during a time of day used by many families for traditional family activities.

(4) North Carolina residents should have the freedom to choose whether or not to permit telemarketers to contact them.

(5) Individual privacy rights, public safety interests, and commercial freedom of speech and trade must be balanced in a way that protects

the privacy of individuals and permits legitimate telemarketing practices.

(6) Even legitimate telemarketers have no interest in continuing to invade the privacy of those consumers who affirmatively express their objections to such contact and, in fact, legitimate telemarketers can make their telemarketing efforts more cost effective by avoiding calls to those consumers who have affirmatively expressed an objection to any such contact.

(7) Many North Carolina consumers who have transacted business with firms that employ telemarketing have experienced problems with their checking and credit card accounts being debited before they can evaluate the terms and conditions of the transaction, before they can evaluate the merchandise or service to be delivered, or without their agreement to enter into the transaction or authorize such transactions in the first place.

(8) New technologies that make telemarketing more cost effective also allow for the creation of a State No-Call Registry through which North Carolina consumers can easily register their desires not to receive further telemarketing calls and telemarketers can easily access and employ lists of consumers who have registered those desires.

(9) The public interest requires an efficient mechanism for North Carolina residents to notify telemarketers that their telephone numbers cannot be called and additional protections for North Carolina residents who enter into consumer transactions initiated through telemarketing calls.

SECTION 2. G.S. 75-30.1 reads as rewritten:

"**§ 75-30.1. Restrictions on telephone solicitations.**

(a) For purposes of this section:

(1) 'Residential telephone subscriber' means a person who subscribes to residential telephone service from a local exchange company and uses that service primarily for residential purposes, or the persons living or residing with that person.

(2) 'Telephone solicitation' means a voice ~~communication~~ communication, whether prerecorded or live, or a facsimile over a telephone line to a residential telephone subscriber for the purpose of soliciting or encouraging the purchase or rental of, or investment in, property, goods, or ~~services, or~~ services; for the purpose of obtaining information that will or may be used for that ~~purpose,~~ purpose; for the purpose of soliciting or encouraging a telephone subscriber's participation in any contest, sweepstakes, raffle, or lottery, whether legal or illegal; or for the purpose of obtaining a donation. Telephone solicitation also means any such voice communication that is initiated by a residential telephone subscriber responding to any unsolicited letter, telegram, e-mail message, or other notice that states any one or more of the following:

a. That the residential telephone subscriber has won, may have won, or may win any contest, sweepstakes, raffle, or lottery.
b. That the residential telephone subscriber may obtain or qualify for credit by contacting the solicitor.
c. That the solicitor has buyers interested in purchasing the recipient's property.

(2a) 'Telephone solicitation' ~~but~~ does not include any of the following telephonic communications:
a. To any person with that person's prior express invitation or ~~permission;~~ permission, including telephonic communications initiated by that person unless that person is responding to any unsolicited letter, telegram, e-mail message, or other notice that states one or more of the following:
1. That the residential telephone subscriber has won, may have won, or may win any contest, sweepstakes, raffle, or lottery.
2. That the residential telephone subscriber may obtain or qualify for credit by contacting the solicitor.
3. That the solicitor has buyers interested in purchasing the recipient's property.
b. To any person ~~with whom the telephone solicitor has an established business relationship; or~~ in connection with an existing debt or contract for which payment or performance has not been completed at the time of the call.
c. By or on behalf of a tax-exempt nonprofit ~~organization.~~ organization when calls are being placed by direct employees of the organization, or volunteers without remuneration for the organization, and the caller immediately discloses the following information upon making contact with the residential telephone subscriber:
(1.) The caller's true first and last name; and
(2.) The name, address, and telephone number of the organization.

(3) 'Telephone solicitor' means any business or other legal entity doing business in this State ~~that~~ that, directly or through salespersons or agents, makes or attempts to make telephone solicitations or causes telephone solicitations to be made.

(4) 'Doing business in this State' means to make or cause to be made any telephone solicitation to North Carolina residential telephone subscribers, whether the telephone solicitations are made from a location inside North Carolina or outside North Carolina.

(b) No telephone solicitor shall place any calls to a North Carolina residential telephone subscriber's number if that telephone subscriber's telephone number, facsimile machine number, pager number, or other telephonic device number appears on the latest

edition of the No-Call Registry under G.S. 75-30.2 or if the telephone subscriber previously has communicated to that telephone solicitor a desire to receive no further telephone solicitations from that solicitor. Any telephone solicitor who makes a telephone solicitation to a residential telephone subscriber whose telephonic device number is not listed in the latest edition of the No-Call Registry or who previously has not communicated to the telephone solicitor a desire to receive no further telephone solicitations from that solicitor shall:

(1) At the beginning of the call, state clearly the identity of the business, individual, or other legal entity initiating the call, and identify the person making the call by that person's name.

(2) Upon request, provide the telephone subscriber with the telephone number or address at which the person or entity may be contacted.

(3) Terminate the call if the person does not consent to the call.

(4) If the person called requests to be taken off the contact list of the telephone solicitor, take all steps necessary to remove within three business days that person's name and telephone number from the contact records of the business, individual or other legal entity initiating the call.

(c) Every telephone solicitor who makes telephone solicitations in this State shall implement in-house systems and procedures designed to prevent further calls to ~~persons~~ any person who ~~have~~ has asked not to be called ~~again. Compliance with 47 C.F.R. § 64.1200(e) of the Federal Communications Commission's Restrictions on Telephone Solicitation constitutes compliance with this subsection:~~ again or who has placed a telephonic device number in the No-Call Registry.

~~(d) No telephone solicitor shall initiate a call to a residential telephone subscriber who has communicated to that telephone solicitor a desire to be taken off the contact list of that solicitor.~~

(e) No telephone solicitor shall initiate a call to a residential telephone subscriber after ~~9:00 P.M.~~ 8:00 P.M. or before ~~8:00 A.M.~~ 10:00 A.M. at the called party's location.

(f) No telephone solicitor who makes a telephone solicitation to the telephone line of a residential telephone subscriber in this State shall knowingly use any method to block or otherwise circumvent that subscriber's use of a caller identification service. ~~A telephone solicitor who makes a telephone solicitation to the telephone line of a residential subscriber through the use of a private branch exchange (PBX) or other call-generating system that is not capable of transmitting caller identification information shall not be in violation of this subsection.~~ No provider of telephone caller identification services shall be held liable for violations of this subsection committed by other persons or entities.

(g) Every telephone solicitor who makes telephone solicitations in this State shall keep a record for a period of 24 months from the date a call is placed of the legal name and any fictitious name used, resident address, telephone number, and job title of each person who places a telephone solicitation for that telephone solicitor. If callers for a telephone solicitor use fictitious names, each fictitious name shall be traceable to only one specific caller.

(g1) In all transactions involving residential telephone subscribers in North Carolina, no contract or purchase agreement secured during a telephone solicitation is valid, and no money from the residential telephone subscriber is due thereunder, unless all of the following conditions are satisfied:

(1) The contract is reduced to writing and signed by the consumer.

(2) The contract complies with all other applicable laws.

(3) The contract contains the name, address, and business telephone number of the seller, the total price of the contract, and a detailed description of the goods or services being sold.

(4) The goods or services subject to the contract comply with the description principally used in the telephone solicitation.

(5) The contract contains, in bold, conspicuous type, immediately preceding the signature, the words: 'You are not obligated to pay any money unless you sign this contract and return it to the seller.'

(6) The contract does not exclude from its terms any oral or written representations made by the telephone solicitor to the consumer in connection with the transaction.

(g2) A telephone solicitor or a merchant who engages a telephone solicitor to make or cause to be made a telephone solicitation to a North Carolina residential telephone subscriber shall not do any of the following until the merchant receives from the residential telephone subscriber a copy of the written contract, signed by the consumer, that complies with this section:

(1) Make or submit a charge to a consumer's credit card account, debit card account, checking account, savings account, or other account.

(2) Make or cause to be made any electronic transfer of funds.

(h) The Attorney General may investigate any complaints received alleging violations of ~~subsections (b) through (g) of~~ this ~~section.~~section or G.S. 75-30.2. If, after investigating a complaint, the Attorney General finds that there has been a violation of ~~subsections (b) through (g) of~~ this ~~section,~~section or G.S. 75-30.2, the Attorney General may bring an action to impose ~~a civil penalty~~ civil penalties and to seek any other appropriate ~~relief,~~ relief pursuant to this Chapter, including equitable relief to restrain the ~~violation pursuant to G.S. 75-14. Actions for civil penalties under this section shall be consistent with the provisions of G.S. 75-15.2 except that the penalty imposed for a violation of this section shall not exceed five hundred dollars ($500.00) per~~ violation.

(i) A ~~person~~ residential telephone subscriber who has received ~~more than one~~ a telephone solicitation ~~within any 12-month period by~~ from or on behalf of ~~the same~~ a telephone solicitor in violation of ~~subsections (b) through (g) of~~ this section or G.S. 75-30.2 may bring any of the following actions in the General Court of Justice:

(1) An action to enjoin further ~~violations.~~ violations by the telephone solicitor.

(2) An action to recover ~~five hundred dollars ($500.00)~~ five thousand dollars ($5,000) in statutory damages for each ~~violation;~~violation.

(3) An action to declare void any contract resulting from telephonic solicitations in violation of this section or G.S. 75-30.2.

In an action brought pursuant to this ~~section,~~section or G.S. 75-30.2, a prevailing plaintiff shall be entitled to recover reasonable attorneys' fees and the court may award reasonable attorneys' fees to a prevailing defendant if the court finds that the plaintiff knew, or should have known, that the action was frivolous and malicious.

(j) A citizen of this State is also entitled to bring an action in the General Court of Justice to enforce the private rights of action established by federal law under 47 U.S.C. § 227(b)(3) and 47 U.S.C. § 227(c)(5).

(k) Actions brought by residential telephone subscribers pursuant to ~~subsections (i) and (j) of~~ this section or G.S. 75-30.2 shall be tried in the county where the plaintiff resides at the time of the commencement of the action."

SECTION 3. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-30.2. No-Call Registry.**

The Attorney General shall establish and maintain a No-Call Registry containing the telephone numbers of North Carolina residential telephone subscribers who do not wish to receive telephone solicitations at those numbers. The No-Call Registry shall be operated as follows:

(1) The telephone number of a residential telephone subscriber shall be placed in the No-Call Registry immediately upon receipt of a request submitted by the subscriber pursuant to registration procedures established by the Attorney General. The telephone subscriber's number shall remain in the No-Call Registry until the telephone subscriber notifies the Attorney General, in accordance with these registration procedures, that it should be removed, or until the number is assigned to a new telephone subscriber.

(2) Not less than 10 days before commencing telephone solicitations in this State, a telephone solicitor shall register pursuant to G.S. 66-261 and obtain from the Attorney General a copy of the most up-to-date quarterly edition of the No-Call Registry. On the first business day following each January 1, April 1, July 1, and October 1 of each year, the Attorney General shall produce and make available to registered telephone solicitors a revised, quarterly edition of the No-Call Registry. A telephone solicitor that relies upon any version of the Registry beyond the quarter for which it was produced and issued is in violation of this section.

(3) The Attorney General shall make the latest edition of the No-Call Registry available to the registered telephone solicitor in written form upon request, or in whatever electronic form that the Attorney General deems appropriate and cost effective.

(4) The Attorney General may contract with an agent to establish and operate the No-Call Registry under this section so long as all of the following are satisfied:

a. The agent has demonstrated the capacity to maintain and operate such a registry.

b. The Attorney General, upon entering into a contract under this section, has ultimate authority over the agent for the approval of procedures for the establishment, maintenance, and dissemination of the listings in the No-Call Registry.

(5) The Attorney General shall arrange, if the Attorney General determines it is technically feasible and economically practicable, to transfer into the No-Call Registry the numbers of all North Carolina residential telephone subscribers who have enrolled in any national do-not-call registries that may be established and operated by agencies of the United States government. The Attorney General may also arrange to transfer information from the No-Call Registry under this section to such federal agencies so that the wishes of the North Carolina telephone subscribers are recorded in those national do-not-call registries.

(6) No telephone solicitor shall sell, assign, transfer, or convey any copy of the No-Call Registry to parties other than its employees or its wholly owned subsidiaries. If a telephone solicitor utilizes other telephone solicitors to make telephone solicitations for it in North Carolina on a subcontract, commission, partnership, or similar basis, that other telephone solicitor shall register under G.S. 66-261 and shall procure and utilize its own copy of the current No-Call Registry from the Attorney General in accordance with the provisions of this section. No telephone solicitor may use the information on the Registry for any purpose other than to remove residential telephone subscribers from telephone call lists and to prevent calls from being placed to telephone numbers listed in the Registry.

(7) No information compiled and maintained in the No-Call Registry is a public record under Chapter 132 of the General Statutes. Information contained in the No-Call Registry shall be used only for complying with or enforcing the requirements of this section.

(8) The Attorney General shall produce a bill insert, pamphlet, or other document that notifies consumers of the existence of the No-Call Registry and provides information to consumers on how to use it to object to receiving telephone solicitations. Local exchange companies shall distribute the insert, pamphlet, or other document pursuant to G.S. 62-54."

SECTION 4. G.S. 62-54 reads as rewritten:

"**§ 62-54. Notification of opportunity to object to telephone solicitation.**

The Commission shall require each local exchange company to notify all persons who subscribe to residential service from that company of the provisions of ~~G.S. 75-30.1,~~G.S. 75-30.1 and G.S. 75-30.2, of the federal laws and regulations allowing consumers to object to receiving telephone solicitations, and of programs made available by private industry that allow consumers to have their names removed from telemarketing lists, by enclosing that information, at least ~~annually,~~every six months, in

every telephone bill mailed to residential customers. This information shall be in the form of a bill insert, pamphlet, or other document drafted by the Attorney General and reprinted at the local exchange company's expense, and shall reflect any changes in North Carolina, federal, or private industry procedures and requirements for registering objections to telephone solicitations. The Commission shall also ensure that this information is printed in a clear, conspicuous manner in the consumer information pages of each telephone directory distributed to residential customers."

SECTION 5. G.S. 75-30 reads as rewritten:

"**§ 75-30. Automatic dialing and recorded message players; restriction on use of.**

(a) No person may make an unsolicited telephone call by the use of an automatic dialing and recorded message player ~~unless:~~unless all of the following conditions are satisfied:

(1) Such calling person is a ~~charitable, civic, political or~~ tax-exempt charitable or civic organization, a political party or political candidate, a governmental official, an opinion polling ~~organization~~ organization, or a radio station, television ~~station~~ station, or broadcast rating service conducting a public opinion ~~poll required by law; and~~ poll when no part of the call is used for any one or more of the following:

a. To solicit or encourage the purchase or rental of, or investment in, property, goods, or services.

b. To obtain information that will or may be used for that purpose.

c. For the purpose of obtaining a donation.

(2) Such calling person clearly identifies the nature of the call and the name and address of the calling organization.

(b) As an exception to subsection ~~(a)~~ (a) of this section, an unsolicited telephone call may be made by the use of an automatic dialing and recorded message player if the recorded message is preceded by an announcement made by a ~~human~~ live operator ~~who:~~who does all of the following:

(1) States the nature and length in minutes of the recorded ~~message; and~~message.

(2) Identifies the individual, business, group, or organization ~~calling; and~~calling.

(3) Asks ~~the called party whether he is willing to listen to the recorded message; and~~ for and receives the called party's prior approval to play the recorded message.

(4) ~~Disconnects~~ Promptly disconnects from the called party's line ~~if~~ once the called party ~~is unwilling to listen to the recorded message.~~hangs up or otherwise attempts to terminate the call.

(c) For the purpose of this ~~section~~ section, an automatic dialing and recorded message player shall be defined as any automatic equipment which incorporates a storage capability of telephone numbers to be called or a random or sequential number generator capable of producing numbers to be called and the capability, working alone or in conjunction with other equipment, of disseminating a prerecorded message to the telephone number called.

(d) For the purpose of this section, a telephone call shall be deemed to be unsolicited unless pursuant to a prior agreement between the parties the person called has agreed to accept such calls from the person ~~calling.~~ calling, and the person called has not subsequently expressed to the caller a desire not to receive further telephone solicitations in accordance with provisions of G.S. 75-30.1.

(e) Violation of this section ~~shall be a Class 3 misdemeanor, punishable only by a fine of one hundred dollars ($100.00), for each occurrence~~ is an unfair and deceptive act or practice in or affecting commerce under G.S. 75-1.1.

(f) The Attorney General may investigate any complaints received alleging violations of this section. If, after investigating a complaint, the Attorney General finds that there has been a violation of this section, the Attorney General may bring an action to impose civil penalties and to seek any other appropriate relief pursuant to this Chapter, including equitable relief to restrain the violation.

(g) A residential telephone subscriber who has received a telephone communication in violation of this section may bring a civil action seeking any one or more of the following:

(1) An action to enjoin further violations by the telephone solicitor.

(2) An action to recover five thousand dollars ($5,000) in statutory damages for each violation.

(3) An action to declare void any contract resulting from telephone solicitations in violation of this section.

(4) An action to enforce private rights of action established by federal law under 47 U.S.C. § 227(b)(3) and 47 U.S.C. § 227(c)(5).

(h) Actions brought by residential telephone subscribers under this section shall be tried in the county where the plaintiff resides at the time of the commencement of the action."

SECTION 6. Article 33 of Chapter 66 of the General Statutes reads as rewritten:

"Article 33.

"~~Telephonic Seller~~Telephone Solicitor Registration and Bond Requirement.

"**§ 66-260. Definitions.**

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

(1) 'Gift or prize' means any premium, bonus, award, or any other thing of value.

(2) 'Item' means any good or any service. 'Item' includes coupon books, vouchers, or certificates that are to be used with businesses other than the ~~seller's~~solicitor's business.

~~(3) 'Owner' means a person who owns or controls ten percent (10%) or more of the equity of, or otherwise has a claim to ten percent (10%) or more of the net income of, a telephonic seller.~~

(4) 'Person' includes any individual, firm, association, corporation, partnership, joint venture, or any other business entity.

(5) 'Principal' means an owner, a part-owner holding or controlling ten percent (10%) or more of the equity of, or otherwise having a claim to

ten percent (10%) or more of the net income of, a telephone solicitor, an executive officer of a corporation, a general partner of a partnership, a sole proprietor of a sole proprietorship, a trustee of a trust, or any other individual with similar supervisory functions with respect to any person.

(6) 'Purchaser' or 'prospective purchaser' means ~~a person who is solicited to become obligated to a telephonic seller or to make any donation or gift to any person represented by the telephonic seller.~~ the residential telephone subscriber whose telephone number is called or used in a telephone solicitation, and includes any member of the residential telephone subscriber's household who is a party to any telephone solicitation transaction.

~~(7) 'Room operator' means any principal, employee, or agent responsible for the operational management and supervision of facilities from which telephonic sales calls are made or received.~~

~~(8) 'Salesperson' means any individual employed, appointed, or authorized by a telephonic seller, whether referred to by the telephonic seller as an agency, representative, or independent contractor, who attempts to solicit or solicits a sale on behalf of the telephonic seller.~~

~~(9) 'Secretary' means the Office of the Secretary of State.~~

(10) 'Telephone solicitation' or 'attempted telephone solicitation' ~~means any telephonic communication designed to persuade any person to purchase goods or services, to enter a contest, or to contribute to a charity or a person represented to be a charity, regardless of whether the telephone call initiating the solicitation is placed by the (i) telephonic seller or (ii) a person responding to any unsolicited notice or notices sent or provided by or on behalf of the seller, which notice or notices represent to the recipient that he or she has won a gift or prize, that the recipient may obtain or qualify for credit by contacting the seller, or that the seller has buyers interested in purchasing the recipient's property.~~ has the same meaning as telephone solicitation in G.S. 75-30.1.

(11) ~~'Telephonic seller' or 'seller' means a person who, directly or through salespersons, causes a telephone solicitation or attempted telephone solicitation to occur. 'Telephonic seller' and 'seller' do not include any of the following:~~

~~a. A securities 'dealer' within the meaning of G.S. 78A-2(2) or a person excluded from the definition of 'dealer' by that provision; a 'salesman' within the meaning of G.S. 78A-2(9); an 'investment adviser' within the meaning of G.S. 78C-2(1) or a person excluded from the definition of 'investment adviser' by that provision; or an 'investment adviser representative' within the meaning of G.S. 78C-2(3); provided that such persons shall~~

~~be excluded from the terms 'telephonic seller' and 'seller' only with respect to activities regulated by Chapters 78A and 78C.~~

~~b. Any person conducting sales or solicitations on behalf of a licensee of the Federal Communications Commission or holder of a franchise or certificate of public convenience and necessity from the North Carolina Utilities Commission.~~

~~c. Any insurance agent or broker who is properly licensed by the Department of Insurance and who is soliciting within the scope of the agent's or broker's license or any employee or independent contractor of an insurance company licensed by the Department of Insurance conducting sales or solicitations on behalf of that company.~~

~~d. Any federally chartered bank, savings institution, or credit union or any bank, savings institution, or credit union properly licensed by the State or subject to federal regulating authorities.~~

~~e. Any organization that is exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section, or that is organized exclusively for one or more of the purposes specified in section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section and that upon dissolution shall distribute its assets to an entity that is exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section, the United States, or a state; any "charitable solicitor" properly licensed under Article 2 of Chapter 131F of the General Statutes, or any person exempt from Chapter 131F of the General Statutes under G.S. 131F-3.~~

~~f. A person who periodically issues and delivers catalogs to potential purchasers and the catalog:~~

~~1. Includes a written description or illustration and the sales price of each item offered for sale;~~

~~2. Includes at least 24 full pages of written material or illustrations;~~

~~3. Is distributed in more than one state; and~~

~~4. Has an annual circulation of not less than 250,000 customers.~~

~~g. A person engaging in a commercial telephone solicitation where the solicitation is an isolated transaction and not done in the course of a pattern of repeated transactions of a like nature.~~

~~h. A person primarily soliciting the sale of a newspaper of general circulation, a publisher of a magazine or other periodical of general circulation, or an agent of such a publisher acting pursuant to a written agency agreement.~~

~~i. A person soliciting the sale of services provided by a cable television system operating under the authority of a local franchise.~~

~~j. Any passenger airline licensed by the Federal Aviation Administration.~~

~~k. Any person holding a real estate broker's or sales agent's license under Chapter 93A of the General Statutes and who is soliciting within the scope of the broker's or agent's license.~~

~~l. Any person soliciting a transaction regulated by the Commodities Futures Trading Commission, provided the person is registered or temporarily licensed by the Commodities Futures Trading Commission under the Commodity Exchange Act, 7 U.S.C. § 1, et seq.~~

~~m. Any person soliciting a purchase from a business, provided the person soliciting makes reasonable efforts to ensure that the person solicited has actual authority to bind the business to a purchase agreement.~~

~~n. A foreign corporation, limited liability company, or limited partnership that has obtained and maintained a certificate of authority to transact business or conduct affairs in this State pursuant to Chapter 55, 55A, or 57C or Article 5 of Chapter 59 of the General Statutes and that only transacts business or conducts affairs in this State using the name set forth in the certificate of authority.~~

~~o. An issuer or a subsidiary of an issuer that has a class of securities which is subject to section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 781) and which is either registered or exempt from registration under paragraph (A), paragraph (B), paragraph (C), paragraph (E), paragraph (F), paragraph (G), or paragraph (H) of subsection (g)(2) of that section.~~

~~p. A person soliciting the sale of food, seeds, or plants when a sale does not involve an amount in excess of one hundred dollars ($100.00) directed to a single address.~~

~~q. A person soliciting:~~

~~1. Without intent to complete or obtain provisional acceptance of a sale during the telephone solicitation;~~

~~2. Who does not make the major sales presentation during the telephone solicitation but arranges for the major sales presentation to be made at a later face-to-face meeting between the salesperson and the purchaser;~~

~~3. Who does not cause an individual to go to the prospective purchaser to collect payment for the~~

~~purchase or to deliver any item purchased directly following the telephone solicitation; or~~

~~4. Who offers to send the purchaser descriptive literature and does not require payment prior to the purchaser's review of the descriptive literature.~~

~~r. A person soliciting the purchase of contracts for the maintenance or repair of items previously purchased from the person making the solicitation or on whose behalf the solicitation is made.~~

~~s. A book, video, recording, or multimedia club or contractual plan or arrangement:~~

~~1. Under which the seller provides the consumer with a form with which the consumer can instruct the seller not to ship the offered merchandise.~~

~~2. Which is regulated by the Federal Trade Commission trade regulation concerning "use of negative option plans by sellers in commerce".~~

~~3. Which provides for the sale of books, recordings, multimedia products or goods, or videos which are not covered under paragraphs 1. or 2. of this sub-subdivision, including continuity plans, subscription arrangements, standing order arrangements, supplements, and series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive such merchandise on a periodic basis.~~

~~t. A person who for at least two years has been operating under the same name as that used in connection with its telemarketing operations and retail establishment in North Carolina where consumer goods are displayed and offered for sale on a continuing basis if a majority of the person's business involves the buyers obtaining services or products at the person's retail establishment.~~

~~u. A person:~~

~~1. Who provides telephone solicitation services under contract to sellers;~~

~~2. Who has been operating continuously for at least three years under the same business name; and~~

~~3. For whom at least seventy five percent (75%) of the person's contracts are performed on behalf of other persons exempt under this section.~~

~~v. A person soliciting political contributions in accordance with Article 22A of Chapter 163 of the General Statutes.~~

~~w. The seller of a "business opportunity" as defined in G.S. 66-94, while engaged in activities subject to regulation under Article 19 of Chapter 66 of the General Statutes, provided that such seller has complied with the provisions of G.S. 66-97.~~

~~x. A "loan broker" as defined in G.S. 66-106, while engaged in activities subject to regulation under Article 20 of Chapter 66 of the General Statutes, provided that such loan broker has complied with the provisions of G.S. 66-109.~~

~~y. A "membership camping operator" as defined in G.S. 66-232(10) or a "salesperson" as defined in G.S. 66-232(16), while engaged in activities subject to regulation under Article 31 of Chapter 66 of the General Statutes, provided that such persons have complied with the provisions of G.S. 66-234 and 66-237, as applicable.~~

'Telephone solicitor' or 'solicitor' has the same meaning as telephone solicitor in G.S. 75-30.1.

"§ 66-261. Registration of ~~telephonic sellers.~~telephone solicitors.

(a) Not less than 10 days before commencing telephone solicitations in this State, a ~~telephonic seller~~ telephone solicitor shall register with the ~~Secretary~~ Attorney General by filing the information required in G.S. 66-262 and paying a filing fee of ~~one hundred dollars ($100.00).~~one thousand dollars ($1,000). A ~~telephonic seller~~ telephone solicitor is doing business in this State if it solicits or attempts to solicit prospective purchasers from locations in this State or solicits or attempts to solicit prospective purchasers who are located in this State.

(b) The information required in G.S. 66-262 shall be submitted on a form provided by the ~~Secretary~~ Attorney General and shall contain the notarized signatures of each principal of the ~~telephonic seller.~~telephone solicitor.

(c) Registration of a ~~telephonic seller~~ telephone solicitor shall be valid for one year from the effective date thereof and may be annually renewed by making the filing required in G.S. 66-262 and paying the filing fee of ~~one hundred dollars ($100.00).~~one thousand dollars ($1,000). Registration shall not be deemed effective unless all required information is provided and any deficiencies or errors noted by the ~~Secretary~~ Attorney General have been corrected to the satisfaction of the ~~Secretary.~~Attorney General.

(d) Whenever, prior to expiration of a ~~seller's~~ solicitor's annual registration, there is a change in the information required by G.S. 66-262, the ~~seller~~ solicitor shall, within 10 days after the change, file an addendum with the ~~Secretary~~ Attorney General updating the information.

"§ 66-262. Filing information.

(a) Each filing submitted to the ~~Secretary~~ Attorney General shall contain all of the following information:

(1) The name or names, including any assumed names, under which the ~~telephonic seller~~ telephone solicitor is doing or intends to do business in this State.

(2) The ~~telephonic seller's~~ telephone solicitor's business form and place of ~~organization and, if the seller is a corporation, copies of its articles of incorporation and bylaws and amendments thereto, or if a partnership, a copy of the partnership agreement.~~organization.

(3) Complete street address of the ~~telephonic seller's~~ telephone solicitor's principal place of business.

~~(4) The complete street address of each location from which telephone solicitations are placed by the telephonic seller.~~

~~(5) A listing of all telephone numbers to be used by the telephonic seller, including area codes, and the complete street address of the business premises served by each number.~~

~~(6) The name and title of each principal.~~

~~(7) The complete street address of the residence, the date of birth, and the social security number of each principal.~~

~~(8) The true name, street address, date of birth, and the social security number of each room operator, together with the room operator's full employment history during the preceding two years.~~

~~(9) The name and address of all banks or savings institutions where the telephonic seller maintains deposit accounts.~~

~~(10) The name and address of each long-distance telephone carrier used by the telephonic seller.~~

(10a) The name, title, telephone number, fax number (if any), electronic mail address (if any), and mailing address of the party to whom all notices, information regarding changes in North Carolina telemarketing regulations, and current copies of the No-Call Registry established under G.S. 75-30.2 shall be delivered.

(11) A summary of each ~~civil or criminal proceeding~~ civil, criminal, or administrative proceeding, including a consent judgment or consent decree without litigation and including an assurance of discontinuance or an assurance of voluntary compliance in order to resolve any allegation that has been brought by any federal, state, or local government agency or local official within the United States or any federal, provincial, or local government agency or official in Canada, ~~brought against the telephonic seller,~~ in which the telephone solicitor, any of its principals, ~~or any of its room operators~~ subsidiaries, or corporate predecessors has been a party during the ~~preceding five years~~ten-year period preceding registration or renewal of registration, ~~by federal, State, or local officials relating to telephonic sales practices of each.~~ and which proceeding involves allegations that regulations, agency rules, ordinances, or statutes pertaining to telephone solicitations have been violated by the telephone solicitor or that the telephone solicitor or any of its principals, subsidiaries, or corporate predecessors have violated any criminal statute prohibiting mail fraud, wire fraud, money laundering, obtaining property by false pretenses, or

other forms of fraud. The summary shall include the date each ~~action~~ proceeding was commenced, the ~~criminal or civil charges~~criminal, civil, or administrative violations alleged, the case caption, the court or agency proceeding file number, the ~~court venue,~~ venue of the proceeding, and the disposition or current status of the ~~action.~~ proceeding. ~~For purposes of this section, a 'civil proceeding includes' means assurances of voluntary compliance, assurances of discontinuance, consent judgments, and similar agreements executed with federal, State, or local officials.~~ The summary of settlement agreements, assurances of discontinuance, and assurances of voluntary compliance shall include the date each was executed, the violations alleged or resolved, and the name and address of the agency or official that executed the document with the telephone solicitor.

(b) For purposes of this section, `street address' does not include a private mail service ~~address.~~address, `Commercial Mail Receiving Agency' ('CMRA') or 'private mailbox' ('PMB'), as those terms are defined by the United States Postal Service.

"§ 66-263. Bond requirement; prizes and gifts.

(a) At least 10 days before the commencement of any promotion offering any gift or prize with an actual or represented market value of five hundred dollars ($500.00) or more, the ~~telephonic seller~~ telephone solicitor shall notify the ~~Secretary~~ Attorney General in writing of the details of the promotion, fully describing the nature and number of all gifts or prizes and their current market value, the ~~seller's~~ solicitor's rules and regulations governing the promotion, and the date the gifts or prizes are to be awarded. All gifts or prizes offered shall be awarded. Concurrent with notifying the ~~Secretary~~ Attorney General under this subsection, the ~~telephonic seller~~ telephone solicitor shall post a bond with the ~~Secretary~~ Attorney General for the market value or the represented value, whichever is greater, of all gifts or prizes represented as available under the promotion. The bond must be issued by a surety company authorized to do business in this State. The bond shall be in favor of the State of North Carolina for the benefit of any person entitled to receive a gift or prize under the promotion who did not receive it within 30 days of the specified date of award. The amount recoverable by any person under the bond shall not exceed the market value, the represented value of the gift or prize, or the amount of any consideration or contribution paid by that person in response to the telephone solicitation, whichever is greatest.

(b) Within 45 days after the specified date of the award of the gift or prize, the ~~seller~~ solicitor shall provide, in writing, to the ~~Secretary,~~Attorney General, proof that the gifts or prizes were awarded. The writing shall include the name, address, and telephone number of all persons receiving awards or prizes. The bond shall be maintained until the ~~Secretary~~ Attorney General receives reliable proof that the gifts or prizes have been delivered to the intended recipients.

(c) The Attorney General, on behalf of any injured purchaser, or any purchaser who is injured by the bankruptcy of the ~~telephonic seller~~ telephone solicitor or its breach of any agreement entered into in its capacity as a ~~telephonic seller,~~telephone solicitor, may initiate a civil action to recover against the bond.

"**§ 66-264. Calls made to minors.**

A ~~telephonic seller~~ telephone solicitor must inquire as to whether the prospective purchaser it is contacting is under 18 years of age. If the prospective purchaser purports to be under 18 years of age, the ~~telephonic seller~~ telephone solicitor must discontinue the call immediately.

"**§ 66-265. Offers of gifts or prizes.**

(a) It shall be unlawful for any ~~telephonic seller~~ telephone solicitor to make a telephone solicitation or attempted telephone solicitation involving any gift or prize when the solicitation or attempted solicitation:

(1) Requests or directs the consumer to further the transaction by calling a 900 number or a pay-per-call number.

(2) Requests or directs the consumer to send any payment or make a donation in order to collect the gift or prize.

(3) Does not comply fully with G.S. 75-30, 75-32, 75-33, or 75-34.

(b) Notwithstanding subsection (a) of this section, a ~~telephonic seller~~ telephone solicitor may offer a gift or prize in connection with the bona fide sale of a product or service.

"**§ 66-266. Penalties.**

(a) Any violation of this Article shall constitute an unfair and deceptive trade practice in violation of G.S. 75-1.1.

(b) In an action by the Attorney General against a ~~telephonic seller~~ telephone solicitor for violation of this Article, or for any other act or practice by a ~~telephonic seller~~ telephone solicitor constituting a violation of G.S. 75-1.1, the court may impose civil penalties of up to twenty-five thousand dollars ($25,000) for each violation involving North Carolina purchasers or prospective purchasers who are 65 years of age or older.

(c) The remedies and penalties available under this section shall be supplemental to others available under the law, both civil and criminal.

(d) Compliance with this Article does not satisfy or substitute for any other requirements for license, registration, or conduct imposed by law.

(e) In any civil proceeding alleging a violation of this Article, the burden of proving an exemption or an exception from a definition is upon the person claiming it, and in any criminal proceeding alleging a violation of this Article, the burden of producing evidence to support a defense based upon an exemption or an exception from a definition is upon the person claiming it."

SECTION 7. Should one or more of the terms or provisions of this act or any application thereof be held or declared unenforceable or invalid to any extent, the remainder of this act, and the applications thereof that have not been held or declared unenforceable or invalid, shall remain in effect.

SECTION 8. Consistent with protected speech rights of businesses that engage in telephone solicitations, the provisions of this act shall be given broad construction so as to protect North Carolina residential telephone subscribers from unwanted telephone solicitations and from problematic sales techniques and payment procedures often associated with these solicitations.

SECTION 9. There is appropriated from the General Fund to the Department of Justice the sum of nine hundred thousand dollars ($900,000) for the 2002-2003 fiscal year to establish and maintain the No-Call Registry established by G.S. 75-30.2, as enacted in Section 3 of this act.

SECTION 10. This act is effective when it becomes law and applies to telephone solicitations made on or after that date. G.S. 75-30.2, as enacted in Section 3 of this act, becomes effective 90 days after the current operations appropriations act for the 2002-2003 fiscal year is enacted. G.S. 66-54, as amended in Section 4 of this act, applies to all telephone directories printed on or after that date.

HOUSE BILL 1612:
Stop Unwanted Telephone Solicitations

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representatives Baddour and Redwine
Date:	July 9, 2002		
Version:	Proposed Committee Substitute H1612-PCS4254-SB-62	**Summary by:**	Jeff Hudson, Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 1612, would direct the Attorney General to establish a No-Call Registry and would prohibit telephone solicitors from calling the telephone number of a residential telephone subscriber if the subscriber's telephone number appears in the No-Call Registry. The Proposed Committee Substitute would also increase the filing fees for telephone solicitors and regulate the formation of contracts via telephone solicitations.***

BILL ANALYSIS:

Section 1. Findings

Section 2. Restrictions on Telephone Solicitations

Under current law, a telephone solicitor may not call a residential telephone subscriber who has communicated to that telephone solicitor a desire to be taken off the telephone solicitor's contact list. Section 2 prohibits a telephone solicitor from calling the telephone number of a residential telephone subscriber if the subscriber's telephone number appears in the No-Call Registry.

Section 2 also:

- Amends the definitions related to the regulation of telephone solicitations as follows:
  - Expands the definition of "telephone solicitation" to include telephone calls for the purpose of soliciting or encouraging participation in a contest, sweepstakes, raffle, or lottery and for the purpose of obtaining a charitable donation.
  - Amends the list of exemptions from the definition of "telephone solicitation" as follows:
    - The established business relationship exemption is narrowed to calls that are in connection with an existing debt or contract.
    - The tax-exempt nonprofit exemption is narrowed to calls that are placed by direct employees of a tax-exempt nonprofit organization or by volunteers without remuneration from the organization.
    - An exemption is added for reference checks.
    - An exemption is added for persons, businesses, or other legal entities that employ fewer than 10 direct employees and those direct employees collectively make or attempt to make no more than 10 unsolicited calls per week.
  - Defines "doing business in this State" as making or causing to be made any telephone solicitation to residential telephone subscribers, whether the telephone solicitations are made from a location inside or outside North Carolina. **Note:** This definition is designed to address the issue of whether North Carolina has jurisdiction to enforce telephone solicitation laws against out-of-state telephone solicitors.

- Provides that a telephone solicitor may contact a residential telephone subscriber whose telephone number appears in the No-Call Registry via non-telephonic means in order to obtain the subscriber's express written permission allowing the telephone solicitor to make telephone solicitations to the subscriber.
- Provides that a telephone solicitor may advertise in a general medium or contact a residential telephone subscriber whose telephone number appears in the No-Call Registry via non-telephonic means in order to encourage the subscriber to initiate telephonic communications to the telephone solicitor.
- Authorizes the Attorney General to bring an action to impose the following civil penalties for violations of telephone solicitation laws:
    - $500 for the first violation, $1,000 for the second violation, and $5,000 for the third and each subsequent violation
    - $100 for each violation if the telephone solicitor has established in-house procedures to comply with telephone solicitation requirements, has maintained a list of persons that may not be contacted, and the violations are rare and the result of a mistake.
- Authorizes a residential telephone subscriber who has received a telephone solicitation in violation of the telephone solicitation laws to bring an action to recover damages in amounts equivalent to the civil penalties that the Attorney General may seek.

Section 3. Caller Identification Block

Under current law, a telephone solicitor may not knowingly block a residential telephone subscriber's caller identification service. Use of a call generating system that does not transmit caller identification information, however, is not a violation of this prohibition. Section 3 repeals the exemption for call generating systems effective January 1, 2006.

Section 4. No-Call Registry

Section 4 directs the Attorney General to establish and maintain a No-Call Registry containing the telephone numbers of residential telephone subscribers who do not wish to receive telephone solicitations at those numbers. The No-Call Registry will be operated in the following manner:

- The telephone number of a residential telephone subscriber will be placed in the No-Call Registry upon the request of the subscriber and will remain in the No-Call Registry until the subscriber requests its removal or the Attorney General is notified that the number has been disconnected.
- Not less than 10 days before commencing telephone solicitations, a telephone solicitor must register with the Attorney General, pay a filing fee, and obtain the latest edition of the No-Call Registry.
- A telephone solicitor may not sell, assign, transfer, or convey a copy of the No-Call Registry to parties other than its employees, its wholly owned subsidiaries, or any independent contractors operating within one location or franchise with whom the telephone solicitor has a business relationship.
- Information contained in the No-Call Registry may only be used to remove residential telephone subscribers from telephone call lists and to prevent calls from being placed to telephone numbers listed in the No-Call Registry. Information contained in the No-Call Registry is not a public record.

Section 5. Notification of Opportunity to Object to Telephone Solicitations

Under current law, each local exchange company must notify each residential telephone subscriber, at least annually, of various provisions of State and federal law that allow consumers to object to receiving telephone solicitations and that allow consumers to have their names removed from telemarketing lists. This information must also be contained in the consumer information pages of each telephone directory.

Section 5 requires both local exchange companies and competing local exchange companies to make this notification at least two times per calendar year and include information about the existence of and opportunity to subscribe to the No-Call Registry. This section applies to telephone directories printed on or after April 1, 2003.

Section 6. Restriction on Use of Automatic Dialing and Recorded Message Players

Under current law, no person may use an automatic dialing and recorded message player to make unsolicited telephone calls unless the person is a charitable, civic, political, or opinion polling organization, or a radio station, television station, or broadcast rating service conducting a public opinion poll and the person clearly identifies the nature of the call and the name and address of the calling organization. Violation of this prohibition is a Class 3 misdemeanor punishable only by a fine of $100 per occurrence.

Section 6 adds the requirement that no part of an unsolicited telephone call from an automatic dialing and recorded message player may be used to solicit or encourage the purchase or rental of, or investment in, property, goods, or services or to obtain information that will or may be used to solicit or encourage the purchase or rental of, or investment in, property, goods, or services.

Section 6 also:

- Provides that a call is unsolicited if the telephone number of the person called appears in the No-Call Registry.
- Deletes the penalty for violation of this section.
- Provides that this section does not apply to calls made in connection with an existing debt or contract.

Section 7. Telephone Solicitor Registration and Bond Requirement

Under current law, not less than 10 days before commencing telephone solicitations, a telephone solicitor must register with the Secretary of State and pay a $100 filing fee. Section 7 requires telephone solicitors to register with the Attorney General not less than 10 days before commencing telephone solicitations and pay the following fees:

- $1,000 if the telephone solicitor employs 500 or more persons in one location or franchise.
- $750 if the telephone solicitor employs between 50 and 500 persons in one location or franchise.
- $500 if the telephone solicitor employs between 5 and 51 persons in one location or franchise.
- $250 if the telephone solicitor employs 5 or fewer persons in one location or franchise.

Section 7 also:

- Amends the definitions related to the registration and bonding of telephone solicitors as follows:
    - Defines "telephone solicitor" to also include any person, business, or other legal entity that receives inbound telephone solicitations.

- Defines "inbound telephone solicitation" as a telephone call initiated by a prospective purchaser in response to any non-telephonic notice that the prospective purchaser has won a contest or may qualify for credit.
- Defines "prospective purchaser" as a residential telephone subscriber and any member of the residential telephone subscriber's household.

- Provides that for a contract or purchase agreement secured during a telephone solicitation to be valid:
  - The contract must be reduced to writing and signed by the consumer.
  - The contract complies with all other applicable laws.
  - The contract contains the name, address, and business telephone number of the seller; the total price of the contract; and a detailed description of the goods or services being sold.
  - The goods or services comply with the description used in the telephone solicitation.
  - The contract contains a statement that the prospective purchaser is not obligated to pay unless the prospective purchaser signs the contract and returns it to the seller.
  - The contract does not exclude any representations made by the telephone solicitor.
- Provides that a telephone solicitor or a merchant who engages a telephone solicitor to make telephone solicitations to a prospective purchaser may not make or submit a charge to the prospective purchaser's accounts or make an electronic transfer of funds until the merchant receives a signed copy of the written contract from the prospective purchaser.

Section 8. Severability Clause

If any provision of the act is held to be unenforceable or invalid, the remainder of the act that has not been held to be unenforceable or invalid shall remain in effect.

Section 9. Construction of Act

Consistent with protected speech rights, this act shall be construed broadly to protect residential telephone subscribers from unwanted telephone solicitations and from problematic sales techniques and payment procedures often associated with these solicitations. **Note:** This provision is designed to address concerns that may arise due to the act's regulation of various forms of speech.

Section 10. Effective Dates

Except as otherwise noted, this act is effective January 1, 2003 and applies to telephone solicitations made on or after that date.

Section 11. Effectiveness Contingent on Appropriation

This act becomes effective only if a Budget Bill that contains a provision that is equivalent to Section 15.2(a) of the Senate Budget Bill becomes law. Section 15.2(a) of the Senate Budget Bill provides that the Department of Justice may use up to one million dollars ($1,000,000) of the funds available to the Department during the 2002-2003 fiscal year to establish and implement a no-call registry to stop unwanted telemarketing calls and to increase protections for consumers in transactions initiated by telemarketers.

Exemptions to State No-Call Lists or General Telephone Solicitation Laws

Compiled by Kristen Crosson, Research Division, North Carolina General Assembly
July 9, 2002

Alabama

- Solicitations for an isolated transaction not done in the course of a pattern of repeated transactions
- Calls for religious, charitable, political, educational, or other noncommercial purposes or someone soliciting for a nonprofit corporation, including rural electric cooperatives
- Calls from anyone who doesn't intend to complete a sale during the call or who doesn't make the major sales presentation during the call. Also, anyone who doesn't complete the sales presentation during the call but who completes the sales presentation at a follow-up meeting
- Solicitations from any licensed securities, commodities, or investment broker, dealer, or investment adviser
- Solicitations from any licensed associated person of a securities, commodities, or investment broker, dealer, or investment adviser, when soliciting within the scope of his or her license
- Solicitations for the sale of a newspaper, periodical, or magazine
- Solicitations for a book, video, or record club or contractual plan or arrangement
- Solicitations from a commercial bank, trust company, savings and loan association, mutual savings bank, credit union, industrial loan company, consumer finance lender, commercial finance lender, or insurer
- Solicitations from any licensed insurance broker, agent, customer representative, or solicitor
- Solicitations for the sale of cable television services
- Solicitations for some types of business-to-business sales
- Solicitations for sales or advertising in a catalog, periodical, or magazine of the seller's merchandise or ad purchasers, merchandise to prospective purchasers
- Solicitations for maintenance or repair contracts for goods that were bought from the solicitor
- Solicitations from a telephone company or utility company regulated by the Alabama Public Service Commission
- Solicitations for funeral services
- Solicitations from a licensed commercial telephone seller
- An issuer or a subsidiary of an issuer that has a class of securities subject to Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. Section 781)
- Solicitations for telephone answering services
- Solicitations for transactions regulated by the Commodity Futures Trading Commission
- Solicitations for the sale of food or produce if for less than $500
- Solicitations to consumers who have an existing business relationship with the caller
- Solicitations from a retail business in operation for at least a year whose products or services are offered for sale at the place of business
- Solicitations for vacation time-sharing plans
- Solicitations from a telemarketing company with 75% of its contracts to exempt entities
- Solicitations for the sale of an annual publication of notable individuals

Alaska

- An act or transaction regulated under laws administered by the state, by a regulatory board or commission except as provided by AS 45.50.471(b)(27) and (30), or officer acting under statutory authority of the state or of the United States, unless the law regulating the act or transaction does not prohibit the practices declared unlawful in AS 45.50.471;
- An act done by the publisher, owner, agent, or employee of a newspaper, periodical, or radio or television station in the publication or dissemination of an advertisement, when the owner, agent, or employee did not have knowledge of the false, misleading, or deceptive character of the advertisement or did not have a direct financial interest in the sale or distribution of the advertised product or service;
- An act or transaction regulated under AS 21.36 or AS 06.05 or a regulation adopted under the authority of those chapters.

Arizona

- A person who is registered with the secretary of state pursuant to section 44-6552 or who is exempt from registration pursuant to section 44-6553.
- A person making telephone solicitations without the intent to complete and who does not complete the sales presentation during the telephone solicitation but completes the sales presentation at a later face-to-face meeting between the solicitor and the consumer provided that the later face-to-face meeting is not for the purpose of collecting the payment or delivering any item purchased.
- A person who after making a telephone contact with a consumer sends the consumer descriptive literature and does not require payment before the consumer's review of the descriptive literature and the person is not conducting a solicitation involving any of the following:
  - The sale of an investment or an opportunity for an investment that is not registered with any state or federal authority.
  - A prize promotion or premium.
  - A recovery service.
- A person or solicitor for a person who operates a retail business establishment under the same name as the name used in the solicitation of sales by telephone, if on a continuing basis all of the following apply:
  - Merchandise is displayed and offered for sale or services are offered for sale and provided at the person's business establishment.
  - At least fifty per cent of the person's business involves the buyer obtaining the merchandise at the person's business establishment.
  - The person holds a transaction privilege tax license pursuant to title 42, chapter 5.

Arkansas

- Anyone with written permission to call you.
- Businesses with whom you have had a relationship with in the past 36 months.
- Anyone calling regarding an outstanding debt or obligation.
- Motor vehicle dealers, insurance agents, real estate agents, funeral establishments or from licensed investment brokers regarding the sale of their products and services.
- Volunteers calling on behalf of a charitable organization.
- Newspapers regarding advertising or sales.
- Banks relating to banking services other than credit card offers.

California

- Tax-exempt charitable organizations
- Local small businesses w/in 50 mile radius
- Established business relationship
- Subscriber-identified exclusions
- Debt collection
- Seasonal goods/services (offered less than 4 months of year)
- Express request

Colorado

- To any residence with that resident's prior express invitation or permission.
- By or on behalf of any person or entity with whom a resident has an established business relationship.
- For 30 days after a resident has contacted a business to inquire about the potential purchase of goods or services or until the resident requests that no further calls be made, whichever occurs first.
- By or on behalf of a charitable organization that is required to and that has complied with the notice and reporting requirements of section 6-16-104 C.R.S. or is excluded from such notice and reporting requirements by section 6-16-103(7) C.R.S.
- Made for the sole purpose of urging support for or opposition to a political candidate or ballot issue; or
- Made for the sole purpose of conducting political polls or soliciting the expression of opinions, ideas or votes.

Connecticut

- Calls made in response to your written or verbal request or permission,
- Tax-exempt, non-profit organizations, including their paid phone solicitors,
- Telephone companies compiling their own directories,
- Calls in response to your visit to a business that has a fixed location, such as a car dealer you visited,
- Calls made to an existing customer, such as the bank you have a checking account with,
- Calls made regarding an existing debt or contract where the payment or the performance of the contract is not yet completed,
- Calls from a solicitor first doing business in Connecticut after January 1, 2001. In this case, they may call you during their first year in business, unless you tell them not to, and
- Calls made for non-commercial purposes such as polls and surveys.

Delaware– no law

Florida

- In response to an express request by the person called.
- In reference to an existing debt, contract, payment or performance.
- To any person with whom the telephone solicitor has a prior or existing business relationship.
- About the newspaper business, including newspaper publishers, agents or employees.
- On behalf of charitable organizations.
- On behalf of political candidates and political parties.

Georgia

- Businesses that have a previous or current relationship with the customer;
- Recognized charitable or religious organizations; or
- Political pollsters or candidates for public office.

Hawaii

- A person who initiates telephone calls to a residence for the sole purpose of polling or soliciting the expression of ideas, opinions, or votes, or a person soliciting solely for a political or religious cause or purpose;
- A securities broker-dealer, salesperson, investment [adviser], or investment [adviser] representative who is registered with this State to sell securities or who is authorized to sell securities in this State pursuant to federal securities laws, when soliciting over the telephone within the scope of the person's registration;
- A financial institution that is authorized to accept deposits under its chartering or licensing authority where such deposits are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, such as a bank, savings bank, savings and loan association, depository financial services loan company, or credit union, or a nondepository financial services loan company that is licensed or authorized to conduct business in this State by the commissioner of financial institutions, or an affiliate or subsidiary of a financial institution as defined in chapter 412;
- A person or organization that is licensed or authorized to conduct business in this State by the commissioner of insurance including but not limited to an insurance company and its employees, while engaged in the business of selling or advertising the sale of insurance products or services;
- A college or university accredited by an accrediting organization recognized by the United States Department of Education;
- A person who publishes a catalog of at least fifteen pages, four times a year, with a circulation of at least one hundred thousand, where the catalog includes clear disclosure of sale prices, shipping, handling, and other charges;
- A political subdivision or instrumentality of the United States, or any state of the United States;
- The sale of goods or services by telecommunications or landline (i.e., cable) or wireless video service providers, for which the terms and conditions of the offering, production, or sale are regulated by the public utilities commission or the Federal Communications Commission, or pursuant to chapter 440G, including the sale of goods or services by affiliates of these telecommunications or video service providers; provided that

nothing herein shall be construed to preclude or preempt actions brought under any other laws including chapter 480;

- A real estate broker or salesperson who is licensed by this State to sell real estate, when soliciting within the scope of the license; or
- A travel agency that is registered with this State, when engaging in the business of selling or advertising the sale of travel services. [L 1999, c 170, pt of §1]

Idaho

- Existing business relationship
- Those seeking charitable donations

Illinois

- Autodialers
- Secutiries brokers and investment advisors
- Insurance agent if existing policy holders

Indiana

- Charitable organizations who use volunteers or employees to make the calls and immediately disclose A) the caller's true first and last name, and B) the name, address and phone number of the organization;
- Newspapers who use volunteers or employees to make the calls;
- Insurance agents licensed when the individual is soliciting an application for insurance or negotiating a policy of insurance on behalf of an insurer
- Realtors licensed if A) the sale of goods or services is not completed; and B) the payment or authorization of payment is not required until after a face to face sales presentation by the seller.

Iowa – no law

Kansas

- Organizations soliciting for charitable donations
- Calls concerning political candidates or issues
- Expressly requested a company to call
- Established business relationship has been developed within the past three years between the consumer and the company.

Kentucky

- Telemarketers who have a prior or existing business relationship with you.
- Telemarketers who have received an express request from you to call.
- Telemarketers with whom you have an existing debt or contract.
- Telemarketers soliciting only donations for charities.
- Colleges and universities
- Public schools
- Charities and exempt organizations
- Real estate brokers
- Stock brokers
- Insurance agents
- Employment agencies
- Subscriptions for newspapers, magazines, cable TV
- Merchant regulated by Public Service Commission
- Sale of food costing less than $100 per address
- Sales catalog publishers
- Banks and other financial institutions
- Merchant regulated by FCC
- Book, video, and record clubs

- Merchants scheduling "face to face" sales pitch
- Telemarketers operating continuously for at least 5 years under the same name and providing 75% of their services to merchants exempted under the act

Louisiana
- In response to an express request of the person called.
- Primarily in connection with an existing debt or contract, payment or performance of which has not been completed at the time of such call.
- To any person with whom the telephonic solicitor has an existing business relationship, or a prior business relationship that was terminated or lapsed within six (6) months of such call.
- On behalf of an organization, which has non-profit status.
- For the purpose of conducting marketing research, public opinion polling, or similar activities that do not involve telephonic solicitation or selling.
- Constituting political activity

Maine
- Established business relationship

Maryland – no law

Massachusetts – no law

Michigan – no law

Minnesota
- Non profit organizations
- Political organizations
- Businesses with a prior relationship with the customer (such as banks, credit card companies and telephone companies)
- Businesses that do not complete the sale over the phone, but rather complete the transaction in a face-to-face setting (such as home repair services, lawn services, and mortgage companies)

Mississippi – no law

Missouri
- Telephone companies.
- Those that have a current business relationship with you.
- Those that you have expressly invited or permitted (for example, filling your name and number on an entry form).
- Certain not-for-profit groups if the person calling is a member of the group.
- Persons calling on a referral or working from their homes, or any person licensed for a trade or profession who is setting or attempting to set an appointment.

Montana
- Any securities, commodities, or investment brokers, dealers, or investment advisers or any associates of securities, commodities, or investment brokers, dealers, or investment advisers who are subject to licensure or registration by the securities and exchange commission, the national association of securities dealers, or another self-regulatory organization, as defined by 15 U.S.C. 78(c), or by an agency of this state or any other state and who are soliciting within the scope of their license or registration;
- A person engaged in solicitation for a religious, charitable, political, educational, or other noncommercial purpose or a person soliciting for a domestic or foreign nonprofit corporation that is registered with the Montana secretary of state;
- A business-to-business sale;

- A person that solicits sales by periodically publishing and delivering a catalog of the person's merchandise to prospective purchasers, if the catalog:
  (a) contains a written description or illustration of each item offered for sale;
  (b) includes the business or home address of the person soliciting the sale;
  (c) includes at least 20 pages of written material and illustrations;
  (d) is distributed in more than one state; and
  (e) has a circulation by mailing of not less than 150,000;
- A person who solicits contracts for maintenance or repair of goods previously purchased from that person or from the person on whose behalf the solicitation is made;
- A person soliciting a transaction regulated by the commodity futures trading commission if the person is registered or temporarily licensed with the commodity futures trading commission under the Commodity Exchange Act, Title 7, chapter 1, of the United States Code, and the person's registration or license is not expired, suspended, or revoked;
- A supervised financial organization or parent, subsidiary, or affiliate of a supervised financial organization;
- An insurer authorized to transact insurance under Title 33, chapter 2, part 1, a person licensed as an insurance producer under Title 33, chapter 17, part 2, or staff members, licensed or unlicensed, of the producer;
- A person soliciting the sale of services provided by a satellite or cable television system or a radio or television station authorized by the federal government or this state to provide services in this state;
- A telephone company or its subsidiary or agent or other business regulated by the Montana public service commission, the federal communications commission, a rural telephone cooperative or its subsidiary or agent, or a federally licensed cellular telephone or radio telecommunication service provider;
- A person soliciting business from consumers that have an existing business relationship with or have previously purchased from the business enterprise for which the person is soliciting;
- A person operating a retail business establishment under the same name as that used in the solicitation and:
  (a) the products or services are displayed and offered for sale at the business establishment; and
  (b) a majority of the person's business involves the consumer obtaining the products or services at the business establishment;
- A person soliciting for the sale of a magazine or newspaper of general circulation;
- An issuer or a subsidiary of an issuer that is authorized to offer securities for sale in this state;
- A book, video, record, or multimedia club, contractual plan, or arrangement:
  (a) under which the seller provides the consumer with a form that the consumer may use to instruct the seller not to ship the offered merchandise;
  (b) that is regulated by the federal trade commission regulation, 16 CFR 425, concerning the use of negative option plans by sellers in commerce; or
  (c) that provides for the sale of books, videos, records, multimedia products, or other goods that are not covered by subsection (15)(a) or (15)(b), including continuity plans, subscription arrangements, standing order arrangements, single sales, supplements, or series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive the merchandise on a periodic basis;
- A real estate salesperson or broker licensed by this state;
- A person that has provided telemarketing sales services under the same name and derives 50% of gross telemarketing sales revenue from contracts with persons exempted under this section from registration requirements;
- A person soliciting the sale of food or food products if the solicitation is not intended to and does not result in a sale in excess of $100 to a single address.

Nebraska

- Made to any person with the person's prior express invitation or permission,
- Made to any person with whom the caller has an established business relationship,
- Made by a tax-exempt nonprofit organization,
- Not made for commercial purposes,
- Made for a commercial purpose but which does not include the transmission of an unsolicited advertisement, or
- Placed by a live operator and a prerecorded message is not utilized

Nevada – no law

New Hampshire – no law

New Jersey –no law

New Mexico – no law

New York

- Charitable organizations;
- Religious corporations;
- Political parties and committees;
- Companies with which you have a prior business relationship; and
- Telemarketers who wish to arrange for a face-to-face meeting before concluding a sales transaction.

North Carolina – no law

North Dakota – no law

Ohio – no law

Oklahoma – no law

Oregon

- You asked them to call you (however, on occasion consumers inadvertently ask telemarketers to call them when entering contests or accepting free trials);
- The telemarketer calls on behalf of a public agency or a charitable organization to which you belong, or to which you have previously donated or have expressed an interest in making a donation;
- The call is a political poll or opinion survey unrelated to the marketing of any property, goods, or services; or
- The call is from a business you have bought from in the past, including a "predecessor of a business enterprise" for certain financial institutions.

Pennsylvania

- Made in response to a consumer's previous express request; in reference to an existing debt, contract, payment, or performance;
- Where an established business relationship between the consumer and the entity making the call currently exists;
- Made on behalf of a tax-exempt charitable or fraternal organization;
- Made on behalf of a veterans' organization; or,
- Made on behalf of a political candidate.

Rhode Island – no law

South Carolina

- Response to request
- Existing debt or contract
- Existing or previous business relationship
-

South Dakota – no law

Tennessee

- Express invitation or permission by the person being called
- Not-for-profit organization if the call is made by a member of the specific not-for-profit organization.
- Business relationship with the person being called within the previous twelve (12) months.
- Business calling does not sell or engage in telephone solicitation and does not make more than three (3) calls in any one calendar week.

Texas

- With whom they have an established business relationship;
- If the customer requests contact;
- To collect a debt; or
- If the telemarketer is a state licensee (for example – insurance or real estate agent, etc.) and:
  - the call is not made by an automated device;
  - the solicited transaction is not completed without a face-to-face presentation to complete a sales transaction and make payment;
  - the consumer has not previously told the licensee that the consumer does not wish to be called.

Utah – no law

Vermont – not provided

Virginia – not provided

Washington – not provided

West Virginia – no law

Wisconsin

- Banks & savings and loans
- Insurance companies
- Public utility
- Telecommunications carrier
-

Wyoming - not provided

Comparison of No-Call List and General Telephone Solicitation Laws by State

State	No-Call List or General Telephone Solicitation Law	List compiled by	Who notifies consumers	Time length on list	Cost to Consumer	Cost for Solicitors	Exemptions	Enforcement by	Civil/Criminal Penalties	Private Right of Action & Attorneys' Fees	Defenses
North Carolina											
HB 1612, First Edition	No-Call List	Attorney General (AG)	Local exchange companies	Until consumer notifies AG to remove name	No cost	$1,000 annual filing fee	Yes (see attached)	Attorney General	**Civil:** Up to $5,000 per violation	-Consumers have private cause of action -Can recover attorneys' fees	N/A
PCS for H1612	Same	Same	Local exchange companies and competing local exchange companies certified in NC	Until consumer notifies AG to remove name or until local exchange company or competing local provider notifies AG that the number has been disconnected	Same	Annual filing fee based on number of employees and independent contractors: $1,000 - 500 or more employees; $750 - Between 50 and 500 employees; $500 - Between five and 51 employees; $250 - Five or fewer employees	Yes (see attached)	Same	**Civil:** $500 for 1st violation, $1,000 for 2nd violation, $5,000 for the 3rd and each subsequent violation. $100 for each violation if it can be shown that the solicitor has established and implemented an in-house system designed to prevent further calls and that the violations are rare and a result of mistake	$500 for 1st violation, $1,000 for 2nd violation, $5,000 for the 3rd and each subsequent violation. $100 for each violation if it can be shown that the solicitor has established and implemented an in-house system designed to prevent further calls and that the violations are rare and a result of mistake	Reduced penalties if it can be shown that the solicitor has established and implemented an in-house system designed to prevent further calls and that the violations are rare and a result of mistake
G.S. 75-30.1	General Telephone Solicitation Law	Telemarketers each maintains list of persons that have requested not to be called	Local exchange companies	N/A	N/A	N/A	N/A	Attorney General	**Civil:** consumer - $500 per violation Attorney General - up to $500 per violation	-Consumers have private cause of action -Can recover attorneys' fees	No

Comparison of No-Call List and General Telephone Solicitation Laws by State

Other States

State	No-Call List or General Telephone Solicitation Law	List compiled by	Who notifies consumers	Time length on list	Cost to Consumer	Cost for Solicitors	Exemptions	Enforcement by	Civil/Criminal Penalties	Private Right of Action & Attorneys' Fees	Defenses
Alabama ALA Code 8-19A-3	No-Call List	Public Service Commission	Local exchange companies	2 years	None	$500 annual	Yes (see attached)	Public Service Commission	**Civil:** up to $2,000 per violation	-Consumers have private cause of action -Can recover attorneys' fees	-Established & implemented with due care -Reasonable practices & procedures
Alaska Sec. 45.50.475	No-Call List	Public Service Commission	Local exchange companies	until request removal	$5	$25-50 annual	Yes (see attached)	Attorney General	**Civil:** consumer - up to $500 per violation Attorney General - up to $5,000 per violation	-Consumers have private cause of action -Can recover attorneys' fees	Written procedures, trained personnel, maintain no-call list, AND calls are infrequent 44-1278(B)(2)
Arizona A.R.S. 44-1271, 1278(B)(3)	General Telephone Solicitation Law	Telemarketers each maintains list of persons that have requested not to be called	N/A	N/A	N/A	N/A	Yes (see attached)	Attorney General	**Civil:** up to $10,000 per violation	-Consumers have private cause of action -Can recover attorneys' fees	Written procedures, trained personnel, maintain no-call list, AND call was in error 44-1278(B)(2)
Arkansas A.R.S. 4-99-404	No-Call List	Attorney General establishes and operates list	Attorney General	1 year	$5 per phone number $5 annual renewal	Free	Yes (see attached)	Attorney General	**Civil:** -up to $10,000 per violation -Additional penalty of up to $10,000 if committed against elderly **Criminal:** Class A misdemeanor	-Consumers have private cause of action -Can recover reasonable attorneys' fees	None enumerated

Comparison of No-Call List and General Telephone Solicitation Laws by State

State	No-Call List or General Telephone Solicitation Law	List compiled by	Who notifies consumers	Time length on list	Cost to Consumer	Cost for Solicitors	Exemptions	Enforcement by	Civil/Criminal Penalties	Private Right of Action & Attorneys' Fees	Defenses
California	No-Call List	Attorney General	N/A	3 years	$1	$1,000 annual; $250 quarter	Yes	Attorney General	**Civil:** -up to $500 for 1st violation -$1,000 for additional violations **Criminal:** Class A misdemeanor	-Consumers have private cause of action -Can recover reasonable attorneys' fees	Had list, written procedures, trained personnel, maintain no-call list, AND call was in error
Colorado	No-Call List	Public Utilities Commission	N/A	1 year	Free	$0-500	Yes (see attached)	Attorney General	N/A	-Consumers have private cause of action -Can recover attorneys' fees	N/A
Connecticut	No-Call List	Department of Consumer Protection (DCP)	N/A	until written request for removal received	Free	$415 annual	Yes (see attached)	Department of Consumer Protection (DCP)	**Civil:** consumer - up to $500 per violation DCP - $5,000 to $25,000 per violation	N/A	Written procedures, trained personnel, maintain no-call list, and call was in error
Delaware	None										
Florida F.S.C. 501.059	No-Call List	Dept. of Agriculture and Consumer Services	Local exchange companies	For as long as subscribed	$10 initial $5 annual	$100 per area code quarterly or $400 for entire state quarterly	Yes (see attached)	Dept. of Agriculture and Consumer Services or Department of Legal Affairs	**Civil:** up to $10,000 per violation	-Consumers have private cause of action -Can recover attorneys' fees	None enumerated
Georgia O.C.G.A. 46-5-27	No-Call List	Public Service Commission	Local exchange companies	2 years	$5	$10 annual	Yes (see attached)	Governor's Office of Consumer Protection	**Civil:** up to $2,000 per violation	-Consumers have private cause of action -No specific recovery of attorneys' fees	Established & implemented with due care, reasonable practices & procedures

Comparison of No-Call List and General Telephone Solicitation Laws by State

State	No-Call List or General Telephone Solicitation Law	List compiled by	Who notifies consumers	Time length on list	Cost to Consumer	Cost for Solicitors	Exemptions	Enforcement by	Civil/Criminal Penalties	Private Right of Action & Attorneys' Fees	Defenses
Hawaii H.R.S. 481P-4 thru 6, 480-2	General Telephone Solicitation Law	Telemarketers	None	N/A	N/A	N/A	Yes (see attached)	Attorney General; Office of Consumer Protection	**Civil:** $500-$10,000 per violation	-Consumers have private cause of action -Can recover attorneys' fees	None enumerated
Idaho	No-Call List	Attorney General	Local exchange companies	3 years	$10 initial, $5 renewal	$25 quarter, $100 year	Yes (see attached)	Attorney General	Yes	-Consumers have private cause of action - Can recover attorneys' fees	None enumerated
Illinois 815 ILCS 413/15(b)3	General Telephone Solicitation Law	Telemarketers each maintains list of persons that have requested not to be called	N/A	N/A	N/A	N/A	Yes (see attached)	Attorney General	**Civil:** Action by Attorney General, not to exceed $50,000 per violation	-Consumers have private cause of action for reasonable actual damages -Can recover attorneys' fees	None enumerated
Indiana	No-Call List	Attorney General	N/A	until request removal	Free	$300 annual	Yes (see attached)	Attorney General	**Civil:** $10,000 for 1st violation, $25,000 additional violations	-Consumers have private cause of action -Can recover attorneys' fees	None enumerated
Iowa	None										
Kansas	No-Call List	N/A	N/A	N/A	N/A	N/A	Yes (see attached)	N/A	N/A	N/A	N/A
Kentucky KRS 367.461	No-Call List	Attorney General	N/A	1 year	Free	$300 registration fee; $50,000 surety bond; $50 renewal fee	Yes (see attached)	Attorney General	**Civil:** $2,000 per willful violation **Criminal:** Class B misdemeanor for first offense; Class A misdemeanor for subsequent offenses	None	None enumerated

Comparison of No-Call List and General Telephone Solicitation Laws by State

State	No-Call List or General Telephone Solicitation Law	List compiled by	Who notifies consumers	Time length on list	Cost to Consumer	Cost for Solicitors	Exemptions	Enforcement by	Civil/Criminal Penalties	Private Right of Action & Attorneys' Fees	Defenses
Louisiana	No-Call List	Public Service Commission	N/A	5 years	Free	$800 annual fee;$20,000 surety bond	Yes (see attached)	Public Service Commission	**Civil:** up to $1,500 per violation and up to $3,000 when concerning consumers aged 65 or older	N/A	N/A
Maine	No-Call List	DMA	N/A	N/A	$5	$781 for the DMA list	Yes (see attached)	Attorney General	No	N/A	N/A
Maryland	None										
Massachusetts	None										
Michigan	None										
Minnesota	No-Call List	Department of Commerce	N/A	4 years	Free	$125 per quarter in 2003, $90 in 2004, and $75 in 2005 and each year thereafter	Yes (see attached)	Department of Commerce	**Civil:** $1,000 per violation	N/A	N/A
Mississippi	None										
Missouri	No-Call List	Attorney General	Local exchange companies	1 year	Free	$25 quarter per area code; $600 year	Yes (see attached)	Attorney General	**Civil:** up to $5,000 per violation	-Consumers have private cause of action -Can recover attorneys' fees	Established & implemented practices & procedures
Montana M.C.A. 30-14-1412(1)	General Telephone Solicitation Law	Telemarketers each maintains list of persons that have requested not to be called	N/A	N/A	Free	N/A	Yes (see attached)	Attorney General; Department of Administration; county attorneys	**Civil:** actual damages or $500 per violation **Criminal:** up to $500 fine or up to 6 mos. imprisonment; subsequent conviction up to $5,000 fine or up to 5 years imprisonment	-Consumers have private cause of action -Can recover attorneys' fees	None enumerated

Comparison of No-Call List and General Telephone Solicitation Laws by State

State	No-Call List or General Telephone Solicitation Law	List compiled by	Who notifies consumers	Time length on list	Cost to Consumer	Cost for Solicitors	Exemptions	Enforcement by	Civil/Criminal Penalties	Private Right of Action & Attorneys' Fees	Defenses
Nebraska	General Telephone Solicitation Law	Telemarketers each maintains list of persons that have requested not to be called	N/A	N/A	N/A	N/A	Yes (see attached)	Public Service Commission, Attorney General, county attorneys	**Civil:** up to $2,000 per violation **Criminal:** Class I misdemeanor	-Consumers have private cause of action -Can recover reasonable attorneys' fees	None enumerated
Nevada	Telephone Solicitation Fraud law	Consumer Affairs Division of Department of Business and Industry	N/A	N/A	N/A	$6,000 registration fee; $50,000 surety bond	N/A	Attorney General	Yes	-Consumers have private cause of action -Can recover reasonable attorneys' fees	N/A
New Hampshire	None										
New Jersey 48:17-25	None	N/A	Local exchange companies	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
New Mexico	None										
New York Chapter 547, section 399-z	No-Call List	New York State Consumer Protection Board	N/A	3 years	Free	$500 annual	Yes (see attached)	New York State Consumer Protection Board	**Civil:** up to $5,000 per violation	N/A	Had list, written procedures, trained personnel, maintain no-call list, AND call in error
North Dakota	None										
Ohio	None										
Oklahoma	None										

Comparison of No-Call List and General Telephone Solicitation Laws by State

State	No-Call List or General Telephone Solicitation Law	List compiled by	Who notifies consumers	Time length on list	Cost to Consumer	Cost for Solicitors	Exemptions	Enforcement by	Civil/Criminal Penalties	Private Right of Action & Attorneys' Fees	Defenses
Oregon ORS 646.569	No-Call List	List Administrator	Local exchange companies	1 year	$6.50 per number; $3 annual renewal	$120 annual	Yes (see attached)	Attorney General	**Civil:** up to $25,000 per violation	-Consumers have private cause of action if can prove ascertainable loss of money or property -Can recover attorneys' fees	None enumerated
Pennsylvania 73 P.S. 2245(a)(2)	No-Call List	Telemarketers each maintains list of persons that have requested not to be called	N/A	5 years	None	$500 fee every 2 years; $50,000 surety bond	Yes (see attached)	Attorney General	**Civil:** up to $1,000 per violation or $3,000 if person 65 or older	-Consumers have private cause of action -Can recover reasonable attorneys' fees	Established & implemented procedures to comply, trained personnel maintained lists, and call in error
Rhode Island	None										
South Carolina S.C.C.A. 16-17-445	General Telephone Solicitation Law	Telemarketers each maintains list of persons that have requested not to be called	N/A	5 years	Free	N/A	Yes (see attached)	Department of Consumer Affairs	**Civil:** $100 for first violation; $200 for second; and up to $1,000 for subsequent violations **Criminal:** Misdemeanor; fine of not more than $200 and/or 30 days imprisonment	None	None enumerated
South Dakota	None										

Comparison of No-Call List and General Telephone Solicitation Laws by State

State	No-Call List or General Telephone Solicitation Law	List compiled by	Who notifies consumers	Time length on list	Cost to Consumer	Cost for Solicitors	Exemptions	Enforcement by	Civil/Criminal Penalties	Private Right of Action & Attorneys' Fees	Defenses
Tennessee T.C.A. Section 65-4-401 et seq	No-Call List	Tennessee Regulatory Authority	Local exchange companies	5 years	Free	$500 annual	Yes (see attached)	Tennessee Regulatory Authority	**Civil:** up to $2,000 per violation	None	Established & implemented with due care, reasonable practices & procedures
Texas	No-Call List	Public Utility Commission	Local exchange company	3 years	$2.25 per phone number	$45 per quarter	Yes (see attached)	Public Utility Commission, Attorney General	**Civil:** consumer - up to $500 per violation; Attorney General - up to $1,000 to $3,000 per violation	-Consumers have private cause of action -Can recover reasonable attorneys' fees	None enumerated
Utah	None										
Vermont	General Telephone Solicitation Law	Telemarketers each maintains list of persons that have requested not to be called	Local exchange companies	N/A	N/A	N/A	N/A	Attorney General	**Civil:** consumer - up to $500 per violation	-Consumers have private cause of action -Can recover reasonable attorneys' fees	N/A
Virginia	General Telephone Solicitation Law	Telemarketers each maintains list of persons that have requested not to be called	N/A	N/A	N/A	N/A	N/A	Attorney General	**Civil:** consumer - $500 to $1500 per violation; Attorney General - $500 to $1,000 per violation	-Consumers have private cause of action -Can recover reasonable attorneys' fees	Established & implemented with due care, reasonable practices & procedures
Washington RCW 19.158.110	General Telephone Solicitation Law	Telemarketers each maintains list of persons that have requested not to be called	Local exchange companies	N/A	N/A	N/A	N/A	Attorney General	**Civil:** up to $2,000 per violation	-Consumers have private cause of action -Can recover reasonable attorneys' fees	None enumerated
West Virginia	None										

Comparison of No-Call List and General Telephone Solicitation Laws by State

State	No-Call List or General Telephone Solicitation Law	List compiled by	Who notifies consumers	Time length on list	Cost to Consumer	Cost for Solicitors	Exemptions	Enforcement by	Civil/Criminal Penalties	Private Right of Action & Attorneys' Fees	Defenses
Wisconsin W.A.C. 127.16(4)	General Telephone Solicitation Law	Telemarketers each maintains list of persons that have requested not to be called	N/A	N/A	N/A	N/A	Yes (see attached)	Department of Agriculture, Trade, and Consumer Protection	**Civil:** $100-$10,000 per violation **Criminal:** fine of not less than $25 nor more than $5,000 and/or imprisonment of up to 1 year	-Consumers have private cause of action for double damages, costs -Can recover reasonable attorneys' fees	Established and implemented procedures to comply, trained personnel, maintained list, call is good faith error
Wyoming	No-Call List	Telemarketers each maintains list of persons that have requested not to be called	N/A	N/A	N/A	N/A	N/A	Attorney General	N/A	N/A	N/A

State finding no-call list comes with drawbacks

By Michele McNeil Solida
michele.mcneil.solida@indystar.com

More than 1 million Hoosier phone numbers are off limits to telemarketers.

And that list will grow Tuesday, the next deadline for Indiana residents to get on the state's popular no-call list.

The list comes at a cost, though.

Attorney General Steve Carter's office has spent about $1.25 million to keep the list but has recouped only a fraction of that.

The law that created the no-call list was crafted so that telemarketers — and not call-weary Hoosiers — would foot the bill.

But proceeds from selling the list to telemarketers and fining those who break the law has netted just $303,000. The rest of the money is coming from the consumer protection fund, filled with money from court settlements against businesses accused of deceptive practices.

The attorney general's office has spent an average of 87 cents per phone number to maintain the list, which includes contracting with a call center to sign people up, paying an administrator to oversee the program and investigating complaints.

If telemarketers want to call Hoosiers, they must purchase the list. The charge is $300 per list — and firms have to buy a new one each quarter when the list is updated. But that has raised just $223,000.

The attorney general's office also has collected money from fines levied against telemarketers who break the law. So far, the state has settled with 26 firms and fined them a total of $80,000.

Because Hoosiers have to register their phone numbers only once, the cost of administering the program will dramatically subside, said Staci Schneider, spokeswoman for the attorney general.

The no-call list has sparked at least three legal challenges. The first, by the Professional Fire Fighters Union of Indiana, was dropped in December after a public outcry.

But two court battles remain. On June 7, a trial resumes in Vanderburgh County. Salesman Steven Martin of Evansville says the law violates his free speech rights. Martin, who has sold Kirby vacuum cleaners for 23 years, doesn't think it's fair that there are exemptions for certain businesses, such as real estate firms, newspapers and insurance companies, but not others.

The third lawsuit was filed in U.S. District Court in Indianapolis on behalf of four nonprofit groups by a Missouri firm that represents hundreds of charitable organizations.

Efforts to water down no-call lists in other states have failed, said Keith Fotta, chief executive officer of the Massachusetts-based Gryphon Networks, which helps telemarketing firms handle privacy laws.

"The response to these no-call lists has been tremendous," Fotta said. "Telemarketing firms were caught unprepared."

How to sign up

Tuesday at 11:59 p.m. is the next deadline for Hoosiers to get on the no-call list, which stops most telemarketing calls. The next list will be effective July 1. If you've already registered your phone number, there is no need to do so again. Ways to sign up:

- Register online at www.in.gov/attorneygeneral/telephoneprivacy.
- Call 1-888-834-9969.

Roy Cooper
North Carolina Attorney General

North Carolina residents ask to be free from telemarketers:

Sample letters to the Attorney General

Mrs. Vivian Kontoulas from Asheville

A woman in her mid-80s who has chronic arthritis says her greatest pleasure is living at home and her greatest dilemma are telemarketing contacts. She writes:

"I need relief from numerous telemarketing calls. They seem to dwell on the elders and interrupt my schedule of chores and errands. They are rude and crude by not presenting their name and affiliation. I retire early and even after sleep, I am awakened [by] telemarketers.

Is there a number and address in our state of NC which I can register my request for no telemarketers? Contact and it would become effective? No one should have to contribute their personal and needed time to answer calls from these rude persons, who will not abide by a simple request, "Do not call back." It is a definite invasion of privacy in one's private home and [there] seems to be no laws preventing it."

Ms. Jewel Lowder from Albemarle

"I am an almost 60-year old retired business, computer, and journalism teacher. I am also a diabetic and hearing impaired from a birth defect. I can lip read and I have my phone fixed where I can hear it ring and I can understand my friends and family if they speak slowly and clearly and my television are closed captioned.

I strongly support the registry to stop telemarketing calls to your home. It would be a great help for me. I have a TeleZapper and it does help some. I also walk with a rolling walker and when they call when I am trying to get from one location to the other it is a great bother and I am afraid that it will cause me to fall. I would never purchase or do business with anyone on the phone unless I know them and they are local.

Some days I have had as many as fifteen calls and it runs on the average about four per day. I have even received calls on Sunday morning when I am getting ready to go to church. I have been cussed, laughed at, and abused by the telemarketing industry. I always end the call as soon as possible and tell them not to call this phone number again. I don't appreciate their invading my privacy when they call my home.

Any help that you can give to curbing these calls would be wonderful."

Mr. Jackie Goodwin from Knightdale

An elderly gentleman who is dying of cancer and has heart problems has two unlisted numbers. Yet between June 3 and June 17 of this year, he counted 49 telemarketing calls from a single company.

Given his health, he writes, "[I] don't need stress; [I] don't need to be upset by telemarketing peoples harassing me by telephone."

Mr. Michael Bryan from Franklinton

Mr. Bryan receives 6 to 20 calls a day from telemarketers. He writes:

"This continual bombardment of my home telephone have made it nearly useless to me, plus I have had to add Caller ID for some protection which increases my phone bill. Not to mention that the constant annoyance made me decide to get a cell phone that I really can't afford just so relatives and friends can call me without having to go through the protection rituals I have set up on my home phone.

I have written to the Telephone Preference Service and asked to have my name put on a list of people that want their names and numbers removed from telemarketing lists but so far this particular action appears to be ineffective. I have also told the telemarketers that I actually talk to that I want my name removed from their calling lists but frankly I don't care to go through the long and involved sales talk to tell all of them this and I should not have to listen to them all!

My last resort is to write to your agency for help and to my senators and [representatives] to ask for more stringent laws to stop this continual problem."

Mrs. Arden Root from Raleigh

"My husband and I are in our seventies. He is a semi-invalid, and I have been his sole caregiver for two years. Both of us have been turned down for long-term care insurance, so that tells you that we both have serious health problems.

We use the phones as an intercom system, so that he can call me downstairs, or I can call him upstairs if we have problems, without having to struggle up and down stairs needlessly. My husband often naps during the daytime and has to unplug his telephone to avoid being disturbed by these parasites. That, of course, invalidates our intercom system.

The Telephone Preference Service is no good, because these telemarketers don't want to know who doesn't want to be disturbed. Also, the Telephone Preference Service works only for national telemarketers and does nothing to ward off the local callers. How can one sue a telemarketer who is anonymous? The telemarketers who can be identified are bad enough, but those who insulate themselves with anonymity are beneath contempt. In my book, they are criminals.

Please act to give telephone subscribers relief from these unconscionable opportunists."

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July 3, 2002

COPY

The Honorable Philip A. Baddour, Jr.
Chair - NC House Judiciary II Committee
Room 2301, Legislative Building
Raleigh, NC 27601

Re: H.B. 1612

Dear Chairman Baddour:

It was my hope to have the privilege of appearing before your Committee today. Unfortunately, my schedule was such that I was unable to make arrangements to be in Raleigh. I appreciate the opportunity to express my remarks in writing on behalf of the nonprofit organizations which serve the residents of North Carolina, and engage in grass roots fund raising by telephone contact.

It is the opinion of many charities which provide services in North Carolina that H.B. 1612, as currently drafted, will have a devastating impact on their ability to maintain their program services. The basis for this opinion is not speculative. A similar bill creating a do-not-call law was enacted in the state of Indiana last year which, like H.B. 1612, does not exempt calls on behalf of nonprofit organizations or calls to past supporters. Nonprofit organizations conducting grass roots fund raising in Indiana found that approximately 50% of their entire donor base had become inaccessible to them. The law has been challenged in federal district court on first amendment grounds by this law firm on behalf of four charitable organizations. In some part, we relied on an earlier case we litigated with the state of North Carolina, to-wit: *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781 (1988).

As you may be aware, the Federal Trade Commission (FTC) is also reviewing the possibility of creating a national do-not-call registry. If the FTC decides to go forward with implementing a do-not-call registry it could potentially save the state of North Carolina a very substantial cost. Enclosed is a copy of a newspaper article from the May 19, 2002, issue of the *Indianapolis Star*, which notes that the state of Indiana has already expended more than $1 million dollars to maintain its do-not-call list since the law went into effect. I am, therefore, writing to ask for the Committee's consideration in delaying this legislation or, in the alternative, to create an exemption for all calls made by or on behalf of nonprofit organizations.

If H.B. 1612 is passed in its current form, in all likelihood the law will be challenged. Our research

in the case pending in Indiana clearly indicates the law is a form of content regulation, and the proposed legislation in North Carolina would be appear to be analogous in that regard, which courts have regularly held to be unconstitutional.

If you or any of the committee members would like to review any documentation, or have the benefit of any of our legal research relative to the Indiana litigation, I would be pleased to make same available to you.

Again, I apologize that I am unable to be present in person, and thank you in advance for taking the time to consider my remarks.

Respectfully yours,

Errol Copilevitz
For the Firm

EC:nas

c: NC House Judiciary II Committee Members
Roy Cooper, Attorney General

FACT SHEET

North Carolina Senior Tar Heel Legislature

The North Carolina Senior Tar Heel Legislature was created by the North Carolina General Assembly with the passage of Senate Bill 479 in July of 1993.

The Senior Tar Heel Legislature was created to:

- Provide information to senior citizens on the legislative process and matters being considered by the North Carolina General Assembly.
- Promote citizen involvement and advocacy concerning aging issues before the North Carolina General Assembly.
- Assess the legislative needs of older citizens by convening a forum modeled after the North Carolina General Assembly.

There is one delegate and one alternate delegate to the Senior Tar Heel Legislature from each of the 100 counties in the state. Delegates and alternates must be age 60 or older. The North Carolina Division of Aging provides staff support for the Senior Legislature in cooperation with the 17 Area Agencies on Aging who are responsible for conducting the selection of delegates and alternates. Current officers of the Senior Tar Heel Legislature are: Dorothy Crawford, Speaker (Macon); Vernon Dull, Speaker Pro Tempore (Davie); Jack Kimbrell, Deputy Speaker Pro Tempore (Wake); and Carolyn Bland, Secretary (Craven).

2002 Legislative Priorities

Priority 1: Maintain Home and Community Care Block Grant services for impaired older adults at the current level.
Need for Legislative Action: In-home and community-based services help impaired older adults stay in their homes. Key services include home delivered meals, adult day care/day health care, in-home aide, and respite care for family caregivers. As the older population continues to grow, particularly the 85+ population which is more likely to need these services, so does the demand for services. Current resources are not adequate to meet the demand. Although increased funding has been earmarked for in-home and community-based services since 1995, there are currently over 10,000 older adults on waiting lists for key services such as in-home aide services and home delivered meals. An additional $1.3 million is needed to provide a 3% inflationary increase in order to maintain services at the current level.

Priority 2: Take steps to ensure that the Medicaid Community Alternatives Program for Disabled Adults (CAP/DA) remains a viable services for older and disabled adults in our state and that our Medicaid program is strengthened to further serve low income seniors.
Need for Legislative Action: The Medicaid Community Alternatives Program for Disabled Adults (CAP/DA) is one of four programs under Medicaid which provides home and community care as a cost-effective alternative to institutionalization. The program, which was implemented in 1982, provides a package of services to allow disabled adults age 18 and older who qualify for nursing home care to remain in their private residences. In SFY 2001, the program served 12,901 people at less cost than nursing home care. Two recent studies, the Lewin Group's "North Carolina Medicaid Benefits Study" and the North Carolina Institute of Medicine's "Long

Term Care Plan for North Carolina" expound the worthiness and cost-saving nature of CAP/DA. Because of the budget shortfall in the Medicaid program, a freeze was placed on the CAP/DA program effective October 1, 2001. Due to this freeze, individuals who would prefer to stay in their homes may now be forced into more expensive institutional placement. The freeze is a step backwards in the state's efforts to allow disabled adults choices in their care options and in the state's efforts to promote a continuum of long term care services. The freeze is also not consistent with the state's efforts to adhere to the U.S. Supreme Court's Omlstead decision.

Older and disabled adults in our state with monthly income over $738 can not qualify for Medicaid without meeting a "deductible" or "spend down". In order to meet a "spend down", a person must incur medical bills equaling or exceeding the difference between their countable monthly income and $242 which is the medically needy income limit. Older and disabled adults can also not qualify for Medicaid if their countable assets exceed $2000. We are well aware of the budget challenges facing our state, however, we believe that the state needs to address the limitations on the medically needy income limit and the asset level for older and disabled adults.

Priority 3: Examine the issue of workforce shortages among paraprofessionals and professionals serving older adults and people with disabilities.
Need for Legislative Action: North Carolina is in the midst of a long-term care workforce crisis. Efforts to design a long-term care system that ensures the availability of services and high quality care are meaningless unless there is a supply of trained professional and paraprofessional staff – including nurse aides, nurses, physicians, dentists, and allied health professionals. North Carolina is projected to need an additional 30,850 direct care workers between 1998 and 2008. We encourage the General Assembly to address the workforce shortage issue and propose solutions for addressing this critical problem.

Priority 4: Pass legislation to strengthen consumer protections to the citizens of North Carolina with special focus on the areas of telemarketing fraud, identity theft, credit practices, and home repair scams and study increasing civil and criminal penalties for those who financially exploit older adults.
Need for Legislative Action: Consumer fraud, particularly fraudulent practices targeted to older adults, is a growing problem. Residents of our state loose millions of dollars each year as a result of fraud and scams. In a one-week period, the Telemarketing Fraud Prevention Project in the Attorney General's Office detected eight different telemarketing fraud "hits" on seniors with total payments amounting to $145,000. Consumer protections need to be strengthened and penalties for those who financially exploit seniors need to be increased. At this time, deceptive trade practice cases brought before the Attorney General in state civil court under the Deceptive Trade Practices Act (G.S. 75-1.1) are limited to civil penalties up to a maximum of $5000 per violation.

Priority 5: Examine the biases which favor institutional placement over home and community based care for older adults and people with disabilities.
Need for Legislative Action: The Long-Term Care Plan for North Carolina submitted to the General Assembly in January of 2001 states that the state's long-term care policy should be to support older adults and people with disabilities and their families in making their own choices with regard to living arrangements and long-term care services that will result in appropriate, high quality, cost effective care provided in the least restrictive environment. At this time, there are many biases in our current system which favor institutional placement thereby reducing the choices that older and disabled adults and their families have. These biases need to be addressed.

BEFORE THE
NORTH CAROLINA
HOUSE OF REPRESENTATIVES
JUDICIARY II COMMITTEE
RALEIGH, NORTH CAROLINA 27601

Re: House Bill 1612/An Act To Maintain and Establish a No-Call Registry

COMMENTS OF THE NORTH CAROLINA PRESS ASSOCIATION

William E. N. Hawkins
President
Teresa Saylor
Executive Director
John Bussian
Legislative Counsel

July 9, 2002

COMMENTS OF THE NORTH CAROLINA PRESS ASSOCIATION

The North Carolina Press Association (NCPA) submits its comments in connection with proposed action on House Bill 1612, which if enacted as presently drafted would impose restrictions far beyond those currently in effect under G. S. Section 75-30.1 and Federal Communications Commission regulations found at 47 C.F.R. Section 64.1200(e)(2)(iii,vi). The NCPA's membership, comprised of more than one hundred daily and weekly newspapers that have been circulated in some North Carolina communities since statehood, would be directly affected by the legislation.

Although we support the state's attempt to control abusive marketing practices, the sale of subscriptions over the telephone by newspaper publishers has never been considered one of those practices. To the contrary, the public service provided by newspaper publishers is so valued that newspaper distribution is protected by the state Constitution and the First Amendment. This unique feature of the publishing industry alone makes any regulation of the methods by which newspaper distribution is promoted of doubtful constitutionality.

Apart from legal considerations, the proposed legislation is simply unnecessary. HB 1612 conflicts directly with telemarketing regulations adopted by the FCC concerning calls to existing and prospective customers (as many North Carolina publishers use out of state telemarketing services); whether or not the FCC regulations technically require it, publishers honor "do not call" instructions from both past and new potential subscribers. Worse, the proposed law would prohibit newspapers from contacting new and past subscribers at a time when publishers rely upon telephone sales for half or more of their "starts" each year. And the requirement that telephone sales agreements be reduced to writing ignores the historic practice in publishing of honoring verbal requests to stop delivery. For these reasons, there has been no outcry by consumers to curb telephone sales of newspapers.

I. THE STATE STATUTE SHOULD EXEMPT NEWSPAPERS FROM THE PROPOSED STATEWIDE "DO NOT CALL" OBLIGATIONS.

A. Current state law and federal regulations provide sufficient protection from truly abusive telemarketing practitioners.

The newspaper publishing industry's telemarketing efforts are already heavily regulated. State and federal rules have proved workable without effectively prohibiting telephone subscription sales as the proposed legislation would do.

The state's current telemarketing statute, G. S. 75-30.1, criminalizes the failure to honor requests by past and prospective subscribers who ask not to be called again. The law also restricts calling to the hours of 8 a.m. to 9 p.m. Automatic dialing with a recorded message is banned.

Interstate telemarketing is governed by Federal Communications Commission rules. HB 1612 would conflict directly with telemarketing regulations adopted by the FCC concerning calls to existing and prospective subscribers and the requirement to reduce telephone subscription sales to a written contract. Under FCC rules, if a subscriber requests to be placed on a newspaper's internal "do not call" (DNC) list, the newspaper is prohibited from making further calls to that subscriber. In contrast, HB 1612 would automatically bar a newspaper from telemarketing to a past or prospective subscriber who has registered on the statewide DNC list – even if he or she has not requested placement on the newspaper's internal DNC list as provided under the FCC rules.

The NCPA urges the General Assembly to avoid conflicts with FCC rules. If subscribers do not wish to receive further telemarketing calls from newspapers, existing FCC rules and industry practices allow them to request placement on internal DNC lists that newspapers maintain. Experience with the FCC regulations demonstrates that a very low level of subscribers requests to be placed on a newspaper's internal DNC list—one national newspaper group reports that only approximately one percent of individuals who receive a newspaper subscription sales call opt out of further telemarketing. If anything, this shows that readers find these calls a convenient way of starting or renewing a subscription.

B. The proposed ban on calls to prospective and past subscribers who list themselves on a statewide DNC list would have a dramatic effect on efforts to maintain newspaper circulation.

Even with decades of responsible telemarketing experience, newspapers have found circulation increasingly difficult to maintain. Today, marketing subscriptions by phone has become more crucial than ever to newspapers' – large and small – fiscal health. The typical newspaper must sell 60 percent of its total circulation each year just to maintain its current circulation level. At the same time, according to the Newspaper Association of America, the rate of customer-initiated subscription starts has declined from roughly 30 percent in 1996-98 to less than 25 percent of all new starts in 2000. These market conditions require newspapers affirmatively to reach out and sell more subscriptions than ever before to maintain, much less increase, circulation levels vital to their existence.

Telemarketing has proved to be the most efficient means of acquiring subscribers for all sizes of newspapers. In 2000, again according to the Newspaper Association of America, 57.8 percent of subscriptions due to marketing came from telemarketing.

It is obvious, then, that HB 1612's prohibition against telemarketing past and prospective subscribers, who have not first received a sales call from a newspaper and requested not to be called again, will dramatically affect NCPA members' ability to distribute newspapers. Exempting newspapers from the new law would avoid a circulation catastrophe.

C. HB 1612's new restrictions and requirements would unduly burden publishers' constitutional right to distribute newspapers and, therefore, would violate the free speech and press clause of the state Constitution and the First Amendment.

The distribution of newspapers, unlike the distribution of any other product, has been singled out for constitutional protection by the U. S. Supreme Court. To give meaning to free press rights, the First Amendment (and its state constitutional counterpart, Article 1, Section 14 of the North Carolina Constitution) has been interpreted to provide a broad right to distribute newspapers free of most regulation. Attempts to prohibit or restrict the placement of newsracks, prohibit door-to-door deliveries, impose tax on newracks, and even eliminate street vending of papers have been declared unconstitutional.

Although telemarketing regulations are a step removed from the regulation of the physical delivery of newspapers to readers, the proposed restrictions burden the right to distribute newspapers just the same. In fact, without the ability to sell subscriptions by telephone as currently permitted under state and federal law, many small newspapers may not survive and larger newspapers would be forced to reduce news coverage.

So in a very real sense, the proposed restrictions unduly burden the First Amendment right to distribute newspapers. For that reason, eight other states – Arkansas, Florida, Idaho, Indiana, Louisiana, Nevada, Oklahoma, and Washington – exempt newspapers from their telemarketing laws to one degree or another.

II. NEWSPAPERS ARE RESPONSIBLE TELEMARKETERS WHO SHOULD BE EXEMPT FROM THE PROPOSED LAW.

A. Newspaper publishers are good corporate citizens with historic incentives not to offend those to whom telemarketing efforts are directed.

Newspapers are deeply-rooted corporate citizens in the communities in which they circulate and have compelling business incentives not to offend current or prospective customers, facts distinguishing them from the telemarketers whose abuses trigger government oversight under existing law. The vast majority of newspapers are local businesses that market to the community – mostly small communities in North Carolina – where they have a physical presence. These ties between a newspaper and the local community provide a strong check on telemarketing practices. Indeed, a newspaper's most important asset is its reputation for integrity and civic responsibility.

These market forces distinguish newspapers from telemarketers that do not invest in forming long-term relationships with consumers.

Newspapers are also responsible in their use of telemarketing, in contrast with other telemarketing companies whose practices HB 1612 aims to restrict. Consumers buying a newspaper subscription in response to a marketing call receive substantial savings over buying a paper at a newsstand. Further, there are no "small print" contracts, long-term commitments or hidden costs. And newspapers honor verbal subscriber requests to cancel subscriptions.

B. Newspaper publishers provide an important public service through the distribution of their products.

Newspapers, unlike many other telemarketers, provide valuable public benefits. Publishers serve communities typically as the only media outlet providing in-depth local news coverage. And they facilitate local political discourse by publishing news, legal notices, opinion concerning regional and national issues, and many other types of information of interest to their communities.

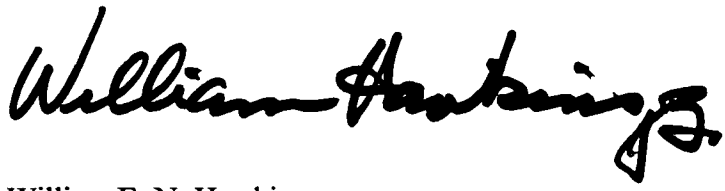
C. Even residents who might put themselves on a statewide DNC list won't won't mind being called to subscribe to their community newspaper.

The general experience in the newspaper publishing industry is that recipients of newspaper telemarketing are not offended by, and often appreciate the calls. For example, those who have recently moved into a community often appreciate the convenient opportunity to subscribe to a local newspaper through a telemarketing call. Others welcome the calls as reminders to renew a subscription.

III. CONCLUSION

For the foregoing reasons, the NCPA urges this Committee and the House of Representatives to exempt newspapers from HB 1612's telemarketing restrictions the way eight other states have exempted the publishing industry. Most NCPA member publishers are local businesses and all are responsible marketers of their products. To avoid imposing an undue burden on the right to distribute newspapers and avoid crippling newspapers' efforts to maintain their circulation, state law must continue to allow publishers to call past and prospective subscribers – as FCC rules currently permit --until a publisher is asked by the subscriber not to call again. And publishers should also be exempted from the requirement that telephone subscriptions sales be reduced to writing. In short, the newspaper publishing industry should be exempted entirely from the proposed telemarketing restrictions in HB 1612.

Respectfully submitted,



William E. N. Hawkins
President

Teresa Saylor
Executive Director

John Bussian
Legislative Counsel

North Carolina Press Association
5171 Glenwood Avenue, Suite 364
Raleigh, North Carolina 27612
(919) 787-7443

July 9, 2002

Professional Fire Fighters of Greensboro

International Association of Fire Fighters Local 947

July 8, 2002.

House Judiciary II Committee Members:

I am writing to you on behalf of the Professional Fire Fighters of Greensboro to express our objection to House Bill 1612 (Stop Unwanted Telephone Solicitations). The proposed application of a statewide "do not call" registry to our organization is unfair, unwise, and unworkable.

As fire fighters, we make it our business to serve our communities to the greatest extent possible. Our fire fighter organization is a non-profit entity that relies extensively upon small gifts from a large number of people to support numerous charitable activities. Through such contributions, we have been able to purchase a Children's Fire Safety House that has allowed us the opportunity to train children to be able to get out of fires alive. We have also donated an all-terrain rescue vehicle to our fire department for use in difficult rescues and are continuing to make payments on its purchase. It also makes it possible for us to have purchased and donated numerous smoke detectors to our department for installation in homes which otherwise may not have one and possibly save many lives. Our organization donated monies to victims of flooding in Eastern North Carolina to try and help them rebuild their lives. We give monies to other non-profit organizations such as the Red Cross, Salvation Army, Association of Retarded Citizens, Urban Ministries, Clare House (Battered Women's Shelter), Summit House (home for female non-violent offenders that can serve their time and have their children with them), and United Services for Older Adults (purchased fans to be given for heat relief). We have purchased food for the needy at holiday seasons, given to the families of fallen fire fighters after 9-11, assist fire fighters throughout the Country when they have fallen on hard times due to medical problems in their families or disasters in their lives. We also support youth athletics in our community. As you can see, if you hamper our fund raising abilities we will not be able to do even a small portion of the things that we do to give back to our communities.

House Bill 1612 is unfair because it would create a "do not call" registry maintained by state government that would apply to fundraising calls made on behalf of our organization to support our charitable activities, but would not apply to all not for profits. The U.S. Supreme Court has been consistent with their rulings that U.S. or State Legislators cannot kill the message just because they do not like the messenger. That is exactly what this bill does by allowing some non-profits that use direct employees or volunteers without remuneration to be exempt, but does not exempt others (like ourselves) that use professional solicitors. Beyond being unfair, this simply does not make any sense.

House Bill 1612 is unwise because it would prohibit our organization from contacting individuals on the "do not call' list even if they had consistently donated to our organization in the past and would still like to do so in the future. At a time when government is relying upon non-profits and charities to do more, it should not undermine the ability of organizations such as our own to provide valuable services to the public. According to figures we have received, the telemarketing industry represents $18.4 billion in sales in our State and employs 166,571. This bill will cause a significant decline in sales and tax revenues while creating higher unemployment during a period of time in our State that we can ill-afford it.

1901 Lendew Street, Greensboro, North Carolina 27408

Finally, House Bill 1612 is unworkable because it violates our First Amendment right to contact members of the public. The Supreme Court has consistently held that any limitations on free speech must be narrowly drawn and use the least intrusive means. This proposed legislation satisfies neither of these requirements.

Please take into consideration our concerns, and reject the proposal to apply the "do not call" registry to calls made on behalf of non-profit organizations that use professional solicitors. If this cannot be done then we would appreciate your "No" vote, outright, on House Bill 1612.

Please feel free to contact me, should you have any questions, by pager at 1-877-283-4515.

Sincerely,

Richard L. O'Brien
President

VISITOR REGISTRATION SHEET

J II — 7/9/02 10:00 am
Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Morrow	~~Sprint~~
Dwight Allen	NC Telephone Coalition
Richard C Hatch	AARP
Helen Savage	AARP
William Schoen	AARP - state office
Linda Parker	AARP - State Office
Olene Ogles	AARP
Stan Pace	VERIZON
Debra Derr	BellSouth
Jeff Van Dyke	BellSouth
Paul Stock	NC Bankers Assn.
Robin Warren	Bank of America
Betty Turner	Bank of America
Dawn Hall	Bank of America
Will Polk	Attorney General
~~Attorney General~~	Attorney General
Don Taylor	AARP
John Goodman	MERCER ASSOC.
Jane Heather	N.C. Atty. General's Office
Stephen Bryant	AG's office
David N. Kirkman	" "
Noelle Taylor	AG's office
Bob Jackson	AARP
Ann Wike	DUAS
Shayna Waites	intern
Paula Page	NCHO
Brad Lamb	NC Consumer Council
Matthew Oliver	NC Consumers Council

VISITOR REGISTRATION SHEET

JI
Name of Committee

7/9/02 10:00am
Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
GARY GOVERT	NC DEPT OF JUSTICE
[illegible]	N.C. Recreation Vehicle Assn.
Jim Cody	UNCTV
Dennis McGavin	Personal Legal Plans, Inc.
John Caan Ford	Macon County
Dorothy Rose Crawford	NC Senior Tar Heel Legislature
Dexter Joyner	AARP Leg. Team
STEVE ROBERTS	AARP
Francis J. Coyle	AARP
Marguerite Coyle	AARP
Mary Dowd	AARP
Carol Ann Parr	AARP
Ann B. Johnson	Gov. Adv. Council on Aging
Leslie Bunch	NCCBT
Mike Loyack	Gryphon Networks Corp.
DAVID BELL	1st Protective / IDA
John Henning	NC Bar Assoc.
TARA LICHTNER	RALEIGH REALTORS ASSN.
STEPHANIE MANSUR	NC REALTORS ASSN.
EDDIE SPEAS	CMAC Animals Pet Man
Kelly Hunt	NC State Watch
James Andrews	NC State AFL-CIO
Bob Price	Jordan Price
Ron Ottavio	Weehawna
Bill Scoggin	Kennedy Covington
Amy Fullbright	Hunton & Williams
Jim Morrison	United Way of N.C.
Vicki Elmore	United Way of N.C.

VISITOR REGISTRATION SHEET

J. II
Name of Committee

7/9/02 10:00 am
Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
FRED BENTON	NC Consumers Council & Bell Lin
[illegible]	Bon & Assoc.
Matt Season	Capitol Group
Ben Kumin	AIG.
RONEY W. LAMM, JR.	Citi Finance / Citi Group
David Woronoff	TWPilot / NC Press Association
OKAE QUARLES III	NEWS & OBSERVER
HC McIntyre	IAFF L-947 5325 Eckerson Rd Gboro NC
Claire Hyde	Intern
Bob Oakley	IAFF L.947 603 Burrowing Bush Dr Clayton NC
Bill Horner III	NC Press Assn. / The Sanford Herald
Margaret McNairy	Intern
Elizabeth Dalton	Bons & Associates
Ted Vaden	NC Press Assn.
Katherine Peters	Electric Cities
Ken Melton	Alloy Associates Inc.
Ashley Thrift III	The Capitol Group
Dan Shatley	Speaker Black
Rob Schofield	NC Justice Center
Bob Gillam	Public Staff - NCUC
BOBBY RIDDLE	SANFORD FIREFIGHTERS
Richard O'Brien	Prof. Fire Fighters & Paramedics of NC
John Palmisano	AT&T
Mike Latta	NCI
Ed TURLINGTON	Brooks Pierce
Tom WELLS	N.C. Telephone Alliance
Jon Carr	Jordan Price
John McMillan	MF&S PA
[illegible]	FOR

VISITOR REGISTRATION SHEET

JTI
Name of Committee

7/9/02 10:00am
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
T. Ben Douglas	N.C. Senior Citizens Assoc.
Fran Rainey	NC Retail Merchants Assoc
Aly M Mac Fadyen	Grp Concerned Citizens Coastal
Barbara Cansler	MFSS
Bri Sayler	NC Press Association
Marie McBride	Senior Tarheel Legislature
Gerald Kinsland	NC Senior Tar Heel Legislature (Wake Co.
Andy Ellen	NC Retail Merchants Assoc
Katherine Joyce	Electric Cooperatives
Alice Bartlett	EC
Sara Lairs	Rep. Paul Luebke
Karen McDevitt	Personal Legal Plans
Zeb Alley	Alley Associates Inc
B Jay Chaudhuri	DOJ
NAOMI NEWMAN	PRIVATE
RAY FARMER	American Ins. Association
Omid Wasab	Hunton & Williams

AGENDA
Judiciary II

Tuesday, July 16 2002
10:00 a.m.
Room 421 LOB

Rep. Phil Baddour, Chair

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD

HB 1508 **Public Health Bioterrorism Preparedness**
Rep. Edwards

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

July 16, 2002

The House Committee on Judiciary II met on Tuesday, July 16, 2002 in room 421 LOB at 10:00 a.m. The following members were present: Rep. Baddour, Chair and Reps. Bowie, Decker, Gulley, Hall, Jeffus, Justus, Miller, Pope, Sherrill, Weiss and Willingham. Bill sponsor, Rep. Edwards was additionally present. Staff including Tracy Dixon, Jeff Hudson and Robin Johnson were in attendance. A Visitor Registration sheet is attached and made part of these minutes.

Chairman Baddour called the meeting to order. Chris Carlton of Wake County (Rep. Miner), Jeff Farmer of Mecklenburg County (Speaker Black), Matt Hoina of Wake County (Rep. Weiss) and Marianna Rodriquez of Mecklenburg County (Speaker Black) served as pages.

Upon the motion of Rep. Hall the PCS, A BILL TO BE ENTITLED AN ACT TO PROMOTE READINESS FOR AND TO IMPROVE MANAGEMENT OF A PUBLIC HEALTH THREAT THAT MAY RESULT FROM AN ACT OF TERRORISM USING NUCLEAR, BIOLOGICAL, OR CHEMICAL AGENTS AND TO AMEND THE NORTH CAROLINA MEDICAL CARE COMMISSION'S RULEMAKING AUTHORITY REGARDING STANDARDS AND CRITERIA FOR THE EDUCATION AND CREDENTIALING OF PERSONS TO ADMINISTER TREATMENT FOR ANAPHYLAXIS, for HB 1612 was adopted for discussion.

Rep. Baddour recognized bill sponsor, Rep. Edwards to explain the bill. Rep. Edwards asked Robin Johnson, Committee Counsel, to go through the bill and explain what had been changed in the bill since it was last heard in committee. Ms. Johnson explained the bill and then responded to Rep. Bowie's question of the difference in definitions for quarantine and isolation authority by guiding her to page 2 of the summary.

Rep. Baddour asked for comments from State Veterinarian, Dr. Marshall. Dr. Marshall stated he was comfortable with the bill's language.

Rep. Miller questioned whether on page 8, line 32, a section from somewhere like the CDC referencing diseases could be inserted so that the law would not have to be changed to add diseases. Chris Hoke, Division of Public Health, responded that there was no approved document that he knew of to insert. Mr. Hoke responded to Rep. Miller's follow up question of the due process for a quarantined person by stating the state health director is given the authority to issue an order for quarantine or isolation until the person is determined to no longer be contagious. He stated this order could last up to 10 days and after this time period the state health director would have to obtain an order from the

judge to extend the time period for up to 30 days. A hearing would be granted within 72 hours if requested.

Rep. Baddour commented that this bill was amending the communicable disease laws to provide due process in all instances and to add bioterrorism to the statute. Rep. Bowie stated this was a good bill and listened to Mr. Hoke's response to her question of liability.

Rep. Pope asked why there was no bioagent included on page 2, lines 36 and 37. He additionally asked questions of the standard preponderance of evidence, what the definition of holidays was in the request for a hearing within 72 hours after being quarantined, and what comments on due process were made by the ACLU, the AOC, etc. In response to Rep. Pope's first question, Mr. Hoke explained the evolution of the provision over time and his thoughts that bioterrorism was put back in the provision. Ms. Johnson disagreed and stated sections that referenced bioterrorism. Mr. Hoke noted it would not be a problem to put the wording back in but commented it may be redundant. To Rep. Pope's next question on preponderance of evidence, Mr. Hoke pointed to the standard in the model act. He continued explaining the holiday definition was borrowed from other law provisions and deferred to a representative from the Administrative Office of the Courts. The result of the discussion between Rep. Pope and the AOC representative was that legal holidays set by the General Assembly could be added. Rep. Pope suggested the elimination of holidays in this bill and asked for the feel of the committee. Rep. Baddour and Mr. Hoke noted no opposition to striking the holidays. Upon the motion of Rep. Pope, a verbal amendment striking the holidays passed.

Ann Winner, ACLU, commented on page 2, line 28 about the process to trigger a hearing and asked whom the personal representative would be. Rep. Baddour responded that the personal representative could be anyone.

Rep. Baddour stated consensus was needed on the language for immunity issue and that this could be a floor amendment.

Rep. Baddour, Mr. Hoke and others took part in a conversation about the need to strengthen preponderance of evidence when holding and whether this should be switched to clear cogent and convincing. Rep. Baddour seemed to think cogent and convincing may be a bit strong but noted it was the will of the committee. Rep. Weiss noted the need to balance the right of the individual to the right to protect the public.

Discussions initiated by Rep. Pope focused on page 2, line 29 and resulted in staff drafting an amendment.

Reps. Decker and Baddour and Mr. Hoke discussed where the person being put on the 10–day limitation of freedom on page 6, line19 should be geographically located as it relates to convenience to the individual. Rep. Decker additionally asked why the state health director did not have to go through the courts relating to unreasonable search and seizures. Rep. Baddour noted that the communicable disease law has already been

established for a number of years and that this bill added bioterrorism–related wording to the existing law. Mr. Hoke also noted that a person would have an opportunity to go into court before anything is done against their will.

Rep. Baddour announced no vote would be taken on the bill and urged members who had amendments to discuss them with staff and the department. He stated he would like to take a vote on the bill at the next meeting.

Rep. Bowie pointed out a public health typo and Dr. Marshall responded that very few communicable diseases had an incubation period of greater than 30 days to Rep. Justus, before the committee adjourned.

A copy of the PCS and bill summary is attached and made part of these minutes.

The meeting adjourned at 10:55 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Tracy Dixon
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1508

Committee Substitute Favorable 6/12/02

PROPOSED COMMITTEE SUBSTITUTE H1508-CSRH-61 [v.14]

7/15/2002 5:14:52 PM

Short Title: Public Health Bioterrorism Preparedness. (Public)

Sponsors:

Referred to:

June 4, 2002

A BILL TO BE ENTITLED

AN ACT TO PROMOTE READINESS FOR AND TO IMPROVE MANAGEMENT OF A PUBLIC HEALTH THREAT THAT MAY RESULT FROM AN ACT OF TERRORISM USING NUCLEAR, BIOLOGICAL, OR CHEMICAL AGENTS AND TO AMEND THE NORTH CAROLINA MEDICAL CARE COMMISSION'S RULEMAKING AUTHORITY REGARDING STANDARDS AND CRITERIA FOR THE EDUCATION AND CREDENTIALING OF PERSONS TO ADMINISTER TREATMENT FOR ANAPHYLAXIS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 130A of the General Statutes is amended by adding the following new Article to read:

"Article 22.

"Bioterrorism.

"**§ 130A-475. Suspected terrorist attack.**

(a) If the State Health Director reasonably suspects that a public health threat may exist and that the threat may have been caused by an act of terrorism using nuclear, biological, or chemical agents, the State Health Director is authorized to issue an order to:

(1) Require any person or animal to submit to examinations and tests to determine possible exposure to the nuclear, biological, or chemical agents.

(2) Test any real or personal property necessary to determine the presence of nuclear, biological, or chemical agents.

(3) Evacuate or close any real property, including any building, structure, or land when necessary to investigate suspected contamination of the property. The period of closure during an investigation shall not exceed 10 calendar days. If the State Health Director determines that a

longer period of closure is necessary to complete the investigation, the Director may institute an action in superior court to order the property to remain closed until the investigation is completed.

(4) Limit the freedom of movement or action of a person or animal that is contaminated with, or reasonably suspected of being contaminated with, a chemical or nuclear agent that may be conveyed to other persons or animals.

(5) Limit access by any person or animal to an area or facility that is housing persons or animals whose movement or action has been limited under subdivision (4) of this subsection or to an area or facility that is contaminated with, or reasonably suspected of being contaminated with, a chemical or nuclear agent that may be conveyed to other persons or animals.

(6) Exercise quarantine authority and isolation authority under G.S. 130A-145.

(b) The authority under subsection (a) of this section shall be exercised only when and so long as a public health threat may exist, all other reasonable means for correcting the problem have been exhausted, and no less restrictive alternative exists. Before applying the authority under subdivisions (4) or (5) of subsection (a) of this section to livestock or poultry for the purpose of preventing the direct or indirect conveyance of a chemical or nuclear agent to persons, the State Health Director shall consult with the State Veterinarian in the Department of Agriculture and Consumer Services.

The period of limited freedom of movement or access under subdivisions (4) and (5) of subsection (a) of this section shall not exceed 10 calendar days. Any person substantially affected by that limitation may institute in superior court in Wake County or in the county in which the limitation is imposed an action to review the limitation. If a person or a person's representative requests a hearing, the hearing shall be held within 72 hours of the filing of the request, excluding Saturdays, Sundays and legal holidays. If the State Health Director determines that a 10 calendar day limitation on freedom of movement or access is not adequate to protect the public heath, the State Health Director may institute in superior court in Wake County or in the county in which the limitation is imposed an action to obtain an order extending the period limiting the freedom of movement or access. The court shall continue the limitation for a period not to exceed 30 days if it determines, by the preponderance of the evidence, that the limitation is reasonably necessary to prevent or limit the conveyance of chemical or nuclear agents to others. Before the expiration of an order issued under this section, the State Health Director may move to continue the order for additional periods not to exceed 30 days each.

(c) If the State Health Director determines that there exists a public health threat that may have been caused by an act of terrorism using nuclear, biological, or chemical agents, the State Health Director shall notify the Secretary of Crime Control and Public Safety.

(d) For the purpose of this Article, the term "public health threat" means a situation that is likely to cause an immediate risk to human life, an immediate risk of serious physical injury or illness, or an immediate risk of serious adverse health effects.

(e) Nothing in this section shall limit any authority otherwise granted to local or State public health officials under this Chapter.

"**§ 130A-476. Access to health information.**

(a) Notwithstanding any other provision of law, a health care provider, a person in charge of a health care facility, or a unit of State or local government may report to the State Health Director or a local health director any events that may indicate the existence of a case or outbreak of an illness, condition or health hazard that may have been caused by an act of terrorism using nuclear, biological or chemical agents. Events that may be reported include unusual types or numbers of symptoms or illnesses presented to the provider, unusual trends in health care visits, or unusual trends in prescriptions or purchases of over-the-counter pharmaceuticals. A person disclosing or not disclosing information pursuant to this subsection is immune from any civil or criminal liability that might otherwise be incurred or imposed based on the disclosure or lack of disclosure provided that the health care provider was acting in good faith and without malice. In any proceeding involving liability, good faith and lack of malice are presumed.

(b) The State Health Director may issue a temporary order requiring health care providers to report symptoms, diseases, conditions, trends in use of health care services, or other health-related information when necessary to conduct a public health investigation or surveillance of an illness, condition or health hazard that may have been caused by an act of terrorism using nuclear, biological or chemical agents. The order shall specify which health care providers must report, what information is to be reported, and the period of time for which reporting is required. The period of time for which reporting is required pursuant to a temporary order shall not exceed 90 days. The Commission may adopt rules to continue the reporting requirement when necessary to protect the public health.

(c) The State Health Director and a local health director may examine, review, and obtain a copy of records containing confidential or protected health information, or a summary of pertinent portions of those records, that pertain to a report authorized by subsection (a) or required by subsection (b) of this section.

(d) A person who makes a report pursuant to subsection (b) of this section or permits examination, review or copying of medical records pursuant to subsection (c) of this section is immune from any civil or criminal liability that otherwise might be incurred or imposed as a result of complying with those subsections.

(e) Confidential or protected health information received by the State Health Director or a local health director pursuant to this section shall be confidential and shall not be released, except when the release is:

(1) Made pursuant to any other provision of law;

(2) To another federal, state, or local public health agency for the purpose of preventing or controlling a public health threat; or

(3) To a court or law enforcement official for the purpose of enforcing the provisions of this chapter or for the purpose of investigating an act of terrorism using nuclear, biological, or chemical agents. A law enforcement official who receives the information shall not disclose it further, except (i) when necessary to conduct an investigation of an attack using nuclear, biological, or chemical agents, or (ii) when the State Health Director or a local health director seeks the assistance of the law enforcement official in preventing or controlling the public health threat and expressly authorizes the disclosure as necessary for that purpose.

(f) In this section the following terms shall include:

(1) "Health care provider" includes a physician licensed to practice medicine in North Carolina or a person who is licensed, certified, or credentialed to practice or provide health care services, including, but not limited to, pharmacists, dentists, physician assistants, registered nurses, licensed practical nurses, chiropractors, respiratory care therapists, and emergency medical technicians; and

(2) "Health care facility" includes hospitals, skilled nursing facilities, intermediate care facilities, psychiatric facilities, rehabilitation facilities, home health agencies, ambulatory surgical facilities, or any other health care related facility, whether publicly or privately owned."

SECTION 2.(a) G.S. 130A-149, "Biological Agents Registry; Rules; Penalties," is recodified as G.S. 130A-477.

SECTION 2.(b) G.S. 130A-29(c)(10) reads as rewritten:

"(10) Pertaining to the biological agents registry in accordance with ~~G.S. 130A-149~~ G.S. 130A-477."

SECTION 3. G.S. 130A-133 is repealed.

SECTION 4. G.S. 130A-2 reads as rewritten:

"**§ 130A-2. Definitions.**

The following definitions shall apply throughout this Chapter unless otherwise specified:

(1) "Commission" means the Commission for Health Services.

(1a) "Communicable condition" means the state of being infected with a communicable agent but without symptoms.

(1b) "Communicable disease" means an illness due to an infectious agent or its toxic products which is transmitted directly or indirectly to a person from an infected person or animal through the agency of an intermediate animal, host or vector, or through the inanimate environment.

(2) "Department" means the Department of Health and Human Services.

(3) "Imminent hazard" means a situation ~~which~~ that is likely to cause an immediate threat to human life, an immediate threat of serious physical injury, an immediate threat of serious adverse health effects, or a

serious risk of irreparable damage to the environment if no immediate action is taken.

(3a) "Isolation authority" means the authority to issue an order to limit the freedom of movement or action of a person or animal with a communicable disease or communicable condition for the period of communicability to prevent the direct or indirect conveyance of the infectious agent from the person or animal to other persons or animals who are susceptible or who may spread the agent to others.

(4) "Local board of health" means a district board of health or a public health authority board or a county board of health.

(5) "Local health department" means a district health department or a public health authority or a county health department.

(6) "Local health director" means the administrative head of a local health department appointed pursuant to this Chapter.

(6a) "Outbreak" means an occurrence of a case or cases of a disease in a locale in excess of the usual number of cases of the disease.

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

(7a) "Quarantine authority" means the authority to issue an order to limit the freedom of movement or action of persons or animals which have been exposed to or are reasonably suspected of having been exposed to a communicable disease or communicable condition for a period of time as may be necessary to prevent the spread of that disease. Quarantine authority also means the authority to limit access by any person or animal to an area or facility that may be contaminated with an infectious agent. The term also means the authority to limit the freedom of movement or action of persons who have not received immunizations against a communicable disease when the State Health Director or a local health director determines that the immunizations are required to control an outbreak of that disease.

(8) "Secretary" means the Secretary of Health and Human Services.

(9) "Unit of local government" means a county, city, consolidated city-county, sanitary district or other local political subdivision, authority or agency of local government.

(10) "Vital records" means birth, death, fetal death, marriage, annulment and divorce records registered under the provisions of Article 4 of this Chapter."

SECTION 5. G.S. 130A-145 reads as rewritten:

"**§ 130A-145. ~~Local health director has quarantine~~ Quarantine and isolation authority.**

(a) The State Health Director and a~~A~~ local health director ~~and the State Health Director~~ are empowered to exercise quarantine and isolation authority. Quarantine and isolation authority shall be exercised only when and so long as the public health is

endangered, all other reasonable means for correcting the problem have been exhausted, and no less restrictive alternative exists.

(b) No person other than a person authorized by the State Health Director or local health director shall enter quarantine or isolation premises. Nothing in this subsection shall be construed to restrict the access of authorized health care, law enforcement or emergency medical services personnel to quarantine or isolation premises as necessary in conducting their duties.

(c) Before applying quarantine or isolation authority to livestock or poultry for the purpose of preventing the direct or indirect conveyance of an infectious agent to persons, the State Health Director or a local health director shall consult with the State Veterinarian in the Department of Agriculture and Consumer Services.

(d) When quarantine or isolation limits the freedom of movement of a person or animal or of access to a person or animal whose freedom of movement is limited, the period of limited freedom of movement or access shall not exceed 10 calendar days. Any person substantially affected by that limitation may institute in superior court in Wake County or in the county in which the limitation is imposed an action to review that limitation. If a person or a person's representative requests a hearing, the hearing shall be held within 72 hours of the filing of that request, excluding Saturdays, Sundays and legal holidays If the State Health Director or the local health director determines that a 10 calendar day limitation on freedom of movement or access is not adequate to protect the public heath, the State Health Director or local health director may institute in superior court in Wake County or in the county in which the limitation is imposed an action to obtain an order extending the period of limitation of freedom of movement or access. The court shall continue the limitation for a period not to exceed 30 days if it determines, by the preponderance of the evidence, that the limitation is reasonably necessary to prevent or limit the conveyance of a communicable disease or condition to others. Before the expiration of an order issued under this section, the State Health Director or local health director may move to continue the order for additional periods not to exceed 30 days each."

SECTION 6. G.S. 130A-20 reads as rewritten:

"**§ 130A-20. Abatement of an imminent hazard.**

(a) If the Secretary or a local health director determines that an imminent hazard exists, the Secretary or a local health director may order the owner, lessee, operator or other person in control of the property to abate the imminent hazard or may, after notice to or reasonable attempt to notify the owner, lessee, operator, or other person in control of the property enter upon any property and take any action necessary to abate the imminent hazard. If the Secretary or a local health director abates the imminent hazard, the ~~The~~ Department or the local health department shall have a lien on the property for the cost of the abatement of the imminent hazard in the nature of a mechanic's and materialmen's lien as provided in ~~Chapter 44A~~ Chapter 44A of the General Statutes, and the lien may be enforced as provided ~~therein.~~ in that Chapter. The lien may be defeated by a showing that an imminent hazard did not exist at the time the Secretary or the local health director took the action.

(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Articles 8, 9, 10, 11, and 12 of this Chapter."

SECTION 7. G.S. 130A-143 reads as rewritten:

"**§ 130A-143. Confidentiality of records.**

All information and records, whether publicly or privately maintained, that identify a person who has AIDS virus infection or who has or may have a disease or condition required to be reported pursuant to the provisions of this Article shall be strictly confidential. This information shall not be released or made public except under the following circumstances:

(1) Release is made of specific medical or epidemiological information for statistical purposes in a way that no person can be identified;

(2) Release is made of all or part of the medical record with the written consent of the person or persons identified or their guardian;

(3) Release is made to health care personnel providing medical care to the patient;

(4) Release is necessary to protect the public health and is made as provided by the Commission in its rules regarding control measures for communicable diseases and conditions;

(5) Release is made pursuant to other provisions of this Article;

(6) Release is made pursuant to subpoena or court order. Upon request of the person identified in the record, the record shall be reviewed in camera. In the trial, the trial judge may, during the taking of testimony concerning such information, exclude from the courtroom all persons except the officers of the court, the parties and those engaged in the trial of the ~~case.~~case;

(7) Release is made by the Department or a local health department to a court or a law enforcement ~~officer~~ official for the purpose of enforcing ~~the provisions of this Article pursuant to Article 1, Part 2 of this Chapter.~~ this Article or Article 22 of this Chapter, or investigating an act of terrorism using nuclear, biological, or chemical agents. A law enforcement official who receives the information shall not disclose it further, except (i) when necessary to enforce this Article or Article 22 of this Chapter, or when necessary to conduct an investigation of an act of terrorism using nuclear, biological, or chemical agents, or (ii) when the Department or a local health department seeks the assistance of the law enforcement official in preventing or controlling the spread of the disease or condition and expressly authorizes the disclosure as necessary for that purpose;

(8) Release is made by the Department or a local health department to another federal, state or local public health agency for the purpose of preventing or controlling the spread of a communicable disease or communicable condition;

(9) Release is made by the Department for bona fide research purposes. The Commission shall adopt rules providing for the use of the information for research purposes;

(10) Release is made pursuant to G.S. 130A-144(b); or

(11) Release is made pursuant to any other provisions of law that specifically authorize or require the release of information or records related to AIDS."

SECTION 8. G.S. 106-24.1 reads as rewritten:

"**§ 106-24.1. Confidentiality of information collected and published.**

All information published by the Department of Agriculture and Consumer Services pursuant to this Part shall be classified so as to prevent the identification of information received from individual farm operators. All information received pursuant to this Part from individual farm operators shall be held confidential by the Department and its employees. Information collected by the Department from individual farm operators for the purposes of its animal health programs may be disclosed by the State Veterinarian when, in his judgment, the disclosure will assist in the implementation of these programs. Animal disease diagnostic tests that identify the owner of the animal shall not be disclosed without the permission of the owner unless the State Veterinarian determines that disclosure is necessary to prevent the spread of an animal disease or to protect the public health."

SECTION 9. G.S. 106-307.2 reads as rewritten:

"**§ 106-307.2. Reports of infectious disease in livestock and poultry to State Veterinarian.**

(a) All persons practicing veterinary medicine in North Carolina shall report promptly to the State Veterinarian the existence of any reportable contagious or infectious disease in livestock and poultry. The Board of Agriculture shall establish by rule a list of animal diseases and conditions to be reported and the time and manner of reporting.

(b) The State Veterinarian shall notify the State Health Director and the Director of the Division of Environmental Health in the Department of Environment and Natural Resources when the State Veterinarian receives a report indicating an occurrence or potential outbreak of anthrax, arboviral infections, brucellosis, epidemic typhus, hantavirus infections, murine typhus, plague, psittacosis, Q fever, hemorrhagic fever virus infections, and any other disease or condition transmissible to humans that the State Veterinarian determines may have been caused by a terrorist act."

SECTION 10. G.S. 130A-152(b) is repealed.

SECTION 11. G.S. 143-518 reads as rewritten:

"**§ 143-518. Confidentiality of patient information.**

(a) Medical records compiled and maintained by the Department or EMS providers in connection with dispatch, response, treatment, or transport of individual patients or in connection with the statewide trauma system pursuant to Article 7 of Chapter 131E of the General Statutes may contain patient identifiable data which will allow linkage to other health care-based data systems for the purposes of quality management, peer review, and public health initiatives.

These medical records and data shall be strictly confidential and shall not be considered public records within the meaning of G.S. 132-1 and shall not be released or made public except under any of the following conditions:

(1) Release is made of specific medical or epidemiological information for statistical purposes in a way that no person can be identified.

(2) Release is made of all or part of the medical record with the written consent of the person or persons identified or their guardians.

(3) Release is made to health care personnel providing medical care to the patient.

(4) Release is made pursuant to a court order. Upon request of the person identified in the record, the record shall be reviewed in camera. In the trial, the trial judge may, during the taking of testimony concerning such information, exclude from the courtroom all persons except the officers of the court, the parties, and those engaged in the trial of the case.

(5) Release is made to a Medical Review Committee as defined in G.S. 131E-95, 90-21.22A, or 130A-45.7 or to a peer review committee as defined in G.S. 131E-108, 122C-30, or 131D-21.1.

(6) Release is made for use in a health research project under rules adopted by the North Carolina Medical Care Commission. The Commission shall adopt rules that allow release of information when an institutional review board, as defined by the Commission, has determined that the health research project:

a. Is of sufficient scientific importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

b. Is impracticable without the use or disclosure of identifying health information;

c. Contains safeguards to protect the information from redisclosure;

d. Contains safeguards against identifying, directly or indirectly, any patient in any report of the research project; and

e. Contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project.

(7) Release is made to a statewide data processor, as defined in Article 11A of Chapter 131E of the General Statutes, in which case the data is deemed to have been submitted as if it were required to have been submitted under that Article.

(8) Release is made pursuant to any other law.

(b) Charges, accounts, credit histories, and other personal financial records compiled and maintained by the Department or EMS providers in connection with the admission, treatment, and discharge of individual patients are strictly confidential and shall not be released."

SECTION 12. G.S. 166A-5(3) is amended by adding a new sub-subdivision to read:

"b1. Coordination with the State Health Director to amend or revise the North Carolina Emergency Operations Plan regarding public health matters. At a minimum, the revisions to the Plan shall provide for the following:

1. The epidemiologic investigation of a known or suspected threat caused by nuclear, biological, or chemical agents.
2. The examination and testing of persons and animals that may have been exposed to a nuclear, biological, or chemical agent.
3. The procurement and allocation of immunizing agents and prophylactic antibiotics.
4. The allocation of the National Pharmaceutical Stockpile.
5. The appropriate conditions for quarantine and isolation in order to prevent further transmission of disease.
6. Immunization procedures.
7. The issuance of guidelines for prophylaxis and treatment of exposed and affected persons."

SECTION 13. G.S. 143-508(d)(11) reads as rewritten:

"(11) Establish standards and criteria for the education and credentialing of persons trained to administer lifesaving treatment to a person who suffers a severe adverse reaction to ~~insect stings.~~agents that might cause anaphylaxis."

SECTION 14. This act becomes effective October 1, 2002.

HOUSE BILL 1508:
Public Health Bioterrorism Preparedness

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Rep. Zeno Edwards
Date:	July 16, 2002	**Summary by:**	Robin Johnson
Version:	Second Edition		Committee Counsel
	H1508-CSRH-61(v.14)		

SUMMARY: Recommended by the Public Health Study Commission, Sections 1-12 of this bill would create a new Article in the Public Health Law and amend North Carolina's communicable disease control laws to allow public health officials to prepare for and respond to suspected public heath threats that may be caused by an act of terrorism using nuclear, biological, or chemical agents. The PCS would expand the authority of the State Health Director and local public health officials to conduct surveillance and investigate cases of an illness or condition caused by a suspected communicable disease outbreak or an illness, disease or other health hazard resulting from a suspected terrorist attack. The PCS also would provide for coordination between the Secretary of Crime Control and Public Safety and the State Health Director regarding emergency operations and public health matters. The PCS also would require the State Veterinarian to notify the State Health Director and the Director of the Division of Environmental Health in DENR of any reports indicating a potential outbreak of a disease or condition that can be transmitted to humans. Finally the PCS would authorize the release of confidential emergency medical data to the State Health Director for the purposes of protecting public health.

The PCS makes clarifying changes and adds a new Section 13, which would direct the North Carolina Medical Care Commission to adopt rules to establish education standards and criteria of persons trained to administer lifesaving treatment for adverse reactions to agents that might cause anaphylaxis.

The PCS, if enacted, would become effective October 1, 2002.

BACKGROUND: North Carolina public health laws provide the State Health Director and local health directors with legal authority to control and prevent reportable communicable diseases and to protect against environmental hazards in partnership with hospitals, nursing homes, schools, physicians, laboratories, emergency medical services providers, and other health care providers. Subsequent to the terrorist attacks of September 11, 2001, and the subsequent release of anthrax spores through the mail in October of 2001, the State's public health laws were reviewed and evaluated as to whether the laws provide sufficient legal authority to the State Health Director and other public health officials to investigate and respond to suspected public heath threats resulting from the use of biological, nuclear or chemical agents. Despite the fact that all of the infectious agents identified by the Centers for Disease Control as agents for bioterrorism planning (e.g., anthrax, botulism, plague, smallpox, tularemia, and certain viral hemorrhagic fevers) fall within the scope of North Carolina's current communicable disease control law, it was determined that the laws are not broad enough to cover public health threats and other health hazards that may result from use of biological, chemical or nuclear agents.

Gaps in the current law were identified and legislation was presented to the Public Health Study Commission, which then recommended the bill to the General Assembly. The proposed legislation is based on The Model State Emergency Health Powers Act, prepared last Fall by the Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities for the Centers for Disease Control and Prevention and in collaboration with the National Governors Association, National Conference of State

Legislatures, Association of State and Territorial Health Officials, National Association of City and County Health Officers, and National Association of Attorneys General.

This PCS includes clarifying changes proposed by the Department of Health and Human Services and changes made in response to members' questions at an earlier committee meeting.

CURRENT LAW GOVERNING THE RESPONSE TO THREATS TO PUBLIC HEALTH:

Communicable Disease Control Laws: Under these laws, the Commission for Health Services adopts rules as to which communicable diseases must be reported by which entities. Physicians, schools, clinical laboratories, etc., are required to report all cases of a communicable disease or condition to the local health director. The legal definition of "communicable disease" is an illness caused by an infectious agent such as a virus or bacterium, that can be transmitted from person to person, from an animal to a person, through an intermediate host or vector, or through the inanimate environment. Currently the list of reportable diseases includes 61 communicable diseases and conditions. A "communicable condition" is when a person has been infected with a communicable agent but does not have symptoms of disease. Local health directors then investigate reported cases and ensure that control measures are in place to prevent the spread of the disease. The State Health Director and local health directors have the authority to examine patient records pertaining to reportable communicable diseases and may exercise isolation or quarantine authority in appropriate circumstances.

Local health directors and the State Health Director have isolation and quarantine authority in order to prevent the spread of communicable diseases or conditions. Isolation applies to persons who actually have a communicable disease or condition, and quarantine applies to persons who have been or are reasonably suspected of having been exposed to a communicable disease or condition. Quarantine also applies to individuals who have not received legally required immunizations when the local health director determines that immunizations are required to control the outbreak. Isolation and quarantine authority may only be exercised when and for so long as the public health is endangered, and only when all other reasonable means for correcting the problem have been exhausted and no less restrictive alternative exists. When a person or animal is quarantined, their freedom of movement is restricted. An area of land or a facility is quarantined by restricting access by persons or animal to the area of land or facility.

Access to Confidential Health Information: Currently access to confidential health information, including confidential medical records, is limited to investigations of reportable communicable diseases or conditions.

Law Governing Abatement Authority: The Secretary of DHHS or a local health director may enter upon property after a reasonable attempt to notify the owner of the property and take any action necessary to abate an imminent hazard. The law places an automatic lien on the property to allow DHHS to recover the costs associated with the abatement.

Violation of Public Health Law and Rules: A violation of the law and rules governing the public health is a misdemeanor. A person convicted of violating a quarantine or isolation order shall be sentenced to a term of imprisonment of no more than two years. This sentence must be served in an enumerated facility or a confinement facility designed for that purpose by the Secretary of Correction after consultation with the State Health Director. A person cannot be released until a determination has been made by the district court that release would not create a danger to the public health.

If a person refuses to submit to immunizations, the State Health Director would seek a court order.

SECTION-BY-SECTION ANALYSIS: Section 1 of the PCS would create a new Article 22 (Bioterrorism) in Chapter 130A of the General Statutes. The new G.S. 130A-475 would authorize the State Health Director to undertake an investigation upon a reasonable suspicion that a public health threat may exist as a result of an act of terrorism using nuclear, biological, or chemical agents. It would authorize the State Health Director to issue orders to (i) require persons and animals to submit to testing to determine possible exposure, (ii) test property to determine presence of nuclear, biological, or chemical agents, (iii) close property to investigate suspected contamination, (iv) limit the movement or action of animals or persons that may be contaminated with a chemical or nuclear agent, (v) limit access to areas housing persons or animals that may have been contaminated with a chemical or nuclear agent, and (vi) quarantine or isolate persons and animals. The PCS limits the Health Director's authority to when a public health threat may exist, all other reasonable means for correcting the problem have been exhausted and no less restrictive alternative exists. Before quarantining, isolating, or limiting the movement or access of livestock or poultry, the Director must consult with the State Veterinarian. The PCS adds a definition of "public health threat" as a situation likely to cause an immediate risk to human life, of serious physical injury or illness, or of serious adverse health effects.

An order to limit movement or access or to quarantine or isolate is limited to a period of 10 calendar days. The PCS adds a provision allowing a person substantially affected by one of these limitations to institute an action in superior court to review the order. A hearing must be held within 72 hours of the request (not counting weekends and legal holidays). In addition, if the Director determines that 10 days is inadequate to protect the public health, she may institute an action in superior court to obtain an order to extend the period of limitation. The court may continue the period of limitation up to 30 days if it determines by the preponderance of evidence that the limitation is reasonably necessary to prevent or limit the conveyance of nuclear, biological, or chemical agents to others. Before an order has expired the Director may move to continue the limitation for additional periods not to exceed 30 days each.

If the State Health Director determines that a public health threat does in fact exist, the State Health Director must notify the Secretary of Crime Control and Public Safety.

The PCS also would create a new G.S. 130A-476 that would provide the State Health Director or local health directors access to confidential health information related to any communicable disease or condition or if necessary to investigate a suspected public health threat that may be caused by an act of terrorism using biological, chemical or nuclear weapons. Specifically, this section will:

1. Encourage health care providers, persons in charge of a health care facility (added by the PCS), and units of State and local government to report events that might indicate the existence of an illness, condition, or health hazard that may have been caused by an act of terrorism using nuclear, biological or chemical agents. This provision also would shield from civil and criminal liability any person who discloses or fails to make such a report so long as the health care provider acted in good faith and without malice (which are presumed).
2. Authorize the State Health Director to issue a temporary order (no longer than 90 days) requiring certain health care providers to make reports for a specific period of time that might indicate a suspected illness, condition, or health hazard that may have been caused by an act of terrorism using nuclear, biological or chemical agents.
3. Authorize the State Health Director or local health director to obtain and review copies of confidential medical records that pertain to a report made under this section.

4. Protect the confidentiality of health information received by the State Health Director or local health director and prohibit release unless authorized by law, made to another federal, state, or local public health agency for the purpose of preventing or controlling a public health threat, or made to a court or law enforcement official for the purpose of enforcing the public health law or for investigating an act of terrorism using nuclear, biological, or chemical agents.
5. Prohibit further disclosure of information received by law enforcement officials under this section unless disclosure is necessary to conduct an investigation of an attack using nuclear, biological, or chemical agents or unless the State Health Director or local health director has expressly authorized the disclosure as necessary for the assistance of the law enforcement official to prevent or control the public health threat. (The PCS adds this prohibition.)

The PCS also adds the definition of "health care facility" in subsection (f).

Section 2(a) and Section 2(b) make conforming changes to current law to conform to the addition of a new Article 22 "Bioterrorism".

Sections 3, 4 and 5 – Quarantine Authority: These sections would repeal G.S. 130A-133 and move its definitions to G.S. 130A-2 in order to expand their applicability to the entire Chapter. The sections would also amend G.S. 130A-2(7a) and G.S. 130A-145 to expand the public health quarantine and isolation authority with respect to communicable disease control by (1) providing that an area of land or a facility that is suspected of being contaminated with an infectious agent may be quarantined and (2) by allowing an individual that is not immunized against any communicable disease to be quarantined if the State Health Director or a local health director determines that such immunizations are required to control an outbreak of that disease. In the event of such quarantine, the PCS would provide that only persons authorized by the State Health Director or who are otherwise authorized to enter may access the quarantined area or facility.

(The PCS extends the applicability of definitions under the Article governing communicable diseases, clarifies that quarantine and isolation authority means the authority to issue orders, adds due process procedures for quarantine and isolation, makes conforming changes to link with the new G.S. 130A-475.)

Section 6- Abatement Authority: The PCS would expand abatement authority by authorizing the Secretary or local health director to order the owner, lessee, operator or other person in control of the property to abate the hazard. Failure to comply with the order may result in a civil action in superior court.

***Section 7- Confidentiality of Records of Reportable Diseases*:** This Section would amend current law regarding when disclosure of confidential health information that includes the identity of a person who has or may have a reportable disease is allowable. The bill clarifies that such disclosure by DHHS or a local health department is allowable to law enforcement officials when necessary to assist with the enforcement of the communicable disease control law or the new Article 22 created in Section 1 of the bill, or to investigate an act of terrorism using a nuclear, biological, or chemical agent. Further disclosure by law enforcement officials is limited to those purposes. (The PCS adds those limitations.)

Section 8 – Confidentiality of Information Published by the Department of Agriculture: This section would amend current law pertaining to cooperation between federal, State and local governments in agricultural work to restrict disclosure to the public of animal diagnostic tests that identify the owner of the animal without the permission of the owner *unless* the State Veterinarian determines that the disclosure is necessary to prevent the spread of an animal disease or to protect public health.

Section 9 – Control of Animal Disease: Current law requires veterinarians to report to the State Veterinarian the existence of infections diseases in livestock and poultry. This section would require the State Veterinarian to notify the State Health Director and the Director of the Division of Environment Health in DENR when a report is received that indicates an occurrence or potential outbreak of specified diseases that may be transmitted to humans and that may have been caused by a terrorist act. (The PCS enumerates the specific diseases that must be reported and directs the Board of Agriculture to establish by rule the list of reportable animal diseases and conditions and the time and manner for reporting.)

Section 10 - Measles Immunization: The bill would delete an outdated statute that requires a second measles immunization when a child is immunized before the child's first birthday.

Section 11 – Confidentiality of Patient Information: Section 13 would amend current law governing the release of medical records compiled and maintained in connection with emergency medical services or the statewide trauma system to authorize the release of such information when authorized by any law.

Section 12 – State Emergency Management Act: The PCS would add a new provision to this Act to require coordination between the State Health Director and the Secretary of Crime Control and Public Safety in revising the State Emergency Operations Plan to address public health matters in emergency management activities. (The PCS moves this provision from Section 3 to Section 12 and also changes the provision of the Emergency Management Act that is being amended.)

Section 13 – Standards for Lifesaving Treatment: Currently, the North Carolina Medical Care Commission is required to adopt rules to establish education standards and criteria of persons trained to administer lifesaving treatment for adverse reactions to insect stings. The PCS adds Section 13, to amend this directive so that these rules apply to training for persons trained to administer lifesaving treatment for adverse reactions to agents that might cause anaphylaxis. Anaphylaxis is an allergic reaction that usually is associated with an inability to breathe.

Section 14 makes the bill effective October 1, 2002.

H1508-SMRH-04: Linda Attarian, Research Division Staff Attorney, substantially contributed to this summary.

VISITOR REGISTRATION SHEET

J H — 7/16/02

Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

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Richard O'Brien	Prof. Fire Fighters & Paramedics of NC
Katherine Davis	Electric Cities
Alice Garland	EC
Brian Francis	Mecklenburg County
Martha Glass	NCDA&CS
[illegible] Jernigan	Agricultural Alumni of N. Carolina
[illegible]	[illegible]
Gary McLeod	GCPS
[illegible] Lott	DUHS
[illegible]	ACLU
Kate Hunt	NC State Watch
[illegible]	NCRA
Marshall Rudolph	NC Bar Association
Michelle Fraiet	NC Bar Ass'n
Julie Sinclair	UNC-CH
Heather Ferreira	UNC-CH

VISITOR REGISTRATION SHEET

J H
Name of Committee

7/16/02
Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gail Cummins	UNC-CH
ANN-LOISE READ	UNC-CH
Doy Rhodes	UNC-CH
Hal Miller	NC ACCT
Jane Ramquist	DTA
Steve Chen	DHHS
John Barkley	DOJ
John McKnight	governor's office
Barbara Camden	MF's
Alex Wayne	News & Record
Aaron Cohen	ESC
Peter Skillern	CRA*NC
Tim Crowley	UNC TV

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

July 23, 2002

The House Committee on Judiciary II met on Tuesday, July 23, 2002 in room 421 LOB at 10:00 a.m. The following members were present: Reps. Bowie, Gulley, Haire, Hall, Jeffus, Justus, Miller, Pope, Sherrill, Weiss and Willingham. Rep. Edwards, bill sponsor was additionally present. Staff including Tracy Dixon, Jeff Hudson and Robin Johnson were in attendance. A Visitor Registration sheet is attached and made part of these minutes.

Rep. Haire assumed the role of Chairman in the absence of Rep. Baddour and called the meeting to order. Holly Furr of Stanly County (Rep. McMahan), Franklin Miller of Guilford County (Rep. Jarrell) and Caitlin Pickard of Wake County (Rep. Thompson) served as pages.

Chairman Haire called the meeting to order to continue discussion on HB 1508, Public Health Bioterrorism Preparedness. Bill sponsor, Rep. Edwards was in attendance to answer questions. The same PCS as used in the previous meeting was distributed. Rep. Haire sent forward amendment H1508–ARH–86 (v.1) on behalf of Reps. Bowie and Sherrill. Robin Johnson, Committee Counsel, explained the amendment and responded to Rep. Justus' question about the control of the Secretary of Crime Control and Public Safety as it related to bioterrorism. Rep. Weiss motioned for adoption of the amendment. After discussions among Reps. Hall, Haire and Miller and Mr. Hoke about inserting perfecting language on page 2, line 40 about determinable and reasonable suspicion, the amendment was adopted.

Rep. Pope sent forward and explained amendment H1508–ARH–84 (v.1). Upon Rep. Pope's motion, the amendment was adopted.

Rep. Weiss sent forward and explained amendment H1508–ARH–87 (v.2). Reps. Pope and Haire suggested adding a perfecting amendment to include the word "willfully" at the end of line 3. After Rep. Weiss' approval of the perfecting amendment, the amendment in its entirety was adopted.

Amendment, H1508–ARH–88 (v.1) was sent forward and explained by Rep. Pope. Upon the motion of Rep. Pope, the amendment was adopted.

Rep. Hall motioned to roll all the amendments into a new PCS and for this new PCS to be given a favorable report, unfavorable to the original bill. The motion carried.

Copies of the PCS, original PCS, amendments and bill summary are attached as part of these minutes.

The meeting adjourned at 10:35 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Tracy Dixon
Committee Assistant

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
H.B. 1508 A BILL TO BE ENTITLED AN ACT TO PROMOTE READINESS FOR AND TO IMPROVE MANAGEMENT OF A PUBLIC HEALTH THREAT THAT MAY RESULT FROM AN ACT OF TERRORISM USING NUCLEAR, BIOLOGICAL, OR CHEMICAL AGENTS AS RECOMMENDED BY THE NORTH CAROLINA PUBLIC HEALTH STUDY COMMISSION.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill # 2, ☒ which changes the title, unfavorable as to Committee Substitute Bill # 1.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1508

Committee Substitute Favorable 6/12/02

PROPOSED COMMITTEE SUBSTITUTE H1508-PCS4267-RH-61

Short Title: Public Health Bioterrorism Preparedness. (Public)

Sponsors:

Referred to:

June 4, 2002

A BILL TO BE ENTITLED

AN ACT TO PROMOTE READINESS FOR AND TO IMPROVE MANAGEMENT OF A PUBLIC HEALTH THREAT THAT MAY RESULT FROM AN ACT OF TERRORISM USING NUCLEAR, BIOLOGICAL, OR CHEMICAL AGENTS AND TO AMEND THE NORTH CAROLINA MEDICAL CARE COMMISSION'S RULE-MAKING AUTHORITY REGARDING STANDARDS AND CRITERIA FOR THE EDUCATION AND CREDENTIALING OF PERSONS TO ADMINISTER TREATMENT FOR ANAPHYLAXIS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 130A of the General Statutes is amended by adding the following new Article to read:

"Article 22.

"Bioterrorism.

"**§ 130A-475. Suspected terrorist attack.**

(a) If the State Health Director reasonably suspects that a public health threat may exist and that the threat may have been caused by an act of terrorism using nuclear, biological, or chemical agents, the State Health Director is authorized to issue an order to:

(1) Require any person or animal to submit to examinations and tests to determine possible exposure to the nuclear, biological, or chemical agents.

(2) Test any real or personal property necessary to determine the presence of nuclear, biological, or chemical agents.

(3) Evacuate or close any real property, including any building, structure, or land when necessary to investigate suspected contamination of the property. The period of closure during an investigation shall not exceed 10 calendar days. If the State Health Director determines that a

longer period of closure is necessary to complete the investigation, the Director may institute an action in superior court to order the property to remain closed until the investigation is completed.

(4) Limit the freedom of movement or action of a person or animal that is contaminated with, or reasonably suspected of being contaminated with, a chemical or nuclear agent that may be conveyed to other persons or animals.

(5) Limit access by any person or animal to an area or facility that is housing persons or animals whose movement or action has been limited under subdivision (4) of this subsection or to an area or facility that is contaminated with, or reasonably suspected of being contaminated with, a chemical or nuclear agent that may be conveyed to other persons or animals.

(6) Exercise quarantine authority and isolation authority under G.S. 130A-145.

(b) The authority under subsection (a) of this section shall be exercised only when and so long as a public health threat may exist, all other reasonable means for correcting the problem have been exhausted, and no less restrictive alternative exists. Before applying the authority under subdivision (4) or (5) of subsection (a) of this section to livestock or poultry for the purpose of preventing the direct or indirect conveyance of a chemical or nuclear agent to persons, the State Health Director shall consult with the State Veterinarian in the Department of Agriculture and Consumer Services.

The period of limited freedom of movement or access under subdivisions (4) and (5) of subsection (a) of this section shall not exceed 10 calendar days. Any person substantially affected by that limitation may institute in superior court in Wake County or in the county in which the limitation is imposed an action to review the limitation. If a person or a person's representative requests a hearing, the hearing shall be held within 72 hours of the filing of the request, excluding Saturdays and Sundays. The court shall reduce the limitation if it determines, by the preponderance of the evidence, that the limitation is not reasonably necessary to prevent or limit the conveyance of chemical or nuclear agents to others.

If the State Health Director determines that a 10-calendar-day limitation on freedom of movement or access is not adequate to protect the public health, the State Health Director may institute in superior court in Wake County or in the county in which the limitation is imposed an action to obtain an order extending the period limiting the freedom of movement or access. The court shall continue the limitation for a period not to exceed 30 days if it determines, by the preponderance of the evidence, that the limitation is reasonably necessary to prevent or limit the conveyance of chemical or nuclear agents to others. Before the expiration of an order issued under this section, the State Health Director may move to continue the order for additional periods not to exceed 30 days each.

(c) If the State Health Director reasonably suspects that there exists a public health threat that may have been caused by an act of terrorism using nuclear, biological,

or chemical agents, the State Health Director shall notify the Secretary of Crime Control and Public Safety. If the Secretary of Crime Control and Public Safety reasonably suspects that a public health threat may exist and that the threat may have been caused by an act of terrorism using nuclear, biological, or chemical agents, the Secretary shall notify the State Health Director.

(d) For the purpose of this Article, the term "public health threat" means a situation that is likely to cause an immediate risk to human life, an immediate risk of serious physical injury or illness, or an immediate risk of serious adverse health effects.

(e) Nothing in this section shall limit any authority otherwise granted to local or State public health officials under this Chapter.

"**§ 130A-476. Access to health information.**

(a) Notwithstanding any other provision of law, a health care provider, a person in charge of a health care facility, or a unit of State or local government may report to the State Health Director or a local health director any events that may indicate the existence of a case or outbreak of an illness, condition, or health hazard that may have been caused by an act of terrorism using nuclear, biological, or chemical agents. Events that may be reported include unusual types or numbers of symptoms or illnesses presented to the provider, unusual trends in health care visits, or unusual trends in prescriptions or purchases of over-the-counter pharmaceuticals. To the extent practicable, a person who makes a report under this subsection shall not disclose personally identifiable information. A person disclosing or not disclosing information pursuant to this subsection is immune from any civil or criminal liability that might otherwise be incurred or imposed based on the disclosure or lack of disclosure provided that the health care provider was acting in good faith and without malice. In any proceeding involving liability, good faith, and lack of malice are presumed. Notwithstanding the foregoing, if a health care provider or unit of State or local government willfully does not disclose information pursuant to this subsection, the immunity from civil or criminal liability provided under this subsection shall not be available if the person had actual knowledge that a condition or illness was caused by use of a nuclear, biological, or chemical weapon of mass destruction as defined in G.S. 14-288.21(c).

(b) The State Health Director may issue a temporary order requiring health care providers to report symptoms, diseases, conditions, trends in use of health care services, or other health-related information when necessary to conduct a public health investigation or surveillance of an illness, condition, or health hazard that may have been caused by an act of terrorism using nuclear, biological, or chemical agents. The order shall specify which health care providers must report, what information is to be reported, and the period of time for which reporting is required. The period of time for which reporting is required pursuant to a temporary order shall not exceed 90 days. The Commission may adopt rules to continue the reporting requirement when necessary to protect the public health.

(c) The State Health Director and a local health director may examine, review, and obtain a copy of records containing confidential or protected health information, or

a summary of pertinent portions of those records, that pertain to a report authorized by subsection (a) or required by subsection (b) of this section.

(d) A person who makes a report pursuant to subsection (b) of this section or permits examination, review, or copying of medical records pursuant to subsection (c) of this section is immune from any civil or criminal liability that otherwise might be incurred or imposed as a result of complying with those subsections.

(e) Confidential or protected health information received by the State Health Director or a local health director pursuant to this section shall be confidential and shall not be released, except when the release is:

(1) Made pursuant to any other provision of law;

(2) To another federal, state, or local public health agency for the purpose of preventing or controlling a public health threat; or

(3) To a court or law enforcement official for the purpose of enforcing the provisions of this Chapter or for the purpose of investigating an act of terrorism using nuclear, biological, or chemical agents. A law enforcement official who receives the information shall not disclose it further, except (i) when necessary to conduct an investigation of an attack using nuclear, biological, or chemical agents, or (ii) when the State Health Director or a local health director seeks the assistance of the law enforcement official in preventing or controlling the public health threat and expressly authorizes the disclosure as necessary for that purpose.

(f) In this section the following terms shall include:

(1) "Health care provider" includes a physician licensed to practice medicine in North Carolina or a person who is licensed, certified, or credentialed to practice or provide health care services, including, but not limited to, pharmacists, dentists, physician assistants, registered nurses, licensed practical nurses, chiropractors, respiratory care therapists, and emergency medical technicians; and

(2) "Health care facility" includes hospitals, skilled nursing facilities, intermediate care facilities, psychiatric facilities, rehabilitation facilities, home health agencies, ambulatory surgical facilities, or any other health care related facility, whether publicly or privately owned."

SECTION 2.(a) G.S. 130A-149, "Biological agents registry; rules; penalties", is recodified as G.S. 130A-477.

SECTION 2.(b) G.S. 130A-29(c)(10) reads as rewritten:

"(10) Pertaining to the biological agents registry in accordance with ~~G.S. 130A-149~~ G.S. 130A-477."

SECTION 3. G.S. 130A-133 is repealed.

SECTION 4. G.S. 130A-2 reads as rewritten:

"**§ 130A-2. Definitions.**

The following definitions shall apply throughout this Chapter unless otherwise specified:

(1) "Commission" means the Commission for Health Services.

(1a) "Communicable condition" means the state of being infected with a communicable agent but without symptoms.

(1b) "Communicable disease" means an illness due to an infectious agent or its toxic products which is transmitted directly or indirectly to a person from an infected person or animal through the agency of an intermediate animal, host or vector, or through the inanimate environment.

(2) "Department" means the Department of Health and Human Services.

(3) "Imminent hazard" means a situation ~~which~~ that is likely to cause an immediate threat to human life, an immediate threat of serious physical injury, an immediate threat of serious adverse health effects, or a serious risk of irreparable damage to the environment if no immediate action is taken.

(3a) "Isolation authority" means the authority to issue an order to limit the freedom of movement or action of a person or animal with a communicable disease or communicable condition for the period of communicability to prevent the direct or indirect conveyance of the infectious agent from the person or animal to other persons or animals who are susceptible or who may spread the agent to others.

(4) "Local board of health" means a district board of health or a public health authority board or a county board of health.

(5) "Local health department" means a district health department or a public health authority or a county health department.

(6) "Local health director" means the administrative head of a local health department appointed pursuant to this Chapter.

(6a) "Outbreak" means an occurrence of a case or cases of a disease in a locale in excess of the usual number of cases of the disease.

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

(7a) "Quarantine authority" means the authority to issue an order to limit the freedom of movement or action of persons or animals which have been exposed to or are reasonably suspected of having been exposed to a communicable disease or communicable condition for a period of time as may be necessary to prevent the spread of that disease. Quarantine authority also means the authority to limit access by any person or animal to an area or facility that may be contaminated with an infectious agent. The term also means the authority to limit the freedom of movement or action of persons who have not received immunizations against a communicable disease when the State Health Director or a local health director determines that the immunizations are required to control an outbreak of that disease.

(8) "Secretary" means the Secretary of Health and Human Services.

(9) "Unit of local government" means a county, city, consolidated city-county, sanitary district or other local political subdivision, authority or agency of local government.

(10) "Vital records" means birth, death, fetal death, marriage, annulment and divorce records registered under the provisions of Article 4 of this Chapter."

SECTION 5. G.S. 130A-145 reads as rewritten:

"**§ 130A-145. ~~Local health director has quarantine~~ Quarantine and isolation authority.**

(a) The State Health Director and a~~A~~ local health director ~~and the State Health Director~~ are empowered to exercise quarantine and isolation authority. Quarantine and isolation authority shall be exercised only when and so long as the public health is endangered, all other reasonable means for correcting the problem have been exhausted, and no less restrictive alternative exists.

(b) No person other than a person authorized by the State Health Director or local health director shall enter quarantine or isolation premises. Nothing in this subsection shall be construed to restrict the access of authorized health care, law enforcement, or emergency medical services personnel to quarantine or isolation premises as necessary in conducting their duties.

(c) Before applying quarantine or isolation authority to livestock or poultry for the purpose of preventing the direct or indirect conveyance of an infectious agent to persons, the State Health Director or a local health director shall consult with the State Veterinarian in the Department of Agriculture and Consumer Services.

(d) When quarantine or isolation limits the freedom of movement of a person or animal or of access to a person or animal whose freedom of movement is limited, the period of limited freedom of movement or access shall not exceed 10 calendar days. Any person substantially affected by that limitation may institute in superior court in Wake County or in the county in which the limitation is imposed an action to review that limitation. If a person or a person's representative requests a hearing, the hearing shall be held within 72 hours of the filing of that request, excluding Saturdays and Sundays. The court shall reduce the limitation if it determines, by the preponderance of the evidence, that the limitation is not reasonably necessary to prevent or limit the conveyance of a communicable disease or condition to others.

If the State Health Director or the local health director determines that a 10-calendar-day limitation on freedom of movement or access is not adequate to protect the public health, the State Health Director or local health director may institute in superior court in Wake County or in the county in which the limitation is imposed an action to obtain an order extending the period of limitation of freedom of movement or access. The court shall continue the limitation for a period not to exceed 30 days if it determines, by the preponderance of the evidence, that the limitation is reasonably necessary to prevent or limit the conveyance of a communicable disease or condition to others. Before the expiration of an order issued under this section, the State Health Director or local health director may move to continue the order for additional periods not to exceed 30 days each."

SECTION 6. G.S. 130A-20 reads as rewritten:

"**§ 130A-20. Abatement of an imminent hazard.**

(a) If the Secretary or a local health director determines that an imminent hazard exists, the Secretary or a local health director may order the owner, lessee, operator, or other person in control of the property to abate the imminent hazard or may, after notice to or reasonable attempt to notify the owner, lessee, operator, or other person in control of the property enter upon any property and take any action necessary to abate the imminent hazard. If the Secretary or a local health director abates the imminent hazard, the ~~The~~ Department or the local health department shall have a lien on the property for the cost of the abatement of the imminent hazard in the nature of a mechanic's and materialmen's lien as provided in ~~Chapter 44A~~ Chapter 44A of the General Statutes, and the lien may be enforced as provided ~~therein.~~ in that Chapter. The lien may be defeated by a showing that an imminent hazard did not exist at the time the Secretary or the local health director took the action.

(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Articles 8, 9, 10, 11, and 12 of this Chapter."

SECTION 7. G.S. 130A-143 reads as rewritten:

"**§ 130A-143. Confidentiality of records.**

All information and records, whether publicly or privately maintained, that identify a person who has AIDS virus infection or who has or may have a disease or condition required to be reported pursuant to the provisions of this Article shall be strictly confidential. This information shall not be released or made public except under the following circumstances:

(1) Release is made of specific medical or epidemiological information for statistical purposes in a way that no person can be identified;

(2) Release is made of all or part of the medical record with the written consent of the person or persons identified or their guardian;

(3) Release is made to health care personnel providing medical care to the patient;

(4) Release is necessary to protect the public health and is made as provided by the Commission in its rules regarding control measures for communicable diseases and conditions;

(5) Release is made pursuant to other provisions of this Article;

(6) Release is made pursuant to subpoena or court order. Upon request of the person identified in the record, the record shall be reviewed in camera. In the trial, the trial judge may, during the taking of testimony concerning such information, exclude from the courtroom all persons except the officers of the court, the parties and those engaged in the trial of the ~~case.~~case;

(7) Release is made by the Department or a local health department to a court or a law enforcement ~~officer~~ official for the purpose of enforcing ~~the provisions of this Article pursuant to Article 1, Part 2 of this Chapter.~~ this Article or Article 22 of this Chapter, or investigating an

act of terrorism using nuclear, biological, or chemical agents. A law enforcement official who receives the information shall not disclose it further, except (i) when necessary to enforce this Article or Article 22 of this Chapter, or when necessary to conduct an investigation of an act of terrorism using nuclear, biological, or chemical agents, or (ii) when the Department or a local health department seeks the assistance of the law enforcement official in preventing or controlling the spread of the disease or condition and expressly authorizes the disclosure as necessary for that purpose;

(8) Release is made by the Department or a local health department to another federal, state or local public health agency for the purpose of preventing or controlling the spread of a communicable disease or communicable condition;

(9) Release is made by the Department for bona fide research purposes. The Commission shall adopt rules providing for the use of the information for research purposes;

(10) Release is made pursuant to G.S. 130A-144(b); or

(11) Release is made pursuant to any other provisions of law that specifically authorize or require the release of information or records related to AIDS."

SECTION 8. G.S. 106-24.1 reads as rewritten:

"**§ 106-24.1. Confidentiality of information collected and published.**

All information published by the Department of Agriculture and Consumer Services pursuant to this Part shall be classified so as to prevent the identification of information received from individual farm operators. All information received pursuant to this Part from individual farm operators shall be held confidential by the Department and its employees. Information collected by the Department from individual farm operators for the purposes of its animal health programs may be disclosed by the State Veterinarian when, in his judgment, the disclosure will assist in the implementation of these programs. Animal disease diagnostic tests that identify the owner of the animal shall not be disclosed without the permission of the owner unless the State Veterinarian determines that disclosure is necessary to prevent the spread of an animal disease or to protect the public health."

SECTION 9. G.S. 106-307.2 reads as rewritten:

"**§ 106-307.2. Reports of infectious disease in livestock and poultry to State Veterinarian.**

(a) All persons practicing veterinary medicine in North Carolina shall report promptly to the State Veterinarian the existence of any reportable contagious or infectious disease in livestock and poultry. The Board of Agriculture shall establish by rule a list of animal diseases and conditions to be reported and the time and manner of reporting.

(b) The State Veterinarian shall notify the State Health Director and the Director of the Division of Environmental Health in the Department of Environment and Natural Resources when the State Veterinarian receives a report indicating an occurrence or

potential outbreak of anthrax, arboviral infections, brucellosis, epidemic typhus, hantavirus infections, murine typhus, plague, psittacosis, Q fever, hemorrhagic fever virus infections, and any other disease or condition transmissible to humans that the State Veterinarian determines may have been caused by a terrorist act."

SECTION 10. G.S. 130A-152(b) is repealed.

SECTION 11. G.S. 143-518 reads as rewritten:

"**§ 143-518. Confidentiality of patient information.**

(a) Medical records compiled and maintained by the Department or EMS providers in connection with dispatch, response, treatment, or transport of individual patients or in connection with the statewide trauma system pursuant to Article 7 of Chapter 131E of the General Statutes may contain patient identifiable data which will allow linkage to other health care-based data systems for the purposes of quality management, peer review, and public health initiatives.

These medical records and data shall be strictly confidential and shall not be considered public records within the meaning of G.S. 132-1 and shall not be released or made public except under any of the following conditions:

(1) Release is made of specific medical or epidemiological information for statistical purposes in a way that no person can be identified.

(2) Release is made of all or part of the medical record with the written consent of the person or persons identified or their guardians.

(3) Release is made to health care personnel providing medical care to the patient.

(4) Release is made pursuant to a court order. Upon request of the person identified in the record, the record shall be reviewed in camera. In the trial, the trial judge may, during the taking of testimony concerning such information, exclude from the courtroom all persons except the officers of the court, the parties, and those engaged in the trial of the case.

(5) Release is made to a Medical Review Committee as defined in G.S. 131E-95, 90-21.22A, or 130A-45.7 or to a peer review committee as defined in G.S. 131E-108, 122C-30, or 131D-21.1.

(6) Release is made for use in a health research project under rules adopted by the North Carolina Medical Care Commission. The Commission shall adopt rules that allow release of information when an institutional review board, as defined by the Commission, has determined that the health research project:

a. Is of sufficient scientific importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

b. Is impracticable without the use or disclosure of identifying health information;

c. Contains safeguards to protect the information from redisclosure;

d. Contains safeguards against identifying, directly or indirectly, any patient in any report of the research project; and

e. Contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project.

(7) Release is made to a statewide data processor, as defined in Article 11A of Chapter 131E of the General Statutes, in which case the data is deemed to have been submitted as if it were required to have been submitted under that Article.

(8) Release is made pursuant to any other law.

(b) Charges, accounts, credit histories, and other personal financial records compiled and maintained by the Department or EMS providers in connection with the admission, treatment, and discharge of individual patients are strictly confidential and shall not be released."

SECTION 12. G.S. 166A-5(3) is amended by adding a new sub-subdivision to read:

"b1. Coordination with the State Health Director to amend or revise the North Carolina Emergency Operations Plan regarding public health matters. At a minimum, the revisions to the Plan shall provide for the following:

1. The epidemiologic investigation of a known or suspected threat caused by nuclear, biological, or chemical agents.
2. The examination and testing of persons and animals that may have been exposed to a nuclear, biological, or chemical agent.
3. The procurement and allocation of immunizing agents and prophylactic antibiotics.
4. The allocation of the National Pharmaceutical Stockpile.
5. The appropriate conditions for quarantine and isolation in order to prevent further transmission of disease.
6. Immunization procedures.
7. The issuance of guidelines for prophylaxis and treatment of exposed and affected persons."

SECTION 13. G.S. 143-508(d)(11) reads as rewritten:

"(11) Establish standards and criteria for the education and credentialing of persons trained to administer lifesaving treatment to a person who suffers a severe adverse reaction to ~~insect stings.~~agents that might cause anaphylaxis."

SECTION 14. This act becomes effective October 1, 2002.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1508

Committee Substitute Favorable 6/12/02

PROPOSED COMMITTEE SUBSTITUTE H1508-CSRH-61 [v.14]

7/15/2002 5:14:52 PM

Short Title: Public Health Bioterrorism Preparedness. (Public)

Sponsors:

Referred to:

June 4, 2002

A BILL TO BE ENTITLED

AN ACT TO PROMOTE READINESS FOR AND TO IMPROVE MANAGEMENT OF A PUBLIC HEALTH THREAT THAT MAY RESULT FROM AN ACT OF TERRORISM USING NUCLEAR, BIOLOGICAL, OR CHEMICAL AGENTS AND TO AMEND THE NORTH CAROLINA MEDICAL CARE COMMISSION'S RULEMAKING AUTHORITY REGARDING STANDARDS AND CRITERIA FOR THE EDUCATION AND CREDENTIALING OF PERSONS TO ADMINISTER TREATMENT FOR ANAPHYLAXIS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 130A of the General Statutes is amended by adding the following new Article to read:

"Article 22.

"Bioterrorism.

"**§ 130A-475. Suspected terrorist attack.**

(a) If the State Health Director reasonably suspects that a public health threat may exist and that the threat may have been caused by an act of terrorism using nuclear, biological, or chemical agents, the State Health Director is authorized to issue an order to:

(1) Require any person or animal to submit to examinations and tests to determine possible exposure to the nuclear, biological, or chemical agents.

(2) Test any real or personal property necessary to determine the presence of nuclear, biological, or chemical agents.

(3) Evacuate or close any real property, including any building, structure, or land when necessary to investigate suspected contamination of the property. The period of closure during an investigation shall not exceed 10 calendar days. If the State Health Director determines that a

longer period of closure is necessary to complete the investigation, the Director may institute an action in superior court to order the property to remain closed until the investigation is completed.

(4) Limit the freedom of movement or action of a person or animal that is contaminated with, or reasonably suspected of being contaminated with, a chemical or nuclear agent that may be conveyed to other persons or animals.

(5) Limit access by any person or animal to an area or facility that is housing persons or animals whose movement or action has been limited under subdivision (4) of this subsection or to an area or facility that is contaminated with, or reasonably suspected of being contaminated with, a chemical or nuclear agent that may be conveyed to other persons or animals.

(6) Exercise quarantine authority and isolation authority under G.S. 130A-145.

(b) The authority under subsection (a) of this section shall be exercised only when and so long as a public health threat may exist, all other reasonable means for correcting the problem have been exhausted, and no less restrictive alternative exists. Before applying the authority under subdivisions (4) or (5) of subsection (a) of this section to livestock or poultry for the purpose of preventing the direct or indirect conveyance of a chemical or nuclear agent to persons, the State Health Director shall consult with the State Veterinarian in the Department of Agriculture and Consumer Services.

The period of limited freedom of movement or access under subdivisions (4) and (5) of subsection (a) of this section shall not exceed 10 calendar days. Any person substantially affected by that limitation may institute in superior court in Wake County or in the county in which the limitation is imposed an action to review the limitation. If a person or a person's representative requests a hearing, the hearing shall be held within 72 hours of the filing of the request, excluding Saturdays, Sundays and legal holidays. If the State Health Director determines that a 10 calendar day limitation on freedom of movement or access is not adequate to protect the public heath, the State Health Director may institute in superior court in Wake County or in the county in which the limitation is imposed an action to obtain an order extending the period limiting the freedom of movement or access. The court shall continue the limitation for a period not to exceed 30 days if it determines, by the preponderance of the evidence, that the limitation is reasonably necessary to prevent or limit the conveyance of chemical or nuclear agents to others. Before the expiration of an order issued under this section, the State Health Director may move to continue the order for additional periods not to exceed 30 days each.

(c) If the State Health Director determines that there exists a public health threat that may have been caused by an act of terrorism using nuclear, biological, or chemical agents, the State Health Director shall notify the Secretary of Crime Control and Public Safety.

(d) For the purpose of this Article, the term "public health threat" means a situation that is likely to cause an immediate risk to human life, an immediate risk of serious physical injury or illness, or an immediate risk of serious adverse health effects.

(e) Nothing in this section shall limit any authority otherwise granted to local or State public health officials under this Chapter.

"**§ 130A-476. Access to health information.**

(a) Notwithstanding any other provision of law, a health care provider, a person in charge of a health care facility, or a unit of State or local government may report to the State Health Director or a local health director any events that may indicate the existence of a case or outbreak of an illness, condition or health hazard that may have been caused by an act of terrorism using nuclear, biological or chemical agents. Events that may be reported include unusual types or numbers of symptoms or illnesses presented to the provider, unusual trends in health care visits, or unusual trends in prescriptions or purchases of over-the-counter pharmaceuticals. A person disclosing or not disclosing information pursuant to this subsection is immune from any civil or criminal liability that might otherwise be incurred or imposed based on the disclosure or lack of disclosure provided that the health care provider was acting in good faith and without malice. In any proceeding involving liability, good faith and lack of malice are presumed.

(b) The State Health Director may issue a temporary order requiring health care providers to report symptoms, diseases, conditions, trends in use of health care services, or other health-related information when necessary to conduct a public health investigation or surveillance of an illness, condition or health hazard that may have been caused by an act of terrorism using nuclear, biological or chemical agents. The order shall specify which health care providers must report, what information is to be reported, and the period of time for which reporting is required. The period of time for which reporting is required pursuant to a temporary order shall not exceed 90 days. The Commission may adopt rules to continue the reporting requirement when necessary to protect the public health.

(c) The State Health Director and a local health director may examine, review, and obtain a copy of records containing confidential or protected health information, or a summary of pertinent portions of those records, that pertain to a report authorized by subsection (a) or required by subsection (b) of this section.

(d) A person who makes a report pursuant to subsection (b) of this section or permits examination, review or copying of medical records pursuant to subsection (c) of this section is immune from any civil or criminal liability that otherwise might be incurred or imposed as a result of complying with those subsections.

(e) Confidential or protected health information received by the State Health Director or a local health director pursuant to this section shall be confidential and shall not be released, except when the release is:

(1) Made pursuant to any other provision of law;

(2) To another federal, state, or local public health agency for the purpose of preventing or controlling a public health threat; or

(3) To a court or law enforcement official for the purpose of enforcing the provisions of this chapter or for the purpose of investigating an act of terrorism using nuclear, biological, or chemical agents. A law enforcement official who receives the information shall not disclose it further, except (i) when necessary to conduct an investigation of an attack using nuclear, biological, or chemical agents, or (ii) when the State Health Director or a local health director seeks the assistance of the law enforcement official in preventing or controlling the public health threat and expressly authorizes the disclosure as necessary for that purpose.

(f) In this section the following terms shall include:

(1) "Health care provider" includes a physician licensed to practice medicine in North Carolina or a person who is licensed, certified, or credentialed to practice or provide health care services, including, but not limited to, pharmacists, dentists, physician assistants, registered nurses, licensed practical nurses, chiropractors, respiratory care therapists, and emergency medical technicians; and

(2) "Health care facility" includes hospitals, skilled nursing facilities, intermediate care facilities, psychiatric facilities, rehabilitation facilities, home health agencies, ambulatory surgical facilities, or any other health care related facility, whether publicly or privately owned."

SECTION 2.(a) G.S. 130A-149, "Biological Agents Registry; Rules; Penalties," is recodified as G.S. 130A-477.

SECTION 2.(b) G.S. 130A-29(c)(10) reads as rewritten:

"(10) Pertaining to the biological agents registry in accordance with ~~G.S. 130A-149~~ G.S. 130A-477."

SECTION 3. G.S. 130A-133 is repealed.

SECTION 4. G.S. 130A-2 reads as rewritten:

"**§ 130A-2. Definitions.**

The following definitions shall apply throughout this Chapter unless otherwise specified:

(1) "Commission" means the Commission for Health Services.

(1a) "Communicable condition" means the state of being infected with a communicable agent but without symptoms.

(1b) "Communicable disease" means an illness due to an infectious agent or its toxic products which is transmitted directly or indirectly to a person from an infected person or animal through the agency of an intermediate animal, host or vector, or through the inanimate environment.

(2) "Department" means the Department of Health and Human Services.

(3) "Imminent hazard" means a situation ~~which~~ that is likely to cause an immediate threat to human life, an immediate threat of serious physical injury, an immediate threat of serious adverse health effects, or a

serious risk of irreparable damage to the environment if no immediate action is taken.

(3a) "Isolation authority" means the authority to issue an order to limit the freedom of movement or action of a person or animal with a communicable disease or communicable condition for the period of communicability to prevent the direct or indirect conveyance of the infectious agent from the person or animal to other persons or animals who are susceptible or who may spread the agent to others.

(4) "Local board of health" means a district board of health or a public health authority board or a county board of health.

(5) "Local health department" means a district health department or a public health authority or a county health department.

(6) "Local health director" means the administrative head of a local health department appointed pursuant to this Chapter.

(6a) "Outbreak" means an occurrence of a case or cases of a disease in a locale in excess of the usual number of cases of the disease.

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

(7a) "Quarantine authority" means the authority to issue an order to limit the freedom of movement or action of persons or animals which have been exposed to or are reasonably suspected of having been exposed to a communicable disease or communicable condition for a period of time as may be necessary to prevent the spread of that disease. Quarantine authority also means the authority to limit access by any person or animal to an area or facility that may be contaminated with an infectious agent. The term also means the authority to limit the freedom of movement or action of persons who have not received immunizations against a communicable disease when the State Health Director or a local health director determines that the immunizations are required to control an outbreak of that disease.

(8) "Secretary" means the Secretary of Health and Human Services.

(9) "Unit of local government" means a county, city, consolidated city-county, sanitary district or other local political subdivision, authority or agency of local government.

(10) "Vital records" means birth, death, fetal death, marriage, annulment and divorce records registered under the provisions of Article 4 of this Chapter."

SECTION 5. G.S. 130A-145 reads as rewritten:

"**§ 130A-145. ~~Local health director has quarantine~~ Quarantine and isolation authority.**

(a) The State Health Director and a~~A~~ local health director ~~and the State Health Director~~ are empowered to exercise quarantine and isolation authority. Quarantine and isolation authority shall be exercised only when and so long as the public health is

endangered, all other reasonable means for correcting the problem have been exhausted, and no less restrictive alternative exists.

(b) No person other than a person authorized by the State Health Director or local health director shall enter quarantine or isolation premises. Nothing in this subsection shall be construed to restrict the access of authorized health care, law enforcement or emergency medical services personnel to quarantine or isolation premises as necessary in conducting their duties.

(c) Before applying quarantine or isolation authority to livestock or poultry for the purpose of preventing the direct or indirect conveyance of an infectious agent to persons, the State Health Director or a local health director shall consult with the State Veterinarian in the Department of Agriculture and Consumer Services.

(d) When quarantine or isolation limits the freedom of movement of a person or animal or of access to a person or animal whose freedom of movement is limited, the period of limited freedom of movement or access shall not exceed 10 calendar days. Any person substantially affected by that limitation may institute in superior court in Wake County or in the county in which the limitation is imposed an action to review that limitation. If a person or a person's representative requests a hearing, the hearing shall be held within 72 hours of the filing of that request, excluding Saturdays, Sundays and legal holidays If the State Health Director or the local health director determines that a 10 calendar day limitation on freedom of movement or access is not adequate to protect the public heath, the State Health Director or local health director may institute in superior court in Wake County or in the county in which the limitation is imposed an action to obtain an order extending the period of limitation of freedom of movement or access. The court shall continue the limitation for a period not to exceed 30 days if it determines, by the preponderance of the evidence, that the limitation is reasonably necessary to prevent or limit the conveyance of a communicable disease or condition to others. Before the expiration of an order issued under this section, the State Health Director or local health director may move to continue the order for additional periods not to exceed 30 days each."

SECTION 6. G.S. 130A-20 reads as rewritten:

"**§ 130A-20. Abatement of an imminent hazard.**

(a) If the Secretary or a local health director determines that an imminent hazard exists, the Secretary or a local health director may order the owner, lessee, operator or other person in control of the property to abate the imminent hazard or may, after notice to or reasonable attempt to notify the owner, lessee, operator, or other person in control of the property enter upon any property and take any action necessary to abate the imminent hazard. If the Secretary or a local health director abates the imminent hazard, the ~~The~~ Department or the local health department shall have a lien on the property for the cost of the abatement of the imminent hazard in the nature of a mechanic's and materialmen's lien as provided in ~~Chapter 44A~~ Chapter 44A of the General Statutes, and the lien may be enforced as provided ~~therein.~~ in that Chapter. The lien may be defeated by a showing that an imminent hazard did not exist at the time the Secretary or the local health director took the action.

(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Articles 8, 9, 10, 11, and 12 of this Chapter."

SECTION 7. G.S. 130A-143 reads as rewritten:

"**§ 130A-143. Confidentiality of records.**

All information and records, whether publicly or privately maintained, that identify a person who has AIDS virus infection or who has or may have a disease or condition required to be reported pursuant to the provisions of this Article shall be strictly confidential. This information shall not be released or made public except under the following circumstances:

(1) Release is made of specific medical or epidemiological information for statistical purposes in a way that no person can be identified;

(2) Release is made of all or part of the medical record with the written consent of the person or persons identified or their guardian;

(3) Release is made to health care personnel providing medical care to the patient;

(4) Release is necessary to protect the public health and is made as provided by the Commission in its rules regarding control measures for communicable diseases and conditions;

(5) Release is made pursuant to other provisions of this Article;

(6) Release is made pursuant to subpoena or court order. Upon request of the person identified in the record, the record shall be reviewed in camera. In the trial, the trial judge may, during the taking of testimony concerning such information, exclude from the courtroom all persons except the officers of the court, the parties and those engaged in the trial of the ~~ease.~~case;

(7) Release is made by the Department or a local health department to a court or a law enforcement ~~officer~~ official for the purpose of enforcing ~~the provisions of this Article pursuant to Article 1, Part 2 of this Chapter.~~ this Article or Article 22 of this Chapter, or investigating an act of terrorism using nuclear, biological, or chemical agents. A law enforcement official who receives the information shall not disclose it further, except (i) when necessary to enforce this Article or Article 22 of this Chapter, or when necessary to conduct an investigation of an act of terrorism using nuclear, biological, or chemical agents, or (ii) when the Department or a local health department seeks the assistance of the law enforcement official in preventing or controlling the spread of the disease or condition and expressly authorizes the disclosure as necessary for that purpose;

(8) Release is made by the Department or a local health department to another federal, state or local public health agency for the purpose of preventing or controlling the spread of a communicable disease or communicable condition;

(9) Release is made by the Department for bona fide research purposes. The Commission shall adopt rules providing for the use of the information for research purposes;

(10) Release is made pursuant to G.S. 130A-144(b); or

(11) Release is made pursuant to any other provisions of law that specifically authorize or require the release of information or records related to AIDS."

SECTION 8. G.S. 106-24.1 reads as rewritten:

"**§ 106-24.1. Confidentiality of information collected and published.**

All information published by the Department of Agriculture and Consumer Services pursuant to this Part shall be classified so as to prevent the identification of information received from individual farm operators. All information received pursuant to this Part from individual farm operators shall be held confidential by the Department and its employees. Information collected by the Department from individual farm operators for the purposes of its animal health programs may be disclosed by the State Veterinarian when, in his judgment, the disclosure will assist in the implementation of these programs. Animal disease diagnostic tests that identify the owner of the animal shall not be disclosed without the permission of the owner unless the State Veterinarian determines that disclosure is necessary to prevent the spread of an animal disease or to protect the public health."

SECTION 9. G.S. 106-307.2 reads as rewritten:

"**§ 106-307.2. Reports of infectious disease in livestock and poultry to State Veterinarian.**

(a) All persons practicing veterinary medicine in North Carolina shall report promptly to the State Veterinarian the existence of any reportable contagious or infectious disease in livestock and poultry. The Board of Agriculture shall establish by rule a list of animal diseases and conditions to be reported and the time and manner of reporting.

(b) The State Veterinarian shall notify the State Health Director and the Director of the Division of Environmental Health in the Department of Environment and Natural Resources when the State Veterinarian receives a report indicating an occurrence or potential outbreak of anthrax, arboviral infections, brucellosis, epidemic typhus, hantavirus infections, murine typhus, plague, psittacosis, Q fever, hemorrhagic fever virus infections, and any other disease or condition transmissible to humans that the State Veterinarian determines may have been caused by a terrorist act."

SECTION 10. G.S. 130A-152(b) is repealed.

SECTION 11. G.S. 143-518 reads as rewritten:

"**§ 143-518. Confidentiality of patient information.**

(a) Medical records compiled and maintained by the Department or EMS providers in connection with dispatch, response, treatment, or transport of individual patients or in connection with the statewide trauma system pursuant to Article 7 of Chapter 131E of the General Statutes may contain patient identifiable data which will allow linkage to other health care-based data systems for the purposes of quality management, peer review, and public health initiatives.

These medical records and data shall be strictly confidential and shall not be considered public records within the meaning of G.S. 132-1 and shall not be released or made public except under any of the following conditions:

(1) Release is made of specific medical or epidemiological information for statistical purposes in a way that no person can be identified.

(2) Release is made of all or part of the medical record with the written consent of the person or persons identified or their guardians.

(3) Release is made to health care personnel providing medical care to the patient.

(4) Release is made pursuant to a court order. Upon request of the person identified in the record, the record shall be reviewed in camera. In the trial, the trial judge may, during the taking of testimony concerning such information, exclude from the courtroom all persons except the officers of the court, the parties, and those engaged in the trial of the case.

(5) Release is made to a Medical Review Committee as defined in G.S. 131E-95, 90-21.22A, or 130A-45.7 or to a peer review committee as defined in G.S. 131E-108, 122C-30, or 131D-21.1.

(6) Release is made for use in a health research project under rules adopted by the North Carolina Medical Care Commission. The Commission shall adopt rules that allow release of information when an institutional review board, as defined by the Commission, has determined that the health research project:

a. Is of sufficient scientific importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

b. Is impracticable without the use or disclosure of identifying health information;

c. Contains safeguards to protect the information from redisclosure;

d. Contains safeguards against identifying, directly or indirectly, any patient in any report of the research project; and

e. Contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project.

(7) Release is made to a statewide data processor, as defined in Article 11A of Chapter 131E of the General Statutes, in which case the data is deemed to have been submitted as if it were required to have been submitted under that Article.

(8) Release is made pursuant to any other law.

(b) Charges, accounts, credit histories, and other personal financial records compiled and maintained by the Department or EMS providers in connection with the admission, treatment, and discharge of individual patients are strictly confidential and shall not be released."

SECTION 12. G.S. 166A-5(3) is amended by adding a new sub-subdivision to read:

"b1. Coordination with the State Health Director to amend or revise the North Carolina Emergency Operations Plan regarding public health matters. At a minimum, the revisions to the Plan shall provide for the following:

1. The epidemiologic investigation of a known or suspected threat caused by nuclear, biological, or chemical agents.
2. The examination and testing of persons and animals that may have been exposed to a nuclear, biological, or chemical agent.
3. The procurement and allocation of immunizing agents and prophylactic antibiotics.
4. The allocation of the National Pharmaceutical Stockpile.
5. The appropriate conditions for quarantine and isolation in order to prevent further transmission of disease.
6. Immunization procedures.
7. The issuance of guidelines for prophylaxis and treatment of exposed and affected persons."

SECTION 13. G.S. 143-508(d)(11) reads as rewritten:

"(11) Establish standards and criteria for the education and credentialing of persons trained to administer lifesaving treatment to a person who suffers a severe adverse reaction to ~~insect stings.~~agents that might cause anaphylaxis."

SECTION 14. This act becomes effective October 1, 2002.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1508

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

H1508-ARH-86 [v.1]

Date July 23 ,2002

Comm. Sub. [YES]
Amends Title [NO]
H1508-CSRH-61

Representative ~~Sherrill~~ Haire

moves to amend the proposed committee substitute (H1508-CSRH-61[V.14]) on page 2, line 43, by inserting at the end of that line the following:
"If the Secretary of Crime Control and Public Safety reasonably suspects that a public health threat may exist and that the threat may have been caused by an act of terrorism using nuclear, biological, or chemical agents, the Secretary shall notify the State Health Director.";
and on p. 2, line 40, by deleting "determines" & substituting "reasonably suspects".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1508

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

H1508-ARH-84 [v.1]

Date 7/23 ,2002

Comm. Sub. [YES]
Amends Title [NO]
H1508-CSRH-61

Representative Pope

moves to amend the proposed committee substitute (H1508-CSRH-61[v.14]) on page 2, line 29, by rewriting the line to read:
"72 hours of the filing of the request, excluding Saturdays and Sundays. The court shall reduce the limitation if it determines, by the preponderance of the evidence, that the limitation is not reasonably necessary to prevent or limit the conveyance of chemical or nuclear agents to others.
If";

and on page 6, lines 18-19, by rewriting the lines to read:
"shall be held within 72 hours of the filing of the request, excluding Saturdays and Sundays. The court shall reduce the limitation if it determines, by the preponderance of the evidence, that the limitation is not reasonably necessary to prevent or limit the

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1508

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

H1508-ARH-84 [v.1]

conveyance of a communicable disease or condition to others.

If the State Health Director or the local health director determines".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1508

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

H1508-ARH-87 [v.2]

Date 7/23 ,2002

Comm. Sub. [YES]
Amends Title [NO]
H1508-CSRH-61

Representative Weiss

moves to amend the proposed committee substitute (H1508-CSRH-61[v.14]) on page 3, line 19, by inserting at the end of that line the following:

"Notwithstanding the foregoing, if a health care provider or unit of State or local government willfully does not disclose information pursuant to this subsection, the immunity from civil or criminal liability provided under this subsection shall not be available if the person had actual knowledge that a condition or illness was caused by use of a nuclear, biological, or chemical weapon of mass destruction as defined in G.S. 14-288.21(c).".

SIGNED Jennifer Weiss
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1508

AMENDMENT NO. 4
(to be filled in by
Principal Clerk)

H1508-ARH-88 [v.1]

Date 7/23 ,2002

Comm. Sub. [YES]
Amends Title [NO]
H1508-CSRH-61

Representative Pope

moves to amend the proposed committee substitute (H1508-CSRH-61[v.14]) on page 3, line 14, by inserting after the word "pharmaceuticals." the following new sentence: "To the extent practicable, a person who makes a report under this subsection shall not disclose personally identifiable information.

SIGNED Rep. Pope
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

HOUSE BILL 1508:
Public Health Bioterrorism Preparedness

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Rep. Zeno Edwards
Date:	July 16, 2002	**Summary by:**	Robin Johnson
Version:	Second Edition		Committee Counsel
	H1508-CSRH-61(v.14)		

SUMMARY: ***Recommended by the Public Health Study Commission, Sections 1-12 of this bill would create a new Article in the Public Health Law and amend North Carolina's communicable disease control laws to allow public health officials to prepare for and respond to suspected public heath threats that may be caused by an act of terrorism using nuclear, biological, or chemical agents. The PCS would expand the authority of the State Health Director and local public health officials to conduct surveillance and investigate cases of an illness or condition caused by a suspected communicable disease outbreak or an illness, disease or other health hazard resulting from a suspected terrorist attack. The PCS also would provide for coordination between the Secretary of Crime Control and Public Safety and the State Health Director regarding emergency operations and public health matters. The PCS also would require the State Veterinarian to notify the State Health Director and the Director of the Division of Environmental Health in DENR of any reports indicating a potential outbreak of a disease or condition that can be transmitted to humans. Finally the PCS would authorize the release of confidential emergency medical data to the State Health Director for the purposes of protecting public health.***

The PCS makes clarifying changes and adds a new Section 13, which would direct the North Carolina Medical Care Commission to adopt rules to establish education standards and criteria of persons trained to administer lifesaving treatment for adverse reactions to agents that might cause anaphylaxis.

The PCS, if enacted, would become effective October 1, 2002.

BACKGROUND: North Carolina public health laws provide the State Health Director and local health directors with legal authority to control and prevent reportable communicable diseases and to protect against environmental hazards in partnership with hospitals, nursing homes, schools, physicians, laboratories, emergency medical services providers, and other health care providers. Subsequent to the terrorist attacks of September 11, 2001, and the subsequent release of anthrax spores through the mail in October of 2001, the State's public health laws were reviewed and evaluated as to whether the laws provide sufficient legal authority to the State Health Director and other public health officials to investigate and respond to suspected public heath threats resulting from the use of biological, nuclear or chemical agents. Despite the fact that all of the infectious agents identified by the Centers for Disease Control as agents for bioterrorism planning (e.g., anthrax, botulism, plague, smallpox, tularemia, and certain viral hemorrhagic fevers) fall within the scope of North Carolina's current communicable disease control law, it was determined that the laws are not broad enough to cover public health threats and other health hazards that may result from use of biological, chemical or nuclear agents.

Gaps in the current law were identified and legislation was presented to the Public Health Study Commission, which then recommended the bill to the General Assembly. The proposed legislation is based on The Model State Emergency Health Powers Act, prepared last Fall by the Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities for the Centers for Disease Control and Prevention and in collaboration with the National Governors Association, National Conference of State

Legislatures, Association of State and Territorial Health Officials, National Association of City and County Health Officers, and National Association of Attorneys General.

This PCS includes clarifying changes proposed by the Department of Health and Human Services and changes made in response to members' questions at an earlier committee meeting.

CURRENT LAW GOVERNING THE RESPONSE TO THREATS TO PUBLIC HEALTH:

Communicable Disease Control Laws: Under these laws, the Commission for Health Services adopts rules as to which communicable diseases must be reported by which entities. Physicians, schools, clinical laboratories, etc., are required to report all cases of a communicable disease or condition to the local health director. The legal definition of "communicable disease" is an illness caused by an infectious agent such as a virus or bacterium, that can be transmitted from person to person, from an animal to a person, through an intermediate host or vector, or through the inanimate environment. Currently the list of reportable diseases includes 61 communicable diseases and conditions. A "communicable condition" is when a person has been infected with a communicable agent but does not have symptoms of disease. Local health directors then investigate reported cases and ensure that control measures are in place to prevent the spread of the disease. The State Health Director and local health directors have the authority to examine patient records pertaining to reportable communicable diseases and may exercise isolation or quarantine authority in appropriate circumstances.

Local health directors and the State Health Director have isolation and quarantine authority in order to prevent the spread of communicable diseases or conditions. Isolation applies to persons who actually have a communicable disease or condition, and quarantine applies to persons who have been or are reasonably suspected of having been exposed to a communicable disease or condition. Quarantine also applies to individuals who have not received legally required immunizations when the local health director determines that immunizations are required to control the outbreak. Isolation and quarantine authority may only be exercised when and for so long as the public health is endangered, and only when all other reasonable means for correcting the problem have been exhausted and no less restrictive alternative exists. When a person or animal is quarantined, their freedom of movement is restricted. An area of land or a facility is quarantined by restricting access by persons or animal to the area of land or facility.

Access to Confidential Health Information: Currently access to confidential health information, including confidential medical records, is limited to investigations of reportable communicable diseases or conditions.

Law Governing Abatement Authority: The Secretary of DHHS or a local health director may enter upon property after a reasonable attempt to notify the owner of the property and take any action necessary to abate an imminent hazard. The law places an automatic lien on the property to allow DHHS to recover the costs associated with the abatement.

Violation of Public Health Law and Rules: A violation of the law and rules governing the public health is a misdemeanor. A person convicted of violating a quarantine or isolation order shall be sentenced to a term of imprisonment of no more than two years. This sentence must be served in an enumerated facility or a confinement facility designed for that purpose by the Secretary of Correction after consultation with the State Health Director. A person cannot be released until a determination has been made by the district court that release would not create a danger to the public health.

If a person refuses to submit to immunizations, the State Health Director would seek a court order.

SECTION-BY-SECTION ANALYSIS: Section 1 of the PCS would create a new Article 22 (Bioterrorism) in Chapter 130A of the General Statutes. The new G.S. 130A-475 would authorize the State Health Director to undertake an investigation upon a reasonable suspicion that a public health threat may exist as a result of an act of terrorism using nuclear, biological, or chemical agents. It would authorize the State Health Director to issue orders to (i) require persons and animals to submit to testing to determine possible exposure, (ii) test property to determine presence of nuclear, biological, or chemical agents, (iii) close property to investigate suspected contamination, (iv) limit the movement or action of animals or persons that may be contaminated with a chemical or nuclear agent, (v) limit access to areas housing persons or animals that may have been contaminated with a chemical or nuclear agent, and (vi) quarantine or isolate persons and animals. The PCS limits the Health Director's authority to when a public health threat may exist, all other reasonable means for correcting the problem have been exhausted and no less restrictive alternative exists. Before quarantining, isolating, or limiting the movement or access of livestock or poultry, the Director must consult with the State Veterinarian. The PCS adds a definition of "public health threat" as a situation likely to cause an immediate risk to human life, of serious physical injury or illness, or of serious adverse health effects.

An order to limit movement or access or to quarantine or isolate is limited to a period of 10 calendar days. The PCS adds a provision allowing a person substantially affected by one of these limitations to institute an action in superior court to review the order. A hearing must be held within 72 hours of the request (not counting weekends and legal holidays). In addition, if the Director determines that 10 days is inadequate to protect the public health, she may institute an action in superior court to obtain an order to extend the period of limitation. The court may continue the period of limitation up to 30 days if it determines by the preponderance of evidence that the limitation is reasonably necessary to prevent or limit the conveyance of nuclear, biological, or chemical agents to others. Before an order has expired the Director may move to continue the limitation for additional periods not to exceed 30 days each.

If the State Health Director determines that a public health threat does in fact exist, the State Health Director must notify the Secretary of Crime Control and Public Safety.

The PCS also would create a new G.S. 130A-476 that would provide the State Health Director or local health directors access to confidential health information related to any communicable disease or condition or if necessary to investigate a suspected public health threat that may be caused by an act of terrorism using biological, chemical or nuclear weapons. Specifically, this section will:

1. Encourage health care providers, persons in charge of a health care facility (added by the PCS), and units of State and local government to report events that might indicate the existence of an illness, condition, or health hazard that may have been caused by an act of terrorism using nuclear, biological or chemical agents. This provision also would shield from civil and criminal liability any person who discloses or fails to make such a report so long as the health care provider acted in good faith and without malice (which are presumed).
2. Authorize the State Health Director to issue a temporary order (no longer than 90 days) requiring certain health care providers to make reports for a specific period of time that might indicate a suspected illness, condition, or health hazard that may have been caused by an act of terrorism using nuclear, biological or chemical agents.
3. Authorize the State Health Director or local health director to obtain and review copies of confidential medical records that pertain to a report made under this section.

4. Protect the confidentiality of health information received by the State Health Director or local health director and prohibit release unless authorized by law, made to another federal, state, or local public health agency for the purpose of preventing or controlling a public health threat, or made to a court or law enforcement official for the purpose of enforcing the public health law or for investigating an act of terrorism using nuclear, biological, or chemical agents.
5. Prohibit further disclosure of information received by law enforcement officials under this section unless disclosure is necessary to conduct an investigation of an attack using nuclear, biological, or chemical agents or unless the State Health Director or local health director has expressly authorized the disclosure as necessary for the assistance of the law enforcement official to prevent or control the public health threat. (The PCS adds this prohibition.)

The PCS also adds the definition of "health care facility" in subsection (f).

Section 2(a) and Section 2(b) make conforming changes to current law to conform to the addition of a new Article 22 "Bioterrorism".

Sections 3, 4 and 5 – Quarantine Authority: These sections would repeal G.S. 130A-133 and move its definitions to G.S. 130A-2 in order to expand their applicability to the entire Chapter. The sections would also amend G.S. 130A-2(7a) and G.S. 130A-145 to expand the public health quarantine and isolation authority with respect to communicable disease control by (1) providing that an area of land or a facility that is suspected of being contaminated with an infectious agent may be quarantined and (2) by allowing an individual that is not immunized against any communicable disease to be quarantined if the State Health Director or a local health director determines that such immunizations are required to control an outbreak of that disease. In the event of such quarantine, the PCS would provide that only persons authorized by the State Health Director or who are otherwise authorized to enter may access the quarantined area or facility.

(The PCS extends the applicability of definitions under the Article governing communicable diseases, clarifies that quarantine and isolation authority means the authority to issue orders, adds due process procedures for quarantine and isolation, makes conforming changes to link with the new G.S. 130A-475.)

Section 6- Abatement Authority: The PCS would expand abatement authority by authorizing the Secretary or local health director to order the owner, lessee, operator or other person in control of the property to abate the hazard. Failure to comply with the order may result in a civil action in superior court.

Section 7- Confidentiality of Records of Reportable Diseases: This Section would amend current law regarding when disclosure of confidential health information that includes the identity of a person who has or may have a reportable disease is allowable. The bill clarifies that such disclosure by DHHS or a local health department is allowable to law enforcement officials when necessary to assist with the enforcement of the communicable disease control law or the new Article 22 created in Section 1 of the bill, or to investigate an act of terrorism using a nuclear, biological, or chemical agent. Further disclosure by law enforcement officials is limited to those purposes. (The PCS adds those limitations.)

Section 8 – Confidentiality of Information Published by the Department of Agriculture: This section would amend current law pertaining to cooperation between federal, State and local governments in agricultural work to restrict disclosure to the public of animal diagnostic tests that identify the owner of the animal without the permission of the owner *unless* the State Veterinarian determines that the disclosure is necessary to prevent the spread of an animal disease or to protect public health.

Section 9 – Control of Animal Disease: Current law requires veterinarians to report to the State Veterinarian the existence of infections diseases in livestock and poultry. This section would require the State Veterinarian to notify the State Health Director and the Director of the Division of Environment Health in DENR when a report is received that indicates an occurrence or potential outbreak of specified diseases that may be transmitted to humans and that may have been caused by a terrorist act. (The PCS enumerates the specific diseases that must be reported and directs the Board of Agriculture to establish by rule the list of reportable animal diseases and conditions and the time and manner for reporting.)

Section 10 - Measles Immunization: The bill would delete an outdated statute that requires a second measles immunization when a child is immunized before the child's first birthday.

***Section 11 – Confidentiality of Patient Information*:** Section 13 would amend current law governing the release of medical records compiled and maintained in connection with emergency medical services or the statewide trauma system to authorize the release of such information when authorized by any law.

Section 12 – State Emergency Management Act: The PCS would add a new provision to this Act to require coordination between the State Health Director and the Secretary of Crime Control and Public Safety in revising the State Emergency Operations Plan to address public health matters in emergency management activities. (The PCS moves this provision from Section 3 to Section 12 and also changes the provision of the Emergency Management Act that is being amended.)

Section 13 – Standards for Lifesaving Treatment: Currently, the North Carolina Medical Care Commission is required to adopt rules to establish education standards and criteria of persons trained to administer lifesaving treatment for adverse reactions to insect stings. The PCS adds Section 13, to amend this directive so that these rules apply to training for persons trained to administer lifesaving treatment for adverse reactions to agents that might cause anaphylaxis. Anaphylaxis is an allergic reaction that usually is associated with an inability to breathe.

Section 14 makes the bill effective October 1, 2002.

H1508-SMRH-04: Linda Attarian, Research Division Staff Attorney, substantially contributed to this summary.

VISITOR REGISTRATION SHEET

J H
Name of Committee

7/23/02
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kate Hinds	NC Statewatch
John McKnight	Governor's office
Bill Holmes	The Associated Press
Dana Damico	Winston-Salem Journal
	NCFPC
	NCRA
David Marshall	NCDA+CS
Bill Wilson	NC ATL
Charles Cromer	NCATL
Deborah Rogers	NCPNA/NCALHD
J. N. MacCormack	DHHS/DPH
John P Barkley	DOJ
Jason Kennedy	N.A.
Stacy Flannery	NC NCFA
Alice Garland	EL
Richard O'Brien	PFFPNC
Mwalu Olan	NCDA:CS
Gary McLeod	CCPS
Linda Sewell	DEH
John Henning	NC Bar Assoc.
Jenny Dinner	ACLU
KB Lamar	HHS
Katie Mills	Rep. Culpepper

AGENDA
Judiciary II

Tuesday, July 30 2002
10:00 a.m.
Room 421 LOB

Rep. Phil Baddour, Chair

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD

HB 1402 **Address Confidentiality Program/Funds**
Rep. Jeffus

SB 1154 **Amend Condominium and Planned Community**
Sen. Hartsell

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

July 30, 2002

The House Committee on Judiciary II met on Tuesday, July 30, 2002 in room 421 LOB at 10:00 a.m. The following members were present: Rep. Baddour, Chair and Reps. Bowie, Decker, Gulley, Hall, Jeffus, Justus, Miller, Pope, Sherrill, Weiss and Willingham. Bill sponsor, Sen. Hartsell was additionally present. Staff including Tracy Dixon and Jeff Hudson were in attendance. A Visitor Registration sheet is attached and made part of these minutes.

Chairman Baddour called the meeting to order. Walter Martin and Brandon Mills of Forsyth County (Rep. Oldham) and Nicole Moore of Person County (Rep. Allen) served as pages. The following bills were considered:

Upon the motion of Rep. Miller the PCS for HB 1402, A BILL TO BE ENTITLED AND ACT TO ESTABLISH AN ADDRESS CONFIDENTIALITY PROGRAM FOR VICTIMS OF DOMESTIC VIOLENCE, SEXUAL OFFENSES, AND STALKING AND TO APPROPRIATE FUNDS FOR THAT PURPOSE, was adopted for discussion.

Rep. Jeffus, bill sponsor, was recognized to explain the bill. She noted to members that this bill was before them last session and that 12 states had such a law. She also commented that there were many people who wanted to speak on the bill.

Rep. Baddour recognized Attorney General Roy Cooper for comment on the bill. AG Cooper thanked those who had worked on the bill and explained the reasoning behind the bill. He referred to the opportunities present to victims through this bill in that they would have the opportunity to use the AG's office as their address so that the victim could not be found by using public records. AG Cooper introduced Will Polk of the AG's Victims Assistance and Services Office.

Laura was then recognized to tell her story. Laura did not divulge her last name for confidentiality reasons. She stated she moved here because she was least likely to be tracked to North Carolina after her ex–husband attempted to murder her and her daughter. She noted the complication in changing her identity only to have her ex–husband hire a private detective. She noted she must mail letters to family members through third parties in other cities and noted that if bill had been made into law, she would not have experienced this anguish in not corresponding with family and friends.

AG Cooper pointed out that victims registered under this program would carry an ACP (Address Confidentiality Program) card.

Rose White Hearn, Chair of the Victims Service Provider noted up to 20 agencies that supported the bill. The full support of the N.C. Council for Women and Domestic Violence Commission was stated by Leslie Starsncik, Executive Director.

Jeff Hudson, Committee Counsel, conducted an overview of the bill and responded to Rep. Bowie's question of how marriage licenses or other contracts were handled by stating the bill directed the register of deeds to use the AG's address. Mr. Polk further explained that the victim would use their actual name and address while filling out the information but would actually use and show the card with the substitute address. Rep. Bowie followed up by questioning what about real estate deals and those deals outside the AG's office. Mr. Poke stated there was an exemption for real estate instruments (real property) that meant no substitute address would be used. For vehicles registered with the DMV, the property tax would be forwarded to the county then to the AG's office who would then forward it to the proper tax assessor. Mr. Hudson added that the bill addressed deals made with state and local governments and the substitute address could be used by a private party, if accepted. Rep. Bowie noted that there was still a lot of information out there on the victim.

Reps. Baddour and Bowie discussed the private, third party acceptance of the substitute address. Mr. Polk commented that this bill starts an overall safety plan and will slow the process of using public records. Rep. Pope followed up by stating the victim could be found through a real estate deal but that he did not have the solution. He also mentioned the marriage license would have the lady's substitute address but the gentleman's regular address and additionally asked about the mechanics of the election board. Mr. Hudson directed Rep. Pope to the last page of the bill that added the ACP to the statute and Mr. Polk and Rep. Baddour noted the willingness of the election board to work with the AG's office.

Rep. Miller stated concern over use of the victim's address on the internet. Mr. Polk responded that only the county in which the person resides would appear.

Mr. Polk stated that the AG's office did not want to get involved with forwarding election materials and this procedure would be incumbent on the program coordinators in response to Rep. Justus' question about the handling of absentee ballots.

Rep. Weiss commended the bill sponsor and called for a favorable report for the PCS.

Mr. Hudson responded to several of Rep. Decker's questions and as a follow–up to Rep. Decker's question, Mr. Polk explained why a sex offender could not participate in the program.

Rep. Bowie questioned whether establishing a witness protection program would be easier. Rep. Jeffus commented she thought it would not be easier and that this bill was not perfect, but a step forward. Mr. Polk stated they only anticipated a small number of

people to apply to this program per year. Laura told the committee of the costliness of acquiring a new identity.

Rep. Baddour noted he did not want to move the bill out of committee before members were ready and stated the bill still needed to go to the Appropriations Committee.

Mr. Polk and Rep. Pope discussed the reasoning on page 3, line 37. Rep. Baddour asked staff to prepare an amendment. After additional discussion among Mr. Hudson, Mr. Polk and Reps. Baddour and Pope, Rep. Baddour suggested the committee think this issue through and take a vote during the next committee meeting.

Rep. Miller questioned why the program was being moved from its original location in the Secretary of State's Office to the AG's office. Rep. Jeffus explained that the AG's office had existing funds to administer the program.

Rep. Decker suggested more was needed in the evidence section to ensure that an actual case of domestic violence was occurring. Rep. Baddour recommended Rep. Decker speak with staff to get an amendment drawn.

Rep. Justus questioned whether the bill still needed to go to Appropriations if the AG has existing funds. Rep. Baddour noted section 6 and stated he would feel better if the bill went through the appropriations process.

Copies of the PCS and bill summary are made part of these minutes.

Rep. Baddour told Sen. Hartsell, his bill SB 1154, A BILL TO BE ENTITLED AN ACT TO EXPAND THE LIST OF SECTIONS OF THE NORTH CAROLINA CONDOMINIUM ACT THAT APPLY TO CONDOMINIUMS CREATED ON OR BEFORE OCTOBER 1, 1986, AND TO CODIFY AN APPLICABILITY PROVISION RELATING TO THE NORTH CAROLINA PLANNED COMMUNITY ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, would be first on the agenda for the next meeting.

The meeting adjourned at 10:55 a.m.

Phil Baddour

Representative Philip A. Baddour, Jr.
Chairman

Tracy Dixon
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1402
PROPOSED COMMITTEE SUBSTITUTE H1402-CSSB-63 [v.22]

7/29/2002 5:36:43 PM

Short Title: Address Confidentiality Program. (Public)

Sponsors:

Referred to:

April 26, 2001

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH AN ADDRESS CONFIDENTIALITY PROGRAM FOR VICTIMS OF DOMESTIC VIOLENCE, SEXUAL OFFENSE, AND STALKING.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 15C.

"Address Confidentiality Program.

"**§ 15C-1. Purpose.**

The purpose of this Chapter is to enable State and local agencies to respond to requests for public records without disclosing the location of a victim of domestic violence, sexual offense, or stalking; to enable interagency cooperation in providing address confidentiality for victims of domestic violence, sexual offense, or stalking; and to enable State and local agencies to accept a program participant's use of an address designated by the Attorney General's Office as a substitute address.

"**§ 15C-2. Definitions.**

The following definitions apply in this Chapter:

(1) Actual address or address. – A residential, work, or school street address as specified on the individual's application to be a program participant under this Chapter.

(2) Address Confidentiality Program or Program – A program in the Office of the Attorney General to protect the confidentiality of the address of a relocated victim of domestic violence, sexual offense, or stalking to prevent the victim's assailants or potential assailants from finding the victim.

(3) Agency of North Carolina. – Includes every elected or appointed State or local public office, public officer, or official; institution, board, commission, bureau, council, department, authority, or other unit of

government of the State or of any local government; or unit, special district, or other political subdivision of government.

(4) Application assistant. – An employee of a State or local agency or nonprofit organization who provides counseling, referral, shelter, or other specialized services to victims of domestic violence, sexual offense, or stalking and who has been designated by the Attorney General to assist individuals with applications to participate in the Address Confidentiality Program.

(5) Attorney General. – Office of the Attorney General.

(6) Person. – Any individual, corporation, limited liability company, partnership, trust, estate, or other association or any state, the United States, or any subdivision thereof.

(7) Program participant. – An individual accepted into the Address Confidentiality Program in accordance with this Chapter.

(8) Public record. – A public record as defined in Chapter 132 of the General Statutes.

(9) Substitute address. – An address designated by the Attorney General under the Address Confidentiality Program.

(10) Victim of domestic violence. – An individual against whom domestic violence, as defined in G.S. 50B-1, has been committed.

(11) Victim of a sexual offense. – An individual against whom a sexual offense under Article 7A of Chapter 14 of the General Statutes has been committed.

(12) Victim of stalking. – An individual against whom stalking, as defined in G.S. 14-277.3, has been committed.

"**§ 15C-3. Address Confidentiality Program.**

The General Assembly establishes the Address Confidentiality Program in the Office of the Attorney General to protect the confidentiality of the address of a relocated victim of domestic violence, sexual offense, or stalking to prevent the victim's assailants or potential assailants from finding the victim. Under this Program, the Attorney General shall designate a substitute address for a program participant and act as the agent of the program participant for purposes of receiving and forwarding first-class mail. The Attorney General shall not be required to forward any mail other than first-class mail to the program participant. The Attorney General shall not be required to track or otherwise maintain records of any mail received on behalf of a program participant unless the mail is certified or registered mail.

"**§ 15C-4. Filing and certification of applications; authorization card.**

(a) Applications shall be filed with the Attorney General. Any of the following individuals may apply to the Attorney General to have an address designated by the Attorney General to serve as the substitute address of the individual:

(1) An adult person.

(2) A parent or guardian acting on behalf of a minor when the minor resides with the victim.

(3) A guardian acting on behalf of an incapacitated person.

(b) The application shall be dated, signed, and verified by the applicant and shall be signed by the application assistant who assisted in the preparation of the application.

(c) The Attorney General may approve an application forwarded by an application assistant if the application is filed in the manner and on the form prescribed by the Attorney General and the application contains all of the following:

(1) A statement by the applicant that the applicant, or the person on behalf of whom the applicant is applying, is a victim of domestic violence, sexual offense, or stalking and that the victim fears for his or her safety or the safety of his or her child.

(2) Evidence that the applicant, or the person on behalf of whom the applicant is applying, is a victim of domestic violence, sexual offense, or stalking. This evidence may include any of the following:

a. Police, court, or other government agency records or files.

b. Documentation from a domestic violence program if the applicant, or the person on behalf of whom the applicant is applying, is alleged to be a victim of domestic violence.

c. Documentation from a religious, medical, or other professional from whom the applicant, or the person on behalf of whom the applicant is applying, has sought assistance in dealing with the alleged domestic violence, sexual offense, or stalking.

(3) A statement by the applicant that disclosure of the victim's address would endanger the victim's safety or the safety of the victim's child.

(4) A statement by the applicant that the victim has or will confidentially relocate in North Carolina.

(5) A designation of the Attorney General as an agent for purposes of service of process and the receipt of first-class mail.

(6) The mailing address and telephone number where the victim can be contacted by the Attorney General.

(7) The address that the applicant requests not to be disclosed by the Attorney General that directly relates to the increased risk of domestic violence, sexual offense, or stalking.

(8) A statement by the applicant that to the best of the applicant's knowledge, the information contained in the application is true.

(9) A recommendation of an application assistant that the victim have an address designated by the Attorney General to serve as the substitute address of the victim.

(d) Upon the filing a properly completed application, the Attorney General shall certify the applicant as a program participant. Upon certification, the Attorney General shall issue an Address Confidentiality Program authorization card to the program participant. The Address Confidentiality Program authorization card shall remain valid for so long as the program participant remains certified under the Program.

(e) Applicants shall be certified for four years following the date of filing unless the certification is withdrawn or canceled prior to the end of the four-year period. A program participant may withdraw the certification by filing a request for withdrawal

acknowledged before a notary with the Attorney General. A certification may be renewed by filing an application containing the information required by G.S. 15C-3 with the Attorney General at least 30 days prior to expiration of the current certification.

"**§ 15C-5. Change of name, address, or telephone number.**

(a) A participant shall notify the Attorney General within 30 days after the participant has obtained a legal name change by providing the Attorney General a certified copy of any judgment or order evidencing the change or any other documentation the Attorney General deems to be sufficient evidence of the name change. If the participant fails to notify the Attorney General of a name change in the manner provided in this subsection, the participant shall lose certification in the program.

(b) A participant shall notify the Attorney General of a change in address or telephone number from the address or telephone number listed for the participant on the application at least seven days before the change occurs. If the participant fails to notify the Attorney General of a change in address or telephone number in the manner provided in this subsection, the participant shall lose certification in the program.

"**§ 15C-6. Falsifying application information.**

A person who falsely attests in an application that disclosure of the applicant's address would endanger the applicant's safety or the safety of the applicant's child or who knowingly provides false information when applying for certification or renewal shall lose his or her certification. The Attorney General shall investigate violations of this section and upon finding that a violation has occurred, assess a civil penalty not to exceed five hundred dollars ($500.00).

"**§ 15C-7. Certification cancellation; Records.**

(a) The Attorney General shall cancel the certification of a program participant under any of the following circumstances:

(1) The program participant files a request for withdrawal of the certification pursuant to G.S. 15C-4.

(2) The program participant fails to notify the Attorney General of a change in the participant's name, address, or telephone number listed on the application pursuant to G.S. 15C-5.

(3) The program participant submitted false information in applying for certification to the program in violation of G.S. 15C-6.

(4) Mail forwarded to the program participant is returned as undeliverable.

(b) The provisions of Article 3 of Chapter 150B of the General Statutes shall not apply to any cancellation of certification by the Attorney General pursuant to subsection (a) of this section.

(c) The Attorney General shall send notice of cancellation to the program participant. Notice of cancellation shall set out the reasons for cancellation. The program participant shall have 30 days to appeal the cancellation decision under procedures developed by the Attorney General.

(d) Any records or documents pertaining to a program participant shall be maintained in accordance with The General Schedule for State Agencies as established by the Department of Cultural Resources.

(e) A person who ceases to be a program participant is responsible for notifying persons who use the substitute address designated by the Attorney General as the program participant's address that the designated substitute address is no longer the person's address.

"**§ 15C-8. Address use by State or local agencies.**

(a) The program participant, and not the Attorney General, is responsible for requesting that agencies of North Carolina use the address designated by the Attorney General as the substitute address of the program participant.

(b) When a program participant submits a current and valid Address Confidentiality Program authorization card to an agency of North Carolina, the agency shall accept the address designation by the Attorney General as the program participant's substitute address when creating a new public record unless the Attorney General has determined that the agency has a statutory or administrative requirement that the agency is unable to fulfill without possession of the program participant's actual residential address and the address will be used only for those statutory or administrative purposes.

(c) An agency may submit a request for a waiver from the requirements of the Address Confidentiality Program to the Attorney General. The agency's waiver request must be in writing and include an explanation of why the agency cannot meet its statutory or administrative obligations by a change in its internal procedures.

(d) The Attorney General's acceptance or denial of an agency's waiver request must be made in writing and include a statement of specific reasons for acceptance or denial. Acceptance or denial of an agency's waiver request is not subject to further review.

(e) Any board of election may use the actual address of a program participant for any election-related purpose as long as the address is kept confidential from the public under the provisions of G.S. 163-82.10(d). Use of the address on letters placed in the U.S. Mail by a board of election shall not be considered a breach of confidentiality. The substitute address designation provided by the Attorney General shall not be used as an address for voter registration or verification purposes.

(f) For purposes of levying and collecting property taxes on motor vehicles pursuant to Article 22A of Chapter 105 of the General Statutes, the Attorney General shall issue to the county, city, or town assessor or tax collector a list containing the names and actual addresses of program participants residing in that county, city, or town. This list shall only be used for the purposes of listing, appraisal, and assessment of property and the collection of property taxes in the county, city, or town. The county, city, or town assessor or tax collector or any current or former officer, employee, or agent of any county, city, or town, who in the course of service to or employment by the county, city, or town has access to the name and actual address of a program participant, may not disclose this information to any other person. A person who violates this subsection is guilty of a Class 1 misdemeanor. If the person committing the violation is an officer or employee, that person shall be dismissed from public office or public employment and may not hold any public office or public employment in this State for five years after the violation.

(g) The substitute address designated by the Attorney General shall not be used as an address by any register of deeds for purposes of indexing land registered under Article 4 of Chapter 43 of the General Statutes in the index of registered instruments pursuant to G.S. 161-22.

(h) A program participant's address and telephone number maintained by an agency of North Carolina is not a public record within the meaning of Chapter 132 of the General Statutes.

"**§ 15C-9. Disclosure of address prohibited.**

(a) The Attorney General is prohibited from disclosing any address or telephone number of a program participant other than the substitute address designated by the Attorney General, except under the following circumstances:

(1) The information is requested by a law enforcement agency for official use only.

(2) The information is required by direction of a court order. However, any person to whom a program participant's address or telephone number has been disclosed shall not disclose the address or telephone number to any other person unless permitted to do so by order of the court.

(3) Upon request by an agency to verify the participation of a specific program participant when the verification is for official use only.

(4) Upon request by an agency, in the manner provided for by G.S. 15C-8.

(5) The program participant is required to disclose his or her actual address as part of a registration required by Article 27A of Chapter 14 of the General Statutes.

(6) If certification has been cancelled.

(b) The Attorney General shall provide immediate notification of disclosure to a program participant when disclosure is made pursuant to subdivision (2) or (4) of subsection (a) of this section.

(c) No person shall knowingly and intentionally obtain a program participant's actual address from the Attorney General knowing that he or she is not authorized to obtain the address information.

(d) No employee of an agency shall knowingly and intentionally disclose a program participant's actual address to a person known to the employee to be prohibited from receiving the participant's actual address, unless such disclosure is permissible by law. This subdivision only applies when an employee obtains a participant's actual address during the course of the employee's official duties and, at the time of disclosure, the employee has specific knowledge that the address disclosed belongs to a person participating in the program.

(e) Any person who knowingly and intentionally discloses information in violation of this section shall be guilty of a Class 1 misdemeanor and assessed a fine not to exceed five hundred dollars ($500.00).

(f) A program participant's address or telephone number maintained by the Attorney General or disclosed by the Attorney General pursuant to this Chapter is not a public record within the meaning of Chapter 132.

"**§ 15C-10. Assistance for program applicants.**

The Attorney General shall designate State and local agencies and nonprofit organizations that provide counseling and shelter services to victims of domestic violence, sexual offense, or stalking to assist persons applying to be program participants. Any assistance and counseling rendered by the Attorney General's Office or its designee to applicants shall in no way be construed as legal advice.

"**§ 15C-11. Limited liability.**

The State of North Carolina, the Attorney General's Office, agencies of North Carolina, and their officers, officials, and employees, both past and present, in their official and individual capacity, shall be absolutely immune and held harmless from any liability in any action brought by or on behalf of any person injured or harmed pursuant to the actions or inactions of the above stated entities and individuals pursuant to this Chapter.

"**§ 15C-12. Rule-making authority.**

The Attorney General is authorized to adopt any rules deemed necessary to carry out the provisions of this Chapter.

"**§ 15C-13. Additional time for action.**

Whenever the laws of this State provide a program participant a legal right to act within a prescribed period of 10 days or less after the service of a notice or other paper upon the participant, and the notice or paper is served upon the participant by mail pursuant to this Chapter, five days shall be added to the prescribed period."

SECTION 2. G.S. 1A-1, Rule 6 is amended by adding a new subsection to read:

"(f) *Additional time for Address Confidentiality Program participants.* – Whenever a person participating in the Address Confidentiality Program established by Chapter 15C of the General Statutes has a legal right to act within a prescribed period of 10 days or less after the service of a notice or other paper upon the participant, and the notice or paper is served upon the participant by mail, five days shall be added to the prescribed period."

SECTION 3. The following section is added to Article 2 of Chapter 51 of the General Statutes:

"**§ 51-16.1. Form of license for Address Confidentiality Program participant.**

If a person submits to the local register of deeds a current and valid Address Confidentiality Program authorization card issued pursuant to the provisions of Chapter 15C of the General Statutes, the local register of deeds shall use the substitute address designated by the Address Confidentiality Program when creating a new marriage license."

SECTION 4. G.S. 132.1 reads as rewritten:

"**§ 132-1.1. Confidential communications by legal counsel to public board or agency; State tax information; public enterprise billing ~~information.~~information; Address Confidentiality Program information.**

(a) Confidential Communications. – Public records, as defined in G.S. 132-1, shall not include written communications (and copies thereof) to any public board, council, commission or other governmental body of the State or of any county,

municipality or other political subdivision or unit of government, made within the scope of the attorney-client relationship by any attorney-at-law serving any such governmental body, concerning any claim against or on behalf of the governmental body or the governmental entity for which such body acts, or concerning the prosecution, defense, settlement or litigation of any judicial action, or any administrative or other type of proceeding to which the governmental body is a party or by which it is or may be directly affected. Such written communication and copies thereof shall not be open to public inspection, examination or copying unless specifically made public by the governmental body receiving such written communications; provided, however, that such written communications and copies thereof shall become public records as defined in G.S. 132-1 three years from the date such communication was received by such public board, council, commission or other governmental body.

(b) State and Local Tax Information. – Tax information may not be disclosed except as provided in G.S. 105-259. As used in this subsection, "tax information" has the same meaning as in G.S. 105-259. Local tax records that contain information about a taxpayer's income or receipts may not be disclosed except as provided in G.S. 153A-148.1 and G.S. 160A-208.1.

(c) Public Enterprise Billing Information. – Billing information compiled and maintained by a city or county or other public entity providing utility services in connection with the ownership or operation of a public enterprise is not a public record as defined in G.S. 132-1. Nothing contained herein is intended to limit public disclosure by a city or county of billing information:

(i) that the city or county determines will be useful or necessary to assist bond counsel, bond underwriters, underwriters' counsel, rating agencies or investors or potential investors in making informed decisions regarding bonds or other obligations incurred or to be incurred with respect to the public enterprise;

(ii) that is necessary to assist the city, county, State, or public enterprise to maintain the integrity and quality of services it provides; or

(iii) that is necessary to assist law enforcement, public safety, fire protection, rescue, emergency management, or judicial officers in the performance of their duties.

As used herein, "billing information" means any record or information, in whatever form, compiled or maintained with respect to individual customers by any owner or operator of a public enterprise, as defined in G.S. 160A-311 and G.S. 153A-274, or other public entity providing utility services, relating to services it provides or will provide to the customer.

(d) Address Confidentiality Program Information. – The actual address and telephone number of a program participant in the Address Confidentiality Program established under Chapter 15C of the General Statutes is not a public record within the meaning of Chapter 132. The actual address and telephone number of a program participant may not be disclosed except as provided in Chapter 15C of the General Statutes."

SECTION 5. G.S. 163-82.10(d) reads as rewritten:

"(d) Exception for Address of Certain Registered Voters. -- Notwithstanding subsections (b) and (c) of this section, if a registered voter submits to the county board of elections a copy of a protective order without attachments, if any, issued to that person under G.S. 50B-3 or a lawful order of any court of competent jurisdiction restricting the access or contact of one or more persons with a registered voter or a current and valid Address Confidentiality Program authorization card issued pursuant to the provisions of Chapter 15C of the General Statutes, accompanied by a signed statement that the voter has good reason to believe that the physical safety of the voter or a member of the voter's family residing with the voter would be jeopardized if the voter's address were open to public inspection, that voter's address is a public record but shall be kept confidential as long as the protective order remains in ~~effect.~~effect or the voter remains a certified program participant in the Address Confidentiality Program. That voter's name, precinct, and the other data contained in that voter's registration record shall remain a public record. That voter's signed statement submitted under this subsection is a public record but shall be kept confidential as long as the protective order remains in ~~effect.~~ effect or the voter remains a certified program participant in the Address Confidentiality Program. It is the responsibility of the voter to provide the county board with a copy of the valid protective order in ~~effect.~~ effect or a current and valid Address Confidentiality Program authorization card issued pursuant to the provisions of Chapter 15C of the General Statutes. The voter's actual address may be used for any election-related purpose by any board of elections. That voter's address shall be available for inspection by a law enforcement agency or by a person identified in a court order, if inspection of the address by that person is directed by that court order. It shall not be a violation of this section if the address of a voter who is participating in the Address Confidentiality Program is discovered by a member of the public in public records disclosed by a county board of elections prior to December 1, 2001."

SECTION 6. This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. The Attorney General and all other agencies to which this act applies shall implement the provisions of this act with funds that are otherwise appropriated or available.

SECTION 7. This act becomes effective January 1, 2003.

HOUSE BILL 1402

Short Title:	Address Confidentiality Program/Funds.	(Public)
Sponsors:	Representatives Jeffus; Barefoot, Boyd-McIntyre, Buchanan, Cox, Dedmon, Easterling, Edwards, Smith, Tucker, Weiss, and Wright.	
Referred to:	Judiciary II, if favorable, Appropriations.	

April 26, 2001

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH AN ADDRESS CONFIDENTIALITY PROGRAM FOR VICTIMS OF DOMESTIC VIOLENCE, SEXUAL OFFENSES, AND STALKING AND TO APPROPRIATE FUNDS FOR THAT PURPOSE.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 15C.

"Address Confidentiality Program.

"**§ 15C-1. Purpose.**

The General Assembly establishes a program in the Secretary of State's Office to protect the confidentiality of victims of actual or threatened violence. The purpose of the program is to allow children and adult persons attempting to escape from actual or threatened domestic violence, sexual offenses, or violence threatened by stalkers to participate in the electoral process and other rights as citizens, including obtaining drivers licenses, birth records, public utilities, school and employment records, without placing them in fear of their assailants or potential assailants locating them. The program will: (i) allow State and local agencies to respond to requests for public records without disclosing the location of the victims; (ii) enable interagency cooperation in providing address confidentiality for the victims; (iii) enable State and local agencies to accept a program participant's use of an address designated by the Secretary of State's Office as a substitute address; and (iv) allow newly relocated victims to keep their addresses confidential from abusive individuals.

"**§ 15C-2. Definitions.**

The following definitions apply in this Chapter:

(1) Address. – A residential, work, or school street address as specified on the individual's application to be a program participant under this Chapter.

(2) Application assistant. – An employee of a State or local agency or nonprofit program that provides counseling, referral, shelter, or other specialized services to victims of domestic violence, sexual offenses, or stalking and who has been designated by the Secretary of State to assist individuals with the program participation applications.

(3) Person. – Any individual, corporation, limited liability company, partnership, trust, estate, or other association or any state, the United States, or any subdivision thereof.

(4) Program participant. – An individual accepted into the program in accordance with G.S. 15C-3 of this Chapter.

(5) Secretary. – Office of the Secretary of State.

(6) Victim of domestic violence. – An individual against whom domestic violence has been committed as defined in G.S. 50B-1.

(7) Victim of a sexual offense. – An individual against whom a sexual offense has been committed pursuant to Article 7A of Chapter 14 of the General Statutes.

(8) Victim of stalking. – An individual against whom stalking has been committed as defined in G.S. 14-277.3.

"**§ 15C-3. Address confidentiality program.**

(a) Any of the following individuals may apply to the Secretary to have an address designated by the Secretary to serve as the person's address:

(1) An adult who resides in this State and is a victim of domestic violence, a victim of a sexual offense, or a victim of stalking.

(2) A parent or guardian acting on behalf of a minor when the minor resides with the victim.

(3) A guardian acting on behalf of an incapacitated person who is a victim of domestic violence, a victim of a sexual offense, or a victim of stalking.

(b) The Secretary shall approve an application forwarded by an application assistant if the application is filed in the manner and on the form prescribed by the Secretary, and it contains:

(1) A statement by the applicant that the applicant is a victim of domestic violence, a victim of a sexual offense, or a victim of stalking and that the applicant fears for his or her safety or the safety of his or her child.

(2) A designation of the Secretary as an agent for purposes of service of process and the receipt of first-class mail.

(3) The mailing address where the applicant can be contacted by the Secretary and the telephone number where the applicant can be reached by the Secretary.

(4) The mailing address that the applicant requests not to be disclosed by the Secretary that directly relates to the increased risk of domestic violence, sexual offense, or stalking.

(5) A statement that disclosure of the applicant's address would endanger the applicant's safety or the safety of the applicant's child, and that to the best of the applicant's knowledge, the information contained in the application is true.

(6) A recommendation of an application assistant that the applicant have an address designated by the Secretary to serve as the applicant's address.

(c) The application shall be dated, signed, and verified by the applicant and shall be signed by the application assistant who assisted in preparing the application.

"**§ 15C-4. Filing and certification of applications.**

Applications shall be filed with the Secretary. Upon filing a properly completed application, the Secretary shall certify the applicant as a program participant. Applicants shall be certified for four years following the date of filing unless the certification is withdrawn or canceled prior to the end of the four-year period. A program participant may withdraw the certification by filing a request for withdrawal acknowledged before a notary with the Secretary. A certification may be renewed by filing an application containing the information required by G.S. 15C-3 with the Secretary at least 30 days prior to expiration of the current certification. The Secretary shall not be required to forward any mail other than first-class mail to the program participant. The Secretary shall not be required to track or otherwise maintain records of any mail received on behalf of a program participant unless the mail is certified or registered mail.

"**§ 15C-5. Change of name or address.**

(a) A participant shall notify the Secretary within 30 days after the participant has obtained a legal name change by providing the Secretary a certified copy of any judgment or order evidencing the change or any other documentation the Secretary deems to be sufficient evidence of the name change. If the participant fails to notify the Secretary of a name change in the manner provided in this subsection, the participant shall lose certification in the program.

(b) A participant shall notify the Secretary of a change in address or telephone number from the address or telephone number listed for the participant on the application at least seven days before the change occurs. If the participant fails to notify the Secretary of a change in address or telephone number in the manner provided in this subsection, the participant shall lose certification in the program.

"**§ 15C-6. Falsifying application information.**

A person who falsely attests in an application that disclosure of the applicant's address would endanger the applicant's safety or the safety of the applicant's child or who knowingly provides false information when applying for certification shall lose his or her certification. The Attorney General shall investigate violations of this section and upon finding that a violation has occurred, assess a civil penalty not to exceed five hundred dollars ($500.00).

"**§ 15C-7. Certification cancellation.**

(a) The Secretary shall cancel the certification of a program participant under any of the following circumstances:

(1) The program participant files a request for withdrawal of the certification that has been acknowledged before a notary.

(2) The program participant fails to notify the Secretary of a change in the participant's name, address, or telephone number listed on the application pursuant to G.S. 15C-6.

(3) Mail forwarded to the program participant is returned as undeliverable.

(4) The program participant submitted false information in applying for certification to the program.

(b) The provisions of Chapter 150B of the General Statutes shall not apply to any cancellation by the Secretary pursuant to subsection (a) of this section.

"**§ 15C-8. Address use by State or local agencies.**

After a program participant demonstrates proof of his or her certification in the program, State or local agencies shall accept the address designation by the Secretary as a program participant's substitute address when creating a new public record for the participant.

"**§ 15C-9. Disclosure of address prohibited.**

(a) The Secretary is prohibited from disclosing any address or telephone number of a program participant other than the address designated by the Secretary, except under the following circumstances:

(1) The information is requested by a law enforcement agency for official use only.

(2) The information is required by direction of a court order. However, any person to whom a program participant's address or telephone number has been disclosed shall not disclose the address or telephone number to any other person unless permitted to do so by order of the court.

(b) Any person who discloses information in violation of this section shall be guilty of a Class 1 misdemeanor and assessed a fine not to exceed five hundred dollars ($500.00).

(c) A program participant's address or telephone number maintained by the Secretary or disclosed by the Secretary pursuant to this Chapter is not a public record within the meaning of G.S. 132-1(a).

"**§ 15C-10. Limited liability.**

The Secretary and any agent or person employed by the Secretary shall be held harmless from any liability in any action brought by or on behalf of any person injured or harmed pursuant to this Chapter.

"**§ 15C-11. Rule-making authority.**

The Secretary is authorized to adopt any rules deemed necessary to carry out the provisions of this Chapter.

"**§ 15C-12. Additional time for action.**

Whenever the laws of this State provide a program participant a legal right to act within a prescribed period of 10 days or less after the service of a notice or other paper

upon the participant, and the notice or paper is served upon the participant by mail pursuant to this Chapter, five days shall be added to the prescribed period."

SECTION 2. G.S. 1A-1, Rule 6 is amended by adding a new subsection to read:

"(f) Additional Time for Address Confidentiality Program Participants. – Whenever a person participating in the address confidentiality program pursuant to Chapter 15C of the General Statutes has a legal right to act within a prescribed period of 10 days or less after the service of a notice or other paper upon the participant, and the notice or paper is served upon the participant by mail, five days shall be added to the prescribed period."

SECTION 3. There is appropriated from the General Fund to the Department of the Secretary of State the sum of one hundred fifteen thousand dollars ($115,000) for the 2001-2002 fiscal year and the sum of eighty-six thousand five hundred fifty dollars ($86,550) for the 2002-2003 fiscal year for the costs of implementing Section 1 of this act.

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

HOUSE BILL 1402:
Address Confidentiality Program

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Jeffus
Date:	July 30, 2002	**Summary by:**	Jeff Hudson, Committee Counsel
Version:	Proposed Committee Substitute H1402-CSSB-63 [v.22]		

SUMMARY: ***The Proposed Committee Substitute for House Bill 1402 (PCS) would establish the Address Confidentiality Program in the Office of the Attorney General to protect the confidentiality of the addresses of relocated victims of domestic violence, sexual offense, or stalking. Under this Program, the Attorney General would designate a substitute address for a program participant and act as the agent of the program participant for purposes of receiving and forwarding first-class mail. State and local agencies would use the address designated by the Attorney General as the program participant's substitute address when creating new public records.***

BILL ANALYSIS:

Application

An adult, a parent or guardian acting on behalf of a minor who resides with the victim, or a guardian acting on behalf of an incapacitated person may apply to the Program. The application must include, among other information, evidence and a statement by the applicant that the applicant or the person on behalf of whom the applicant is applying is a victim of domestic violence, sexual offense, or stalking and a statement that disclosure of the victim's address would endanger the victim's safety or the safety of the victim's child. The application must also contain a recommendation from an application assistant that the victim should be certified to participate in the program. A person who knowingly provides false information in an application shall lose certification in the Program and be subject to a civil penalty not to exceed five hundred dollars ($500).

Substitute Address

If a person is certified by the Attorney General to participate in the Program, the Attorney General will designate a substitute address for the program participant and act as the agent of the program participant for purposes of receiving and forwarding first-class mail. The Attorney General will also issue the program participant an Address Confidentiality Program authorization card. The program participant may submit this card to a State or local government agency and the agency will accept the address designated by the Attorney General as the program participant's substitute address. This substitute address shall be used by agencies when creating a new public record except under the following circumstances:

- The agency receives a waiver from the Attorney General.
- A board of election may use the actual address of a program participant for any election related purposes as long as the address is kept confidential from the public.
- For the purpose of levying and collecting property taxes on motor vehicles, the Attorney General shall issue to county, city, or town assessors or tax collectors lists containing the names and actual address of program participants residing in the county, city, or town, to be used only for the purposes of listing, appraisal, and assessment of property and collection of property taxes. A person violating this exception is guilty of a Class 1 misdemeanor and shall be dismissed from public office for five years.
- Registers of deeds will use the actual address of a program participant for the purpose of indexing transactions involving land in the index of registered instruments.

Cancellation of Certification

The Attorney General shall cancel the certification of a program participant under any of the following circumstances:

- The program participant requests the cancellation.
- The program participant fails to properly notify the Attorney General of a change in the program participant's name, address, or telephone number.
- The program participant submitted false information in applying for certification.
- Mail forwarded to the program participant is returned as undeliverable.

Disclosure of Address Prohibited

The Attorney General may only disclose the address or telephone number of a program participant under the following circumstances:

- The information is requested by a law enforcement agency.
- The information is required by direction of a court order.
- Upon request of an agency to verify the participation of a specific program participant.
- Upon request of an agency that has received a waiver from the Attorney General.
- The program participant is required to disclose his or her address as part of registration in a sex offender registration.
- Certification has been cancelled.

The Attorney General will notify a program participant of an address disclosure in response to a court order or an agency waiver. No person shall intentionally obtain a program participant's actual address from the Attorney General knowing that he or she is not authorized to do so. No employee of an agency shall intentionally disclose a program participant's actual address to a person known to the employee to b prohibited from receiving the information. Any person who knowingly and intentionally discloses information in violation of these provisions is guilty of a Class 1 misdemeanor and will be assessed a fine not to exceed five hundred dollars ($500).

Public Records

A program participant's address and telephone number maintained by an agency of North Carolina is not a public record.

Limited Liability

The State, its agencies, the Attorney General, and their officers and employees are immune and held harmless from any liability in any action brought by or on behalf of any person injured or harmed by actions or inactions pursuant to the Address Confidentiality Program.

Additional Time for Action

Whenever State law provides a program participant a legal right to act within a prescribed period of 10 days or less after the service of a notice or other paper upon the participant and the notice is served on the participant by mail pursuant to this Chapter, five days will be added to the prescribed period.

Funding

The Attorney General and all other agencies to which this act applies shall implement the provisions of this act with funds that are otherwise appropriated and available.

Effective Date

This act becomes effective January 1, 2003.

VISITOR REGISTRATION SHEET

J.-II
Name of Committee

7/30/02
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Katie Mills	Rep. Culpepper
Will McKinney	NC DCG
Paul Coleman	Infact Inc.
Joseph Kelly	Moore & Van Allen
Jo B. McCants	AOC
Helen Lipma	Mecklenburg County
Sharon Matthews	DOT-DMV
Wayne Hurder	DOT-DMV-Driver License
Michelle Frazier	NC Bar Ass'n
John Bussian	NC Press Assn
Robert Wilson	Sec of State
Elizabeth Irvin	Senator Garon's Office
Julia White	DOJ
Kurt Hunt	DOJ
Kate Hays	State Watch
John Phelps	NCLM
Leanne Winner	NCSBA
Pete Rodda	Forsyth Co Tax Assessor/Collector
John C. Daily	NCDOR
Ed Rega	N.C. Assoc. of Co. Commissioners
Mark Seaton	Capitol Bldg
Kimberly Guater	NC Attorney General's Office
Rose White Hearn	Victim Services Interagency Council of NC
Marcus W. Davis	N.C. Attorney General's Office
Ebony Pittman	DOJ
Lucy D. Lee	DOJ
Luis Irene	Atty. Gen. Office
Noel Taylor	AG's office

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Donna Pygott	NCVAN
Monika Johnson Hostler	NCCASA
Elizabeth Froehling	NC Coalition Against ~~Domestic~~ Violence
Lenne Wisine	NCCADV
Willia M. Polk	NCA-H, Gen.
David Anders	PFFPNC
BOBBY RIDDLE	PFFPNC
LARRY DIX	OJJDP
John Herring	NC Bar Assoc.

AGENDA
Judiciary II

Wednesday, August 14, 2002
10:00 a.m.
Room 421 LOB

Rep. Phil Baddour, Chair

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD

SB 1154 **Amend Condominium and Planned Community**
Sen. Hartsell

HB 1402 **Address Confidentiality Program/Funds**
Rep. Jeffus

SB 887 **Expand Magistrates' Authority**
Sen. Clodfelter

SB 1394 **Charlotte Governmental Immunity**
Sen. Clodfelter

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

August 14, 2002

The House Committee on Judiciary II met on Wednesday, August 14 2002 in room 421 LOB at 10:00 a.m. The following members were present: Rep. Baddour, Chair and Reps. Bowie, Decker, Gulley, Haire, Hall, Jeffus, Justus, Miller, Pope, Sherrill, Weiss and Willingham. Bill sponsors Sens. Clodfelter and Hartsell were additionally present. Staff including Tracy Dixon, Jeff Hudson and Robin Johnson were in attendance. A Visitor Registration sheet is attached and made part of these minutes.

Chairman Baddour called the meeting to order. Adam Nicholson or Chatham County (Rep. Morris), Danielle Scharle of Wake County (Speaker Black), Jenna Smith of Wake County (Rep. Blue) and Jeromy Taylor of Franklin (Speaker Black) served as pages. The following bills were considered:

SB 1154, A BILL TO BE ENTITLED AN ACT TO EXPAND THE LIST OF SECTIONS OF THE NORTH CAROLINA CONDOMINIUM ACT THAT APPLY TO CONDOMINIUMS CREATED ON OR BEFORE OCTOBER 1, 1986, AND TO CODIFY AN APPLICABILITY PROVISION RELATING TO THE NORTH CAROLINA PLANNED COMMUNITY ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION was explained by bill sponsor, Sen. Hartsell. Upon the motion of Rep. Sherrill the bill was given a favorable report. Copies of the bill and memorandum from the General Statutes Commission are attached as part of these minutes.

Sen. Clodfelter, bill sponsor, explained SB 1394, A BILL TO BE ENTITLED AND ACT PROVIDING THAT THE CITY OF CHARLOTTE MAY BY RESOLUTION DEEM THE CREATION OF A SELF–FUNDED RISK PROGRAM AS THE PURCHASE OF INSURANCE FOR THE PURPOSE OF WAIVING GOVERNMENTAL IMMUNITY. Reps. Miller and Baddour and Sen. Clodfelter discussed the waiving of immunity as it relates to self-insurers. Upon the motion of Rep. Weiss, the bill was given a favorable report. A copy of the bill is attached and made part of these minutes.

The next item on the order of business was HB 1402, A BILL TO BE ENTITLED AN ACT TO ESTABLISH AN ADDRESS CONFIDENTIALITY PROGRAM FOR VICTIMS OF DOMESTIC VIOLENCE, SEXUAL OFFENSES, AND STALKING AND TO APPROPRIATE FUNDS FOR THAT PURPOSE. Upon the motion of bill sponsor, Rep. Jeffus the PCS was adopted for discussion. Rep. Jeffus stated she supported Rep. Pope's amendment and thanked him for the recommendation. Jeff Hudson, Committee Counsel, explained the bill.

Rep. Pope sent forward and explained amendment H1402–ASB–68 (v.4) and moved for its adoption. The amendment was adopted.

Rep. Jeffus responded to Rep. Haire's question about program participation by stating they were not projecting many applications–perhaps 300 in the coming year and the numbers are expected to increase as the program gains popularity. Rep. Haire followed up by questioning the cost to the Attorney General's office. Rep. Jeffus responded that general fund money would not be used, instead the funding would come from money appropriated from past lawsuits. She noted the estimate to be $22,000 in year one, with some of this being start–up cost.

In response to Rep. Pope, Will Polk of the Attorney General's office stated that the Register of Deeds Association and the Tax Assessors Association were both okay with the provision. Michele Frazier, N.C. Bar Association, also stated they were satisfied with the provision.

Eddie Caldwell, N.C. Sheriffs Association questioned why local law enforcers were left out on page 6, line 22. In response, Rep. Baddour asked staff to prepare an amendment.

Rep. Miller asked how many other states had similar regulations. Rep. Jeffus responded that about 12 states have similar legislation and she noted that this bill was attracting the attention of other states. She continued by reading a few statistics to demonstrate how important it was that this bill be passed to protect the citizens.

Rep. Jeffus motioned to amend the bill on page 6, line 22 to add the word "local" in response to Mr. Caldwell's concern. The motion passed.

Rep. Weiss motioned to roll all the amendments into a new PCS and to give the PCS a favorable report, unfavorable to the original bill.

Rep. Sherrill noted she would like to see the fee on page 7, line 6 raised. Rep. Pope said he shared Rep. Sherrill's concern but thought other laws might be violated by this action. Reps. Baddour, Bowie and Decker and Mr. Hudson discussed whether the committee could set the minimum fine for a class 1 misdemeanor. They decided to give the judge discretion on the $500 minimum and to raise the maximum.

Rep. Sherrill motioned for a verbal amendment that changes page 7, line 6 from $500 to $2500 and the motion carried.

Rep. Weiss withdrew and restated her motion to now roll all the amendments into a new PCS, to be given a favorable report.

In response to Rep. Pope's question as to whether this bill would need to go to the Appropriations Committee, Rep. Baddour said that he had been advised by Gerry Cohen, director of bill drafting, that the bill did not need to go to Appropriations.

The PCS was given a favorable report, unfavorable to the original bill. Copies of the PCS, the original PCS, all amendments and the bill summary are attached and made part of these minutes.

Rep. Baddour announced to the committee that there would be no 12:00 meeting tomorrow but instead, committee members would meet 15 minutes after tomorrow's session to discuss HB 1612, Stop Unwanted Telephone Solicitations, but no vote would be taken.

S887, A BILL TO BE ENTITLED AN ACT TO PROVIDE ADDITIONAL AUTHORITY FOR MAGISTRATES WHO ARE LICENSED TO PRACTICE LAW was not heard during this meeting.

The meeting adjourned at 10:55 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Tracy Dixon
Committee Assistant

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
S.B. 1154 A BILL TO BE ENTITLED AN ACT TO EXPAND THE LIST OF SECTIONS OF THE NORTH CAROLINA CONDOMINIUM ACT THAT APPLY TO CONDOMINIUMS CREATED ON OR BEFORE OCTOBER 1, 1986, AND TO CODIFY AN APPLICABILITY PROVISION RELATING TO THE NORTH CAROLINA PLANNED COMMUNITY ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

5/13/02

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 1

SENATE BILL 1154*

Short Title:	Amend Condominium and Planned Community Acts.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary I.	

June 4, 2002

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE LIST OF SECTIONS OF THE NORTH CAROLINA CONDOMINIUM ACT THAT APPLY TO CONDOMINIUMS CREATED ON OR BEFORE OCTOBER 1, 1986, AND TO CODIFY AN APPLICABILITY PROVISION RELATING TO THE NORTH CAROLINA PLANNED COMMUNITY ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47C-1-102(a) reads as rewritten:

"(a) This ~~chapter~~ Chapter applies to all condominiums created within this State after October 1, 1986. ~~Sections~~ G.S. 47C-1-105 (Separate Titles and Taxation), 47C-1-106 (Applicability of Local Ordinances, Regulations, and Building Codes), 47C-1-107 (Eminent Domain), 47C-2-103 (Construction and Validity of Declaration and Bylaws), 47C-2-104 (Description of Units), 47C-2-121 (Merger or Consolidation of Condominiums), 47C-3-102(a)(1) through (6) and (11) through (16) (Powers of Unit Owners' Association), 47C-3-107A (Charges for Late Payment, Fines), 47C-3-111 (Tort and Contract Liability), 47C-3-112 (Conveyance or Encumbrance of Common Elements), 47C-3-116 (Lien for Assessments), 47C-3-118 (Association Records), and 47C-4-117 (Effect of Violation on Rights of Action; Attorney's Fees), and G.S. 47C-1-103 (Definitions), to the extent necessary in construing any of those sections, apply to all condominiums created in this State on or before October 1, 1986; but those sections apply only with respect to events and circumstances occurring after October 1, ~~1986~~ 1986, and do not invalidate existing provisions of the declarations, bylaws, or plats or plans of those condominiums."

SECTION 2. G.S. 47F-1-102 reads as rewritten:

"**§ 47F-1-102. Applicability.**

(a) This Chapter applies to all planned communities ~~within this State except as provided in subsection (b) of this section.~~created within this State on or after January 1, 1999, except as otherwise provided in this section.

(b) This Chapter does not apply to a planned community created within this ~~State:~~State on or after January 1, 1999:

(1) Which contains no more than 20 lots (including all lots which may be added or created by the exercise of development rights) unless the declaration provides or is amended to provide that this Chapter does apply to that planned community; or

(2) In which all lots are restricted exclusively to nonresidential purposes, unless the declaration provides or is amended to provide that this Chapter does apply to that planned community.

(c) ~~This Chapter does not apply to planned communities or lots located outside this State.~~Notwithstanding the provisions of subsection (a) of this section, G.S. 47F-3-102(1) through (6) and (11) through (17) (Powers of owners' association), G.S. 47F-3-107(a), (b), and (c) (Upkeep of planned community; responsibility and assessments for damages), G.S. 47F-3-115 (Assessments for common expenses), and G.S. 47F-3-116 (Lien for assessments), apply to all planned communities created in this State before January 1, 1999. These sections apply only with respect to events and circumstances occurring on or after January 1, 1999, and do not invalidate existing provisions of the declaration, bylaws, or plats and plans of those planned communities. G.S. 47F-1-103 (Definitions) also applies to all planned communities created in this State before January 1, 1999, to the extent necessary in construing any of the preceding sections.

(d) ~~Any~~ Notwithstanding the provisions of subsections (a) and (c) of this section, any planned community created prior to ~~the effective date of this Chapter~~ January 1, 1999, may elect to make the provisions of this Chapter applicable to it by amending its declaration to provide that this Chapter shall apply to that planned community. The amendment may be made by affirmative vote or written agreement signed by lot owners of lots to which at least sixty-seven percent (67%) ~~percent~~ of the votes in the association are allocated or any smaller majority the declaration specifies. To the extent the procedures and requirements for amendment in the declaration conflict with the provisions of this subsection, this subsection shall control with respect to any amendment to provide that this Chapter applies to that planned community.

(e) This Chapter does not apply to planned communities or lots located outside this State."

SECTION 3. Section 3 of S.L. 1998-199 reads as rewritten:

"Section 3. This act becomes effective January 1, ~~1999, and applies to planned communities created on or after that date. G.S. 47E-3-102(1) through (6) and (11) through (17), G.S. 47E-3-107(a),(b), and (c), G.S. 47E-3-115, and G.S. 47E-3-116 as enacted by Section 1 of this act apply to planned communities created prior to the effective date, except that the provisions of G.S. 47E-3-116(e) as enacted by Section 1 of this act, apply to actions arising on or after the effective date.~~1999."

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

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

MEMORANDUM

TO: House Judiciary II Committee

FROM: General Statutes Commission

DATE: July 24, 2002

RE: SB 1154 (Amend Condominium and Planned Community Acts)

SB 1154 amends G.S. 47C-1-102(a) to add G.S. 47C-2-121, which authorizes the merger or consolidation of condominiums, to the list of sections of the North Carolina Condominium Act that apply to condominiums created on or before October 1, 1986. The amendment is necessitated by the lack of a merger or consolidation statute applicable to condominiums created on or before October 1, 1986. Please note that the merger or consolidation agreement must be approved by the same vote of the unit owners of each condominium that is necessary to terminate that condominium.

The bill also amends G.S. 47F-1-102 to codify an applicability provision that was enacted when the North Carolina Planned Community Act was enacted in 1998 and to conform the section to the style of G.S. 47C-1-102, the comparable section in the North Carolina Condominium Act. Many of the provisions of the North Carolina Planned Community Act were adapted from the North Carolina Condominium Act.

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for

~~H.B.~~ SB 1394 A BILL TO BE ENTITLED AN ACT PROVIDING THAT THE CITY OF CHARLOTTE MAY BY RESOLUTION DEEM THE CREATION OF A SELF-FUNDED RISK PROGRAM AS THE PURCHASE OF INSURANCE FOR THE PURPOSE OF WAIVING GOVERNMENTAL IMMUNITY.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

5/13/02

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 1

SENATE BILL 1394

Short Title:	Charlotte Governmental Immunity.	(Local)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

June 13, 2002

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT THE CITY OF CHARLOTTE MAY BY RESOLUTION DEEM THE CREATION OF A SELF-FUNDED RISK PROGRAM AS THE PURCHASE OF INSURANCE FOR THE PURPOSE OF WAIVING GOVERNMENTAL IMMUNITY.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2(b) of S.L. 1998-200 reads as rewritten:

"(b) This section applies to the ~~City~~ Cities of Charlotte and Raleigh only."

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

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1402 A BILL TO BE ENTITLED AN ACT TO ESTABLISH AN ADDRESS CONFIDENTIALITY PROGRAM FOR VICTIMS OF DOMESTIC VIOLENCE, SEXUAL OFFENSES, AND STALKING AND TO APPROPRIATE FUNDS FOR THAT PURPOSE.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

5/13/02

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1402
PROPOSED COMMITTEE SUBSTITUTE H1402-PCS6480-SB-63

Short Title: Address Confidentiality Program. (Public)

Sponsors:

Referred to:

April 26, 2001

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH AN ADDRESS CONFIDENTIALITY PROGRAM FOR VICTIMS OF DOMESTIC VIOLENCE, SEXUAL OFFENSE, AND STALKING.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 15C.

"Address Confidentiality Program.

"**§ 15C-1. Purpose.**

The purpose of this Chapter is to enable the State and its agencies to respond to requests for public records without disclosing the location of a victim of domestic violence, sexual offense, or stalking; to enable interagency cooperation in providing address confidentiality for victims of domestic violence, sexual offense, or stalking; and to enable the State and its agencies to accept a program participant's use of an address designated by the Office of the Attorney General as a substitute address.

"**§ 15C-2. Definitions.**

The following definitions apply in this Chapter:

(1) Actual address or address. – A residential, work, or school street address as specified on the individual's application to be a program participant under this Chapter.

(2) Address Confidentiality Program or Program. – A program in the Office of the Attorney General to protect the confidentiality of the address of a relocated victim of domestic violence, sexual offense, or stalking to prevent the victim's assailants or potential assailants from finding the victim through public records.

(3) Agency of North Carolina or agency. – Includes every elected or appointed State or local public office, public officer, or official; institution, board, commission, bureau, council, department, authority,

or other unit of government of the State or of any local government; or unit, special district, or other political subdivision of State or local government.

(4) Application assistant. – An employee of an agency or nonprofit organization who provides counseling, referral, shelter, or other specialized services to victims of domestic violence, sexual offense, or stalking and who has been designated by the Attorney General to assist individuals with applications to participate in the Address Confidentiality Program.

(5) Attorney General. – Office of the Attorney General.

(6) Person. – Any individual, corporation, limited liability company, partnership, trust, estate, or other association or any state, the United States, or any subdivision thereof.

(7) Program participant. – An individual accepted into the Address Confidentiality Program in accordance with this Chapter.

(8) Public record. – A public record as defined in Chapter 132 of the General Statutes.

(9) Substitute address. – An address designated by the Attorney General under the Address Confidentiality Program.

(10) Victim of domestic violence. – An individual against whom domestic violence, as defined in G.S. 50B-1, has been committed.

(11) Victim of a sexual offense. – An individual against whom a sexual offense under Article 7A of Chapter 14 of the General Statutes has been committed.

(12) Victim of stalking. – An individual against whom stalking, as defined in G.S. 14-277.3, has been committed.

"**§ 15C-3. Address Confidentiality Program.**

The General Assembly establishes the Address Confidentiality Program in the Office of the Attorney General to protect the confidentiality of the address of a relocated victim of domestic violence, sexual offense, or stalking to prevent the victim's assailants or potential assailants from finding the victim through public records. Under this Program, the Attorney General shall designate a substitute address for a program participant and act as the agent of the program participant for purposes of service of process and receiving and forwarding first-class mail. The Attorney General shall not be required to forward any mail other than first-class mail to the program participant. The Attorney General shall not be required to track or otherwise maintain records of any mail received on behalf of a program participant unless the mail is certified or registered mail.

"**§ 15C-4. Filing and certification of applications; authorization card.**

(a) Applications shall be filed with the Attorney General. Any of the following individuals may apply to the Attorney General to have an address designated by the Attorney General to serve as the substitute address of the individual:

(1) An adult person.

(2) A parent or guardian acting on behalf of a minor when the minor resides with the victim.

(3) A guardian acting on behalf of an incapacitated person.

(b) The application shall be dated, signed, and verified by the applicant and shall be signed by the application assistant who assisted in the preparation of the application.

(c) The application shall contain all of the following:

(1) A statement by the applicant that the applicant, or the person on behalf of whom the applicant is applying, is a victim of domestic violence, sexual offense, or stalking and that the victim fears for his or her safety or the safety of his or her child.

(2) Evidence that the applicant, or the person on behalf of whom the applicant is applying, is a victim of domestic violence, sexual offense, or stalking. This evidence may include any of the following:

a. Police, court, or other federal or state agency records or files.

b. Documentation from a domestic violence program if the applicant, or the person on behalf of whom the applicant is applying, is alleged to be a victim of domestic violence.

c. Documentation from a religious, medical, or other professional from whom the applicant, or the person on behalf of whom the applicant is applying, has sought assistance in dealing with the alleged domestic violence, sexual offense, or stalking.

(3) A statement by the applicant that disclosure of the victim's address would endanger the victim's safety or the safety of the victim's child.

(4) A statement by the applicant that the victim has or will confidentially relocate in North Carolina.

(5) A designation of the Attorney General as an agent for purposes of service of process and the receipt of first-class mail.

(6) The mailing address and telephone number where the victim can be contacted by the Attorney General.

(7) The address that the applicant requests not to be disclosed by the Attorney General that directly relates to the increased risk of domestic violence, sexual offense, or stalking.

(8) A statement as to whether there is any existing court order or court action involving the applicant related to divorce proceedings, child support, child custody, or child visitation and the court that issued the order or has jurisdiction over the action.

(9) A statement by the applicant that to the best of the applicant's knowledge, the information contained in the application is true.

(10) A recommendation of an application assistant that the victim have an address designated by the Attorney General to serve as the substitute address of the victim.

(d) Upon the filing of a properly completed application, the Attorney General shall certify the applicant as a program participant. Upon certification, the Attorney General shall issue an Address Confidentiality Program authorization card to the

program participant. The Address Confidentiality Program authorization card shall remain valid for so long as the program participant remains certified under the Program.

(e) Applicants shall be certified for four years following the date of filing unless the certification is withdrawn or canceled prior to the end of the four-year period. A program participant may withdraw the certification by filing a request for withdrawal acknowledged before a notary with the Attorney General. A certification may be renewed by filing an application containing the information required by G.S. 15C-3 with the Attorney General at least 30 days prior to expiration of the current certification.

"**§ 15C-5. Change of name, address, or telephone number.**

(a) A participant shall notify the Attorney General within 30 days after the participant has obtained a legal name change by providing the Attorney General a certified copy of any judgment or order evidencing the change or any other documentation the Attorney General deems to be sufficient evidence of the name change. If the participant fails to notify the Attorney General of a name change in the manner provided in this subsection, the participant shall lose certification in the Program.

(b) A participant shall notify the Attorney General of a change in address or telephone number from the address or telephone number listed for the participant on the application at least seven days before the change occurs. If the participant fails to notify the Attorney General of a change in address or telephone number in the manner provided in this subsection, the participant shall lose certification in the Program.

"**§ 15C-6. Falsifying application information.**

A person who falsely attests in an application that disclosure of the applicant's address would endanger the applicant's safety or the safety of the applicant's child or who knowingly provides false information when applying for certification or renewal shall lose his or her certification. The Attorney General shall investigate violations of this section and, upon finding that a violation has occurred, assess a civil penalty not to exceed five hundred dollars ($500.00).

"**§ 15C-7. Certification cancellation; records.**

(a) The Attorney General shall cancel the certification of a program participant under any of the following circumstances:

(1) The program participant files a request for withdrawal of the certification pursuant to G.S. 15C-4.

(2) The program participant fails to notify the Attorney General of a change in the participant's name, address, or telephone number listed on the application pursuant to G.S. 15C-5.

(3) The program participant submitted false information in applying for certification to the Program in violation of G.S. 15C-6.

(4) Mail forwarded to the program participant is returned as undeliverable.

(b) The provisions of Article 3 of Chapter 150B of the General Statutes shall not apply to any cancellation of certification by the Attorney General pursuant to subsection (a) of this section.

(c) The Attorney General shall send notice of cancellation to the program participant. Notice of cancellation shall set out the reasons for cancellation. The

program participant shall have 30 days to appeal the cancellation decision under procedures developed by the Attorney General.

(d) Any records or documents pertaining to a program participant shall be maintained in accordance with The General Schedule for State Agencies as established by the Department of Cultural Resources.

(e) A person who ceases to be a program participant is responsible for notifying persons who use the substitute address designated by the Attorney General as the program participant's address that the designated substitute address is no longer the person's address.

"**§ 15C-8. Address use by State or local agencies.**

(a) The program participant, and not the Attorney General, is responsible for requesting that agencies of North Carolina use the address designated by the Attorney General as the substitute address of the program participant.

(b) When a program participant submits a current and valid Address Confidentiality Program authorization card to an agency of North Carolina, the agency shall accept the address designation by the Attorney General as the program participant's substitute address when creating a new public record unless the Attorney General has determined that the agency has a statutory or administrative requirement that the agency is unable to fulfill without possession of the program participant's actual residential address and the address will be used only for those statutory or administrative purposes.

(c) An agency may submit a request for a waiver from the requirements of the Address Confidentiality Program to the Attorney General. The agency's waiver request must be in writing and include an explanation of why the agency cannot meet its statutory or administrative obligations by a change in its internal procedures.

(d) The Attorney General's acceptance or denial of an agency's waiver request must be made in writing and include a statement of specific reasons for acceptance or denial. Acceptance or denial of an agency's waiver request is not subject to further review.

(e) A board of elections shall use the actual address of a program participant for all election-related purposes and shall keep the address confidential from the public under the provisions of G.S. 163-82.10(d). Use of the address on letters placed in the United States mail by a board of elections shall not be considered a breach of confidentiality. The substitute address designation provided by the Attorney General shall not be used as an address for voter registration or verification purposes.

(f) For purposes of levying and collecting property taxes on motor vehicles pursuant to Article 22A of Chapter 105 of the General Statutes, the Attorney General shall issue to the county, city, or town assessor or tax collector a list containing the names and actual addresses of program participants residing in that county, city, or town. This list shall only be used for the purposes of listing, appraisal, and assessment of motor vehicles and the collection of property taxes on motor vehicles in the county, city, or town. The county, city, or town assessor or tax collector or any current or former officer, employee, or agent of any county, city, or town, who in the course of service to

or employment by the county, city, or town has access to the name and actual address of a program participant, may not disclose this information to any other person.

(g) The substitute address designated by the Attorney General shall not be used for purposes of listing, appraisal, and assessment of property and collection of taxes on property under the provisions of Subchapter II of Chapter 105 of the General Statutes.

(h) The substitute address designated by the Attorney General shall not be used as an address by any register of deeds for purposes of indexing land registered under Article 4 of Chapter 43 of the General Statutes in the index of registered instruments pursuant to G.S. 161-22.

(i) A local school administrative unit shall use the actual address of a program participant for any purpose related to admission or assignment pursuant to Article 25 of Chapter 115C of the General Statutes and shall keep the address confidential from the public under the provisions of this Article. The substitute address designated by the Attorney General shall not be used as an address for admission or assignment purposes. For purposes of student records created under Chapter 115C of the General Statutes, the substitute address designated by the Attorney General shall be used.

(j) A program participant's address and telephone number maintained by an agency of North Carolina is not a public record within the meaning of Chapter 132 of the General Statutes.

"**§ 15C-9. Disclosure of address prohibited.**

(a) The Attorney General is prohibited from disclosing any address or telephone number of a program participant other than the substitute address designated by the Attorney General, except under the following circumstances:

(1) The information is requested by a federal, state, or local law enforcement agency for official use only.

(2) The information is required by direction of a court order. However, any person to whom a program participant's address or telephone number has been disclosed shall not disclose the address or telephone number to any other person unless permitted to do so by order of the court.

(3) Upon request by an agency to verify the participation of a specific program participant when the verification is for official use only.

(4) Upon request by an agency, in the manner provided for by G.S. 15C-8.

(5) The program participant is required to disclose his or her actual address as part of a registration required by Article 27A of Chapter 14 of the General Statutes.

(b) The Attorney General shall provide immediate notification of disclosure to a program participant when disclosure is made pursuant to subdivision (2) or (4) of subsection (a) of this section.

(c) If, at the time of application, a program participant is subject to a court order related to divorce proceedings, child support, child custody, or child visitation, the Attorney General shall notify the court that issued the order of the certification of the program participant in the Address Confidentiality Program and the substitute address designated by the Attorney General. If, at the time of application, a program participant

is involved in a court action related to divorce proceedings, child support, child custody, or child visitation, the Attorney General shall notify the court having jurisdiction over the action of the certification of the program participant in the Address Confidentiality Program and the substitute address designated by the Attorney General.

(d) No person shall knowingly and intentionally obtain a program participant's actual address from the Attorney General or an agency knowing that he or she is not authorized to obtain the address information.

(e) No employee of the Attorney General or an agency shall knowingly and intentionally disclose a program participant's actual address to a person known to the employee to be prohibited from receiving the participant's actual address, unless such disclosure is permissible by law. This subsection only applies when an employee obtains a participant's actual address during the course of the employee's official duties and, at the time of disclosure, the employee has specific knowledge that the address disclosed belongs to a person participating in the Program.

(f) Any person who knowingly and intentionally obtains or discloses information in violation of this Chapter shall be guilty of a Class 1 misdemeanor and assessed a fine not to exceed two thousand five hundred dollars ($2,500).

(g) A program participant's address or telephone number maintained by the Attorney General or disclosed by the Attorney General pursuant to this Chapter is not a public record within the meaning of Chapter 132 of the General Statutes.

"**§ 15C-10. Assistance for program applicants.**

The Attorney General shall designate agencies of North Carolina and nonprofit organizations that provide counseling and shelter services to victims of domestic violence, sexual offense, or stalking to assist persons applying to be program participants. Any assistance and counseling rendered by the Office of the Attorney General or its designee to applicants shall in no way be construed as legal advice.

"**§ 15C-11. Limited liability.**

The State, its agencies, and their officers, officials, employees, and agents, both past and present, in their official and individual capacities, shall be immune and held harmless from any liability in any action brought by or on behalf of any person injured or harmed by the actions or inactions of these entities and individuals in implementing this Chapter, provided that the entity or individual was acting in good faith and without malice. In any proceeding involving liability, good faith and lack of malice are presumed.

"**§ 15C-12. Rule-making authority.**

The Attorney General is authorized to adopt any rules deemed necessary to carry out the provisions of this Chapter.

"**§ 15C-13. Additional time for action.**

Whenever the laws of this State provide a program participant a legal right to act within a prescribed period of 10 days or less after the service of a notice or other paper upon the participant, and the notice or paper is served upon the participant by mail pursuant to this Chapter, five days shall be added to the prescribed period."

SECTION 2. G.S. 1A-1, Rule 6, is amended by adding a new subsection to read:

"(f) Additional time for Address Confidentiality Program participants. – Whenever a person participating in the Address Confidentiality Program established by Chapter 15C of the General Statutes has a legal right to act within a prescribed period of 10 days or less after the service of a notice or other paper upon the participant, and the notice or paper is served upon the participant by mail, five days shall be added to the prescribed period."

SECTION 3. Article 2 of Chapter 51 of the General Statutes is amended by adding the following section:

"**§ 51-16.1. Form of license for Address Confidentiality Program participant.**

If a person submits to the local register of deeds a current and valid Address Confidentiality Program authorization card issued pursuant to the provisions of Chapter 15C of the General Statutes, the local register of deeds shall use the substitute address designated by the Address Confidentiality Program when creating a new marriage license."

SECTION 4. G.S. 115C-320 reads as rewritten:

"**§ 115C-320. Certain records open to inspection.**

Each local board of education shall maintain a record of each of its employees, showing the following information with respect to each employee: name, age, date of original employment or appointment, current position, title, current salary, date and amount of most recent increase or decrease in salary, date of most recent promotion, demotion, transfer, suspension, separation, or other change in position classification, and the office or station to which the employee is currently assigned. Subject only to rules and regulations for the safekeeping of records adopted by the local board of education, every person having custody of the records shall permit them to be inspected and examined and copies made by any person during regular business hours. The name of a participant in the Address Confidentiality Program established pursuant to Chapter 15C of the General Statutes shall not be open to inspection and shall be redacted from any record released pursuant to this section. Any person who is denied access to any record for the purpose of inspecting, examining or copying the record shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief."

SECTION 5. G.S. 115C-366 is amended by adding a new subsection to read:

"(g) Any local school administrative unit may use the actual address of a program participant for any purpose related to admission or assignment pursuant to this Article as long as the address is kept confidential from the public under the provisions of Chapter 15C of the General Statutes. The substitute address designated by the Attorney General shall not be used as an address for admission or assignment purposes."

SECTION 6. G.S. 115C-402 is amended by adding a new subsection to read:

"(f) The actual address and telephone number of a student who is a participant in the Address Confidentiality Program established pursuant to Chapter 15C of the General Statutes or a student with a parent who is a participant in the Address Confidentiality Program established pursuant to Chapter 15C of the General Statutes

shall be kept confidential from the public and shall not be disclosed except as provided in Chapter 15C of the General Statutes."

SECTION 7. G.S. 132.1.1 reads as rewritten:

"**§ 132-1.1. Confidential communications by legal counsel to public board or agency; State tax information; public enterprise billing ~~information.~~information; Address Confidentiality Program information.**

(a) Confidential Communications. – Public records, as defined in G.S. 132-1, shall not include written communications (and copies thereof) to any public board, council, commission or other governmental body of the State or of any county, municipality or other political subdivision or unit of government, made within the scope of the attorney-client relationship by any attorney-at-law serving any such governmental body, concerning any claim against or on behalf of the governmental body or the governmental entity for which such body acts, or concerning the prosecution, defense, settlement or litigation of any judicial action, or any administrative or other type of proceeding to which the governmental body is a party or by which it is or may be directly affected. Such written communication and copies thereof shall not be open to public inspection, examination or copying unless specifically made public by the governmental body receiving such written communications; provided, however, that such written communications and copies thereof shall become public records as defined in G.S. 132-1 three years from the date such communication was received by such public board, council, commission or other governmental body.

(b) State and Local Tax Information. – Tax information may not be disclosed except as provided in G.S. 105-259. As used in this subsection, "tax information" has the same meaning as in G.S. 105-259. Local tax records that contain information about a taxpayer's income or receipts may not be disclosed except as provided in G.S. 153A-148.1 and G.S. 160A-208.1.

(c) Public Enterprise Billing Information. – Billing information compiled and maintained by a city or county or other public entity providing utility services in connection with the ownership or operation of a public enterprise is not a public record as defined in G.S. 132-1. Nothing contained herein is intended to limit public disclosure by a city or county of billing information:

(i) that the city or county determines will be useful or necessary to assist bond counsel, bond underwriters, underwriters' counsel, rating agencies or investors or potential investors in making informed decisions regarding bonds or other obligations incurred or to be incurred with respect to the public enterprise;

(ii) that is necessary to assist the city, county, State, or public enterprise to maintain the integrity and quality of services it provides; or

(iii) that is necessary to assist law enforcement, public safety, fire protection, rescue, emergency management, or judicial officers in the performance of their duties.

As used herein, "billing information" means any record or information, in whatever form, compiled or maintained with respect to individual customers by any owner or operator of a public enterprise, as defined in G.S. 160A-311 and G.S. 153A-274, or

other public entity providing utility services, relating to services it provides or will provide to the customer.

(d) Address Confidentiality Program Information. – The actual address and telephone number of a program participant in the Address Confidentiality Program established under Chapter 15C of the General Statutes is not a public record within the meaning of Chapter 132. The actual address and telephone number of a program participant may not be disclosed except as provided in Chapter 15C of the General Statutes."

SECTION 8. G.S. 163-82.10(d) reads as rewritten:

"(d) Exception for Address of Certain Registered Voters. – Notwithstanding subsections (b) and (c) of this section, if a registered voter submits to the county board of elections a copy of a protective order without attachments, if any, issued to that person under G.S. 50B-3 or a lawful order of any court of competent jurisdiction restricting the access or contact of one or more persons with a registered voter or a current and valid Address Confidentiality Program authorization card issued pursuant to the provisions of Chapter 15C of the General Statutes, accompanied by a signed statement that the voter has good reason to believe that the physical safety of the voter or a member of the voter's family residing with the voter would be jeopardized if the voter's address were open to public inspection, that voter's address is a public record but shall be kept confidential as long as the protective order remains in ~~effect.~~effect or the voter remains a certified program participant in the Address Confidentiality Program. That voter's name, precinct, and the other data contained in that voter's registration record shall remain a public record. That voter's signed statement submitted under this subsection is a public record but shall be kept confidential as long as the protective order remains in ~~effect.~~ effect or the voter remains a certified program participant in the Address Confidentiality Program. It is the responsibility of the voter to provide the county board with a copy of the valid protective order in ~~effect.~~ effect or a current and valid Address Confidentiality Program authorization card issued pursuant to the provisions of Chapter 15C of the General Statutes. The voter's actual address may be used for any election-related purpose by any board of elections. That voter's address shall be available for inspection by a law enforcement agency or by a person identified in a court order, if inspection of the address by that person is directed by that court order. It shall not be a violation of this section if the address of a voter who is participating in the Address Confidentiality Program is discovered by a member of the public in public records disclosed by a county board of elections prior to December 1, 2001."

SECTION 9. This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. The Attorney General and all other agencies to which this act applies shall implement the provisions of this act with funds that are otherwise appropriated or available.

SECTION 10. This act becomes effective January 1, 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1402
PROPOSED COMMITTEE SUBSTITUTE H1402-CSSB-63 [v.29]

8/8/2002 4:51:32 PM

Short Title: Address Confidentiality Program. (Public)

Sponsors:

Referred to:

April 26, 2001

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH AN ADDRESS CONFIDENTIALITY PROGRAM FOR VICTIMS OF DOMESTIC VIOLENCE, SEXUAL OFFENSE, AND STALKING.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 15C.

"Address Confidentiality Program.

"**§ 15C-1. Purpose.**

The purpose of this Chapter is to enable the State and its agencies to respond to requests for public records without disclosing the location of a victim of domestic violence, sexual offense, or stalking; to enable interagency cooperation in providing address confidentiality for victims of domestic violence, sexual offense, or stalking; and to enable the State and its agencies to accept a program participant's use of an address designated by the Attorney General's Office as a substitute address.

"**§ 15C-2. Definitions.**

The following definitions apply in this Chapter:

(1) Actual address or address. – A residential, work, or school street address as specified on the individual's application to be a program participant under this Chapter.

(2) Address Confidentiality Program or Program – A program in the Office of the Attorney General to protect the confidentiality of the address of a relocated victim of domestic violence, sexual offense, or stalking to prevent the victim's assailants or potential assailants from finding the victim through public records.

(3) Agency of North Carolina or agency. – Includes every elected or appointed State or local public office, public officer, or official; institution, board, commission, bureau, council, department, authority,

or other unit of government of the State or of any local government; or unit, special district, or other political subdivision of State or local government.

(4) Application assistant. – An employee of an agency or nonprofit organization who provides counseling, referral, shelter, or other specialized services to victims of domestic violence, sexual offense, or stalking and who has been designated by the Attorney General to assist individuals with applications to participate in the Address Confidentiality Program.

(5) Attorney General. – Office of the Attorney General.

(6) Person. – Any individual, corporation, limited liability company, partnership, trust, estate, or other association or any state, the United States, or any subdivision thereof.

(7) Program participant. – An individual accepted into the Address Confidentiality Program in accordance with this Chapter.

(8) Public record. – A public record as defined in Chapter 132 of the General Statutes.

(9) Substitute address. – An address designated by the Attorney General under the Address Confidentiality Program.

(10) Victim of domestic violence. – An individual against whom domestic violence, as defined in G.S. 50B-1, has been committed.

(11) Victim of a sexual offense. – An individual against whom a sexual offense under Article 7A of Chapter 14 of the General Statutes has been committed.

(12) Victim of stalking. – An individual against whom stalking, as defined in G.S. 14-277.3, has been committed.

"**§ 15C-3. Address Confidentiality Program.**

The General Assembly establishes the Address Confidentiality Program in the Office of the Attorney General to protect the confidentiality of the address of a relocated victim of domestic violence, sexual offense, or stalking to prevent the victim's assailants or potential assailants from finding the victim through public records. Under this Program, the Attorney General shall designate a substitute address for a program participant and act as the agent of the program participant for purposes of service of process and receiving and forwarding first-class mail. The Attorney General shall not be required to forward any mail other than first-class mail to the program participant. The Attorney General shall not be required to track or otherwise maintain records of any mail received on behalf of a program participant unless the mail is certified or registered mail.

"**§ 15C-4. Filing and certification of applications; authorization card.**

(a) Applications shall be filed with the Attorney General. Any of the following individuals may apply to the Attorney General to have an address designated by the Attorney General to serve as the substitute address of the individual:

(1) An adult person.

(2) A parent or guardian acting on behalf of a minor when the minor resides with the victim.

(3) A guardian acting on behalf of an incapacitated person.

(b) The application shall be dated, signed, and verified by the applicant and shall be signed by the application assistant who assisted in the preparation of the application.

(c) The application shall contain all of the following:

(1) A statement by the applicant that the applicant, or the person on behalf of whom the applicant is applying, is a victim of domestic violence, sexual offense, or stalking and that the victim fears for his or her safety or the safety of his or her child.

(2) Evidence that the applicant, or the person on behalf of whom the applicant is applying, is a victim of domestic violence, sexual offense, or stalking. This evidence may include any of the following:

a. Police, court, or other federal or state agency records or files.

b. Documentation from a domestic violence program if the applicant, or the person on behalf of whom the applicant is applying, is alleged to be a victim of domestic violence.

c. Documentation from a religious, medical, or other professional from whom the applicant, or the person on behalf of whom the applicant is applying, has sought assistance in dealing with the alleged domestic violence, sexual offense, or stalking.

(3) A statement by the applicant that disclosure of the victim's address would endanger the victim's safety or the safety of the victim's child.

(4) A statement by the applicant that the victim has or will confidentially relocate in North Carolina.

(5) A designation of the Attorney General as an agent for purposes of service of process and the receipt of first-class mail.

(6) The mailing address and telephone number where the victim can be contacted by the Attorney General.

(7) The address that the applicant requests not to be disclosed by the Attorney General that directly relates to the increased risk of domestic violence, sexual offense, or stalking.

(8) A statement by the applicant that to the best of the applicant's knowledge, the information contained in the application is true.

(9) A recommendation of an application assistant that the victim have an address designated by the Attorney General to serve as the substitute address of the victim.

(d) Upon the filing a properly completed application, the Attorney General shall certify the applicant as a program participant. Upon certification, the Attorney General shall issue an Address Confidentiality Program authorization card to the program participant. The Address Confidentiality Program authorization card shall remain valid for so long as the program participant remains certified under the Program.

(e) Applicants shall be certified for four years following the date of filing unless the certification is withdrawn or canceled prior to the end of the four-year period. A

program participant may withdraw the certification by filing a request for withdrawal acknowledged before a notary with the Attorney General. A certification may be renewed by filing an application containing the information required by G.S. 15C-3 with the Attorney General at least 30 days prior to expiration of the current certification.

"**§ 15C-5. Change of name, address, or telephone number.**

(a) A participant shall notify the Attorney General within 30 days after the participant has obtained a legal name change by providing the Attorney General a certified copy of any judgment or order evidencing the change or any other documentation the Attorney General deems to be sufficient evidence of the name change. If the participant fails to notify the Attorney General of a name change in the manner provided in this subsection, the participant shall lose certification in the Program.

(b) A participant shall notify the Attorney General of a change in address or telephone number from the address or telephone number listed for the participant on the application at least seven days before the change occurs. If the participant fails to notify the Attorney General of a change in address or telephone number in the manner provided in this subsection, the participant shall lose certification in the Program.

"**§ 15C-6. Falsifying application information.**

A person who falsely attests in an application that disclosure of the applicant's address would endanger the applicant's safety or the safety of the applicant's child or who knowingly provides false information when applying for certification or renewal shall lose his or her certification. The Attorney General shall investigate violations of this section and upon finding that a violation has occurred, assess a civil penalty not to exceed five hundred dollars ($500.00).

"**§ 15C-7. Certification cancellation; Records.**

(a) The Attorney General shall cancel the certification of a program participant under any of the following circumstances:

(1) The program participant files a request for withdrawal of the certification pursuant to G.S. 15C-4.

(2) The program participant fails to notify the Attorney General of a change in the participant's name, address, or telephone number listed on the application pursuant to G.S. 15C-5.

(3) The program participant submitted false information in applying for certification to the Program in violation of G.S. 15C-6.

(4) Mail forwarded to the program participant is returned as undeliverable.

(b) The provisions of Article 3 of Chapter 150B of the General Statutes shall not apply to any cancellation of certification by the Attorney General pursuant to subsection (a) of this section.

(c) The Attorney General shall send notice of cancellation to the program participant. Notice of cancellation shall set out the reasons for cancellation. The program participant shall have 30 days to appeal the cancellation decision under procedures developed by the Attorney General.

(d) Any records or documents pertaining to a program participant shall be maintained in accordance with The General Schedule for State Agencies as established by the Department of Cultural Resources.

(e) A person who ceases to be a program participant is responsible for notifying persons who use the substitute address designated by the Attorney General as the program participant's address that the designated substitute address is no longer the person's address.

"**§ 15C-8. Address use by State or local agencies.**

(a) The program participant, and not the Attorney General, is responsible for requesting that agencies of North Carolina use the address designated by the Attorney General as the substitute address of the program participant.

(b) When a program participant submits a current and valid Address Confidentiality Program authorization card to an agency of North Carolina, the agency shall accept the address designation by the Attorney General as the program participant's substitute address when creating a new public record unless the Attorney General has determined that the agency has a statutory or administrative requirement that the agency is unable to fulfill without possession of the program participant's actual residential address and the address will be used only for those statutory or administrative purposes.

(c) An agency may submit a request for a waiver from the requirements of the Address Confidentiality Program to the Attorney General. The agency's waiver request must be in writing and include an explanation of why the agency cannot meet its statutory or administrative obligations by a change in its internal procedures.

(d) The Attorney General's acceptance or denial of an agency's waiver request must be made in writing and include a statement of specific reasons for acceptance or denial. Acceptance or denial of an agency's waiver request is not subject to further review.

(e) A board of election shall use the actual address of a program participant for all election-related purposes and shall keep the address confidential from the public under the provisions of G.S. 163-82.10(d). Use of the address on letters placed in the United States mail by a board of election shall not be considered a breach of confidentiality. The substitute address designation provided by the Attorney General shall not be used as an address for voter registration or verification purposes.

(f) For purposes of levying and collecting property taxes on motor vehicles pursuant to Article 22A of Chapter 105 of the General Statutes, the Attorney General shall issue to the county, city, or town assessor or tax collector a list containing the names and actual addresses of program participants residing in that county, city, or town. This list shall only be used for the purposes of listing, appraisal, and assessment of motor vehicles and the collection of property taxes on motor vehicles in the county, city, or town. The county, city, or town assessor or tax collector or any current or former officer, employee, or agent of any county, city, or town, who in the course of service to or employment by the county, city, or town has access to the name and actual address of a program participant, may not disclose this information to any other person.

(g) The substitute address designated by the Attorney General shall not be used for purposes of listing, appraisal, and assessment of property and collection of taxes on property under the provisions of Subchapter II of Chapter 105 of the General Statutes.

(h) The substitute address designated by the Attorney General shall not be used as an address by any register of deeds for purposes of indexing land registered under Article 4 of Chapter 43 of the General Statutes in the index of registered instruments pursuant to G.S. 161-22.

(i) A local school administrative unit shall use the actual address of a program participant for any purpose related to admission or assignment pursuant to Article 25 of Chapter 115C of the General Statutes and shall keep the address confidential from the public under the provisions of this Article. The substitute address designated by the Attorney General shall not be used as an address for admission or assignment purposes. For purposes of student records created under Chapter 115C, the substitute address designated by the Attorney General shall be used.

(j) A program participant's address and telephone number maintained by an agency of North Carolina is not a public record within the meaning of Chapter 132 of the General Statutes.

"**§ 15C-9. Disclosure of address prohibited.**

(a) The Attorney General is prohibited from disclosing any address or telephone number of a program participant other than the substitute address designated by the Attorney General, except under the following circumstances:

(1) The information is requested by a federal or state law enforcement agency for official use only.

(2) The information is required by direction of a court order. However, any person to whom a program participant's address or telephone number has been disclosed shall not disclose the address or telephone number to any other person unless permitted to do so by order of the court.

(3) Upon request by an agency to verify the participation of a specific program participant when the verification is for official use only.

(4) Upon request by an agency, in the manner provided for by G.S. 15C-8.

(5) The program participant is required to disclose his or her actual address as part of a registration required by Article 27A of Chapter 14 of the General Statutes.

(b) The Attorney General shall provide immediate notification of disclosure to a program participant when disclosure is made pursuant to subdivision (2) or (4) of subsection (a) of this section.

(c) No person shall knowingly and intentionally obtain a program participant's actual address from the Attorney General or an agency knowing that he or she is not authorized to obtain the address information.

(d) No employee of the Attorney General or an agency shall knowingly and intentionally disclose a program participant's actual address to a person known to the employee to be prohibited from receiving the participant's actual address, unless such disclosure is permissible by law. This subdivision only applies when an employee

obtains a participant's actual address during the course of the employee's official duties and, at the time of disclosure, the employee has specific knowledge that the address disclosed belongs to a person participating in the Program.

(e) Any person who knowingly and intentionally obtains or discloses information in violation of this Chapter shall be guilty of a Class 1 misdemeanor and assessed a fine not to exceed five hundred dollars ($500.00).

(f) A program participant's address or telephone number maintained by the Attorney General or disclosed by the Attorney General pursuant to this Chapter is not a public record within the meaning of Chapter 132.

"**§ 15C-10. Assistance for program applicants.**

The Attorney General shall designate agencies of North Carolina and nonprofit organizations that provide counseling and shelter services to victims of domestic violence, sexual offense, or stalking to assist persons applying to be program participants. Any assistance and counseling rendered by the Attorney General's Office or its designee to applicants shall in no way be construed as legal advice.

"**§ 15C-11. Limited liability.**

The State, its agencies, and their officers, officials, employees, and agents, both past and present, in their official and individual capacities, shall be immune and held harmless from any liability in any action brought by or on behalf of any person injured or harmed by the actions or inactions of these entities and individuals in implementing this Chapter, provided that the entity or individual was acting in good faith and without malice. In any proceeding involving liability, good faith and lack of malice are presumed.

"**§ 15C-12. Rule-making authority.**

The Attorney General is authorized to adopt any rules deemed necessary to carry out the provisions of this Chapter.

"**§ 15C-13. Additional time for action.**

Whenever the laws of this State provide a program participant a legal right to act within a prescribed period of 10 days or less after the service of a notice or other paper upon the participant, and the notice or paper is served upon the participant by mail pursuant to this Chapter, five days shall be added to the prescribed period."

SECTION 2. G.S. 1A-1, Rule 6 is amended by adding a new subsection to read:

"(f) *Additional time for Address Confidentiality Program participants.* – Whenever a person participating in the Address Confidentiality Program established by Chapter 15C of the General Statutes has a legal right to act within a prescribed period of 10 days or less after the service of a notice or other paper upon the participant, and the notice or paper is served upon the participant by mail, five days shall be added to the prescribed period."

SECTION 3. The following section is added to Article 2 of Chapter 51 of the General Statutes:

"**§ 51-16.1. Form of license for Address Confidentiality Program participant.**

If a person submits to the local register of deeds a current and valid Address Confidentiality Program authorization card issued pursuant to the provisions of Chapter

15C of the General Statutes, the local register of deeds shall use the substitute address designated by the Address Confidentiality Program when creating a new marriage license."

SECTION 4. G.S. 115C-320 reads as rewritten:

"**§ 115C-320. Certain records open to inspection.**

Each local board of education shall maintain a record of each of its employees, showing the following information with respect to each employee: name, age, date of original employment or appointment, current position, title, current salary, date and amount of most recent increase or decrease in salary, date of most recent promotion, demotion, transfer, suspension, separation, or other change in position classification, and the office or station to which the employee is currently assigned. Subject only to rules and regulations for the safekeeping of records adopted by the local board of education, every person having custody of the records shall permit them to be inspected and examined and copies made by any person during regular business hours. The name of a participant in the Address Confidentiality Program established pursuant to Chapter 15C of the General Statutes shall not be open to inspection and shall be redacted from any record released pursuant to this section. Any person who is denied access to any record for the purpose of inspecting, examining or copying the record shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief."

SECTION 5. G.S. 115C-366 is amended by adding a new subsection to read:

"(g) Any local school administrative unit may use the actual address of a program participant for any purpose related to admission or assignment pursuant to this Article as long as the address is kept confidential from the public under the provisions of Chapter 15C of the General Statutes. The substitute address designated by the Attorney General shall not be used as an address for admission or assignment purposes."

SECTION 6. G.S. 115C-402 is amended by adding a new subsection to read:

"(f) The actual address and telephone number of a student who is a participant in the Address Confidentiality Program established pursuant to Chapter 15C of the General Statutes or a student with a parent who is a participant in the Address Confidentiality Program established pursuant to Chapter 15C of the General Statutes shall be kept confidential from the public and shall not be disclosed except as provided in Chapter 15C of the General Statutes."

SECTION 7. G.S. 132.1 reads as rewritten:

"**§ 132-1.1. Confidential communications by legal counsel to public board or agency; State tax information; public enterprise billing ~~information.~~information; Address Confidentiality Program information.**

(a) Confidential Communications. – Public records, as defined in G.S. 132-1, shall not include written communications (and copies thereof) to any public board, council, commission or other governmental body of the State or of any county, municipality or other political subdivision or unit of government, made within the scope of the attorney-client relationship by any attorney-at-law serving any such governmental

body, concerning any claim against or on behalf of the governmental body or the governmental entity for which such body acts, or concerning the prosecution, defense, settlement or litigation of any judicial action, or any administrative or other type of proceeding to which the governmental body is a party or by which it is or may be directly affected. Such written communication and copies thereof shall not be open to public inspection, examination or copying unless specifically made public by the governmental body receiving such written communications; provided, however, that such written communications and copies thereof shall become public records as defined in G.S. 132-1 three years from the date such communication was received by such public board, council, commission or other governmental body.

(b) State and Local Tax Information. – Tax information may not be disclosed except as provided in G.S. 105-259. As used in this subsection, "tax information" has the same meaning as in G.S. 105-259. Local tax records that contain information about a taxpayer's income or receipts may not be disclosed except as provided in G.S. 153A-148.1 and G.S. 160A-208.1.

(c) Public Enterprise Billing Information. – Billing information compiled and maintained by a city or county or other public entity providing utility services in connection with the ownership or operation of a public enterprise is not a public record as defined in G.S. 132-1. Nothing contained herein is intended to limit public disclosure by a city or county of billing information:

(i) that the city or county determines will be useful or necessary to assist bond counsel, bond underwriters, underwriters' counsel, rating agencies or investors or potential investors in making informed decisions regarding bonds or other obligations incurred or to be incurred with respect to the public enterprise;

(ii) that is necessary to assist the city, county, State, or public enterprise to maintain the integrity and quality of services it provides; or

(iii) that is necessary to assist law enforcement, public safety, fire protection, rescue, emergency management, or judicial officers in the performance of their duties.

As used herein, "billing information" means any record or information, in whatever form, compiled or maintained with respect to individual customers by any owner or operator of a public enterprise, as defined in G.S. 160A-311 and G.S. 153A-274, or other public entity providing utility services, relating to services it provides or will provide to the customer.

(d) Address Confidentiality Program Information. – The actual address and telephone number of a program participant in the Address Confidentiality Program established under Chapter 15C of the General Statutes is not a public record within the meaning of Chapter 132. The actual address and telephone number of a program participant may not be disclosed except as provided in Chapter 15C of the General Statutes."

SECTION 8. G.S. 163-82.10(d) reads as rewritten:

"(d) Exception for Address of Certain Registered Voters. -- Notwithstanding subsections (b) and (c) of this section, if a registered voter submits to the county board

of elections a copy of a protective order without attachments, if any, issued to that person under G.S. 50B-3 or a lawful order of any court of competent jurisdiction restricting the access or contact of one or more persons with a registered voter or a current and valid Address Confidentiality Program authorization card issued pursuant to the provisions of Chapter 15C of the General Statutes, accompanied by a signed statement that the voter has good reason to believe that the physical safety of the voter or a member of the voter's family residing with the voter would be jeopardized if the voter's address were open to public inspection, that voter's address is a public record but shall be kept confidential as long as the protective order remains in ~~effect.~~effect or the voter remains a certified program participant in the Address Confidentiality Program. That voter's name, precinct, and the other data contained in that voter's registration record shall remain a public record. That voter's signed statement submitted under this subsection is a public record but shall be kept confidential as long as the protective order remains in ~~effect.~~ effect or the voter remains a certified program participant in the Address Confidentiality Program. It is the responsibility of the voter to provide the county board with a copy of the valid protective order in ~~effect.~~ effect or a current and valid Address Confidentiality Program authorization card issued pursuant to the provisions of Chapter 15C of the General Statutes. The voter's actual address may be used for any election-related purpose by any board of elections. That voter's address shall be available for inspection by a law enforcement agency or by a person identified in a court order, if inspection of the address by that person is directed by that court order. It shall not be a violation of this section if the address of a voter who is participating in the Address Confidentiality Program is discovered by a member of the public in public records disclosed by a county board of elections prior to December 1, 2001."

SECTION 9. This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. The Attorney General and all other agencies to which this act applies shall implement the provisions of this act with funds that are otherwise appropriated or available.

SECTION 10. This act becomes effective January 1, 2003.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1402

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

H1402-ASB-68 [v.4]

Date 8/14 ,2002

Comm. Sub. [YES]
Amends Title [NO]
CSSB-63 [v.29]

Representative Pope

moves to amend the bill on page 3, lines 32 and 33,
by inserting between those lines:

"(8) A statement as to whether there is any existing court order or court action involving the applicant related to divorce proceedings, child support, child custody, or child visitation and the court that issued the order or has jurisdiction over the action.";

by renumbering the subsequent subdivisions accordingly;

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1402

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

H1402-ASB-68 [v.4]

on page 6, lines 37 and 38,
by inserting between those lines:

"(c) If, at the time of application, a program participant is subject to a court order related to divorce proceedings, child support, child custody, or child visitation, the Attorney General shall notify the court that issued the order of the certification of the program participant in the Address Confidentiality Program and the substitute address designated by the Attorney General. If, at the time of application, a program participant is involved in a court action related to divorce proceedings, child support, child custody, or child visitation, the Attorney General shall notify the court having jurisdiction over the action of the certification of the program participant in the Address Confidentiality Program and the substitute address designated by the Attorney General."; and

by relettering the subsequent subsections accordingly.

SIGNED Pope
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. 1402 DATE 8/14/02

S. B. No. _____ Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

(Rep.)
Sen.)

moves to amend the bill on page 6, line 22

( ) WHICH CHANGES THE TITLE

by rewriting that line to read:

"(1) The information is requested by a federal, state, or local law enforcement".

SIGNED Maggie Jeffus

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 1402:
Address Confidentiality Program

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Jeffus
Date:	August 14, 2002	**Summary by:**	Jeff Hudson, Committee Counsel
Version:	Proposed Committee Substitute H1402-CSSB-63 [v.29]		

SUMMARY: ***The Proposed Committee Substitute for House Bill 1402 (PCS) would establish the Address Confidentiality Program in the Office of the Attorney General to protect the confidentiality of the addresses of relocated victims of domestic violence, sexual offense, or stalking. Under this Program, the Attorney General would designate a substitute address for a program participant and act as the agent of the program participant for purposes of service of process and receiving and forwarding first-class mail. State and local government agencies would use the address designated by the Attorney General as the program participant's substitute address when creating new public records.***

BILL ANALYSIS:

Application

An adult, a parent or guardian acting on behalf of a minor who resides with the victim, or a guardian acting on behalf of an incapacitated person may apply to the Address Confidentiality Program (Program). The application must include, among other information, evidence and a statement by the applicant that the applicant or the person on behalf of whom the applicant is applying is a victim of domestic violence, sexual offense, or stalking and a statement that disclosure of the victim's address would endanger the victim's safety or the safety of the victim's child. The application must also contain a recommendation from an application assistant that the victim should be certified to participate in the program. A person who knowingly provides false information in an application shall lose certification in the Program and be subject to a civil penalty not to exceed five hundred dollars ($500).

Substitute Address

Upon the filing of a properly completed application, the Attorney General will certify the applicant as a program participant. The Attorney General will designate a substitute address for the program participant and act as the agent of the program participant for purposes of service of process and receiving and forwarding first-class mail. The Attorney General will also issue the program participant an Address Confidentiality Program authorization card. The program participant may submit this card to a State or local government agency and the agency will accept the address designated by the Attorney General as the program participant's substitute address. This substitute address shall be used by agencies when creating a new public record except under the following circumstances:

- An agency receives a waiver from the Attorney General.
- A board of elections shall use the actual address of a program participant for all election related purposes and shall keep the address confidential from the public.
- For the purpose of levying and collecting property taxes on motor vehicles, the Attorney General shall issue to county, city, or town assessors or tax collectors lists containing the names and actual addresses of program participants residing in the county, city, or town, to be used for the purposes of listing, appraisal, and assessment of motor vehicles and collection of property taxes on motor vehicles.
- The substitute address will not be used for purposes of listing, appraisal, and assessment of property and collection of taxes.
- Registers of deeds will use the actual address of a program participant for the purpose of indexing transactions involving land in the index of registered instruments.

- A local school administrative unit shall use the actual address of a program participant for any purpose related to admission or assignment and shall keep the address confidential from the public. The substitute address will, however, be used for purposes of student records. The name of a program participant contained in local board of education employee records will not be open for inspection and will be redacted prior to the release of records.

Cancellation of Certification

The Attorney General shall cancel the certification of a program participant under any of the following circumstances:

- The program participant requests the cancellation.
- The program participant fails to properly notify the Attorney General of a change in the program participant's name, address, or telephone number.
- The program participant submitted false information in applying for certification.
- Mail forwarded to the program participant is returned as undeliverable.

Disclosure of Address Prohibited

The Attorney General may only disclose the address or telephone number of a program participant under the following circumstances:

- The information is requested by a law enforcement agency.
- The information is required by direction of a court order.
- Upon request of an agency to verify the participation of a specific program participant.
- Upon request of an agency that has received a waiver from the Attorney General.
- The program participant is required to disclose his or her address as part of registration in a sex offender registration.

The Attorney General will notify a program participant of an address disclosure in response to a court order or an agency waiver. No person shall knowingly and intentionally obtain a program participant's actual address from the Attorney General or an agency knowing that he or she is not authorized to do so. No employee of the Attorney General or an agency shall knowingly and intentionally disclose a program participant's actual address to a person known to the employee to be prohibited from receiving the information. Any person who knowingly and intentionally obtains or discloses information in violation of these provisions is guilty of a Class 1 misdemeanor and will be assessed a fine not to exceed five hundred dollars ($500).

Public Records

A program participant's address and telephone number maintained by the Attorney General or an agency is not a public record.

Limited Liability

The State, its agencies, and their officers and employees are immune from any liability in any action brought by or on behalf of any person injured or harmed by the actions or inactions of these entities or individuals in implementing the Program, provided they are acting in good faith and without malice.

Additional Time for Action

Whenever State law provides a program participant a legal right to act within a prescribed period of 10 days or less after the service of a notice or other paper upon the participant and the notice is served on the participant by mail, five days will be added to the prescribed period.

Funding

The Attorney General and all other agencies to which this act applies shall implement the provisions of this act with funds that are otherwise appropriated and available.

Effective Date

This act becomes effective January 1, 2003.

VISITOR REGISTRATION SHEET

DATE 8/14/02

JII

VISITOR: Please sign below and return to clerk.

NAME	FIRM OR STATE AGENCY	TELEPHONE
Patrice Rawls	NCACC	
John Phelps	NC LM	
Kathy Weil	SBOE	
Michelle Mrozkowski	State Board of Elections	
Elizabeth Froehling	NC Coalition Against Domestic Violence	
Veronica Butcher	NC Coalition Against Sexual Assault	
Emily Winn	NCADV	
John Koniach	AOC	
Leslie Starobrock	DVC/CFW	
Lewis Irene	Atty. Gen.	
Katie Hunter	NC Stakwatch	
Rose White Hearn	Victim Service Ombudsman Council of NC	
Kurt Hyman	NCDOJ	
~~Kimberly Cuyler~~	~~NCDOJ~~	
William Polk	NC DOJ	

VISITOR REGISTRATION SHEET

DATE 8/14/02

J. H.

VISITOR: Please sign below and return to clerk.

NAME	FIRM OR STATE AGENCY	TELEPHONE
Charles Cromer	Atty	
Bill Wilson	NCATL	
Floyd Lewis	General Statutes Commission	
Tom Coley	CWA	
P. Bay Hall	General Statutes Commission	
Jim Carr	C.S.C. Rowan Co.	
Pam Bell	AOC	
Miriam Saxon	AOC	
Jo McCants	AOC	
Wayne Hurder	DOT-DMV-Driver License	
Sharon Matthews	DOT-DMV	
Michelle Frazier	NC Bar Ass'n	
Jonathan McGirt	NC Bar Association	
Leon-Killian	Moore-Van Allen	
Deanna Dunn	NCSBA	

VISITOR REGISTRATION SHEET

DATE 8/14/02

J 11

VISITOR: Please sign below and return to clerk.

NAME	FIRM OR STATE AGENCY	TELEPHONE
Linda Suggs	SBE	
Eddie Caldwell	Hoke Caldwell	
R. Paul Wilms	NCHBA	

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

August 15, 2002

The House Committee on Judiciary II met on Thursday, August 15 2002 in room 421 LOB at 10:55 a.m. The following members were present: Rep. Baddour, Chair and Reps. Bowie, Culpepper, Gulley, Haire, Jeffus, Justus, Miller, Pope, Sherrill, Weiss and Willingham. Staff including Tracy Dixon, Jeff Hudson and Robin Johnson were in attendance. A Visitor Registration sheet is attached and made part of these minutes.

Chairman Baddour called the meeting to order. Jessica Harris and Sierra Harris of Halifax County (Rep. Hall) served as pages.

Upon the motion of Rep. Weiss the PCS for HB 1612, A BILL TO BE ENTITLED AND ACT TO ESTABLISH AND MAINTAIN A NO–CALL REGISTRY FOR CONSUMERS WHO WISH TO STOP UNWANTED TELEPHONE SOLICITATION CALLS AND TO INCREASE THE PROTECTIONS FOR CONSUMERS IN TRANSACTIONS INITIATED BY TELEMARKETERS was adopted for discussion. Josh Stein, Office of the Attorney General, explained the changes to the bill and noted a list of organizations that had removed their opposition to the bill. Rep. Pope stated it was inappropriate for Mr. Stein to offer advice as a state employee.

Rep. Sherrill asked for an updated list of who had removed their opposition and who remains opposed. Mr. Stein listed companies still opposed to the bill and responded to Rep. Jeffus' question about the opposition of the Professional Fire Fighters. Mr. Stein additionally explained to Rep. Miller why there was an exemption for existing business language.

Jeff Hudson, Committee Counsel, went through the bill and handouts with the members. Rep. Bowie spoke on dealing with solicitors and their affiliates. Rep. Baddour explained the compromise of having the existing business relationship exemption. Rep. Bowie noted her concern about a citizen who wanted to hear from affiliates. Rep. Sherrill additionally questioned how a person would know it was an affiliate that was calling and stated she would like to come back to this issue.

Rep. Pope, Mr. Hudson and Mr. Stein discussed the policy intent of page 3, line 34.

In response to Rep. Justus' question of how a new bank was to get customers, Mr. Stein stated the bank could call anyone willing to receive calls and felt a good compromise was reached with the existing business relationship exemption. Rep. Justus voiced his concerns over how a new business was supposed to start.

Rep. Pope posed the questions of how the existing business relationship provision works with in–store sales and do discount/credit cards with a business qualify as a relationship. Mr. Stein stated the intent of the legislation is to set the time of retail purchase as the end of the relationship and from this point a business would have 18 months to contact a customer. Mr. Hudson believed Rep. Pope's example would be an existing business relationship and Mr. Stein commented that there would be a difference between a discount card and a line of credit under the definition. Rep. Baddour suggested the language might need some clarification.

Mr. Hudson explained to Rep. Haire how a person would get on the no–call registry by stating the person would notify the AG's office where the rules would be developed. Mr. Stein additionally commented that it was the intent of the AG's office to have a simple way to get on the list, likely by phone, email, mail or the internet.

Rep. Haire questioned whether one person could register multiple names and Mr. Stein responded that each person must register himself or herself.

Mr. Stein responded to Rep. Bowie's question of whether out–of–state businesses were included in the 18-month existing business relationship timeframe. Rep. Baddour additionally noted that a person could give special permission to any business to receive calls even if they are on the no–call registry. Rep. Bowie stated that it was an inconvenience to write each company that a person still wants to hear from and asked how out–of–state businesses would know the laws regarding no call lists in North Carolina. Mr. Stein stated that a person would only have to write an individual company giving them permission to call if a person signed up on the no call list. Rep. Baddour commented that this list was not for everyone and those people who wanted to receive phone calls should not sign up on the list.

Rep. Pope and Mr. Stein discussed the intentions of the provision on page 3, line 8 about employing fewer than 10 employees. Rep. Pope suggested changing the wording to say few then 10 employers per establishment.

Rep. Baddour clarified how the no call registry would work for Rep. Justus.

Rep. Haire questioned whether there was any distinction in the bill between residents, who would pay for the service through their taxes and nonresidents who would not. Mr. Stein stated it would be difficult to capture resident versus non-resident in law but that the service would be based on residential telephone subscribers. Rep. Baddour suggested that this distinction was outside the scope of the bill and stated that Rep. Miller would be recognized then Mr. Hudson would finish the bill explanation.

Rep. Miller asked how change in telephone numbers would be handled by the no–call list. Mr. Hudson stated the bill directs the phone company to notify the AG's office when a phone is disconnected. Mr. Hudson then continued the explanation of the bill.

Rep. Pope suggested an exemption for small businesses that make very few calls and noted the example of an art dealer he deals with on the average of every four years. He noted he was not sure the art dealer knew he was supposed to abide by a list. Rep. Baddour stated the bill was still being worked on and that discussion would be continued during the next meeting. Mr. Stein noted he would be happy to discuss the suggested amendment with Rep. Pope.

Copies of the PCS, bill summary, comparison of no call laws by state and exemptions to state no–call lists by state are attached and made part of these minutes.

The meeting adjourned at 11:55 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Tracy Dixon
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1612
PROPOSED COMMITTEE SUBSTITUTE H1612-CSSBf-73 [v.5]

Short Title: Stop Unwanted Telephone Solicitations. (Public)

Sponsors:

Referred to:

June 11, 2002

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH AND MAINTAIN A NO-CALL REGISTRY FOR CONSUMERS WHO WISH TO STOP UNWANTED TELEPHONE SOLICITATION CALLS AND TO INCREASE THE PROTECTIONS FOR CONSUMERS IN TRANSACTIONS INITIATED BY TELEMARKETERS.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly of North Carolina makes the following findings:

(1) The use of the telephone to market goods and services to the home is now pervasive due to the increased use of cost-effective telemarketing technologies and techniques.

(2) While some consumers enjoy and benefit from unsolicited telemarketing contacts from legitimate telemarketers, many others object to these contacts as an intrusive invasion of an individual's right of privacy in the home.

(3) In addition, the proliferation of unsolicited telemarketing calls, especially during the evening hours, creates a nuisance and a disturbance upon the home and family life of North Carolina residents during a time of day used by many families for traditional family activities.

(4) North Carolina residents should have the freedom to choose whether or not to permit telemarketers to contact them.

(5) Individual privacy rights, personal safety, prevention of fraud, and commercial freedom of speech and trade must be balanced in a way that protects the privacy of individuals and permits legitimate telemarketing practices.

(6) Legitimate telemarketers have no interest in continuing to invade the privacy of those consumers who affirmatively express their objections to such contact.

(7) Many North Carolina consumers who have transacted business with firms that employ telemarketing have experienced problems with their checking and credit card accounts being debited before they can evaluate the terms and conditions of the transaction, before they can evaluate the merchandise or service to be delivered, or without their agreement to enter into the transaction or authorize such transactions in the first place.

(8) New technologies that make telemarketing more cost-effective also allow for the creation of a State No-Call Registry through which North Carolina consumers can easily register their desires not to receive further telemarketing calls and telemarketers can easily access and employ lists of consumers who have registered those desires.

(9) The public interest requires an efficient mechanism for North Carolina residents to notify telemarketers that their telephone numbers cannot be called and additional protections for North Carolina residents who enter into consumer transactions initiated through telemarketing calls.

SECTION 2. G.S. 75-30.1 reads as rewritten:

"**§ 75-30.1. Restrictions on telephone solicitations.**

(a) For purposes of this ~~section:~~Article:

(1) 'Residential telephone subscriber' means a person who subscribes to residential telephone service from a local exchange company and uses that service primarily for residential purposes, or the persons living or residing with that person.

(2) 'Telephone solicitation' means a voice ~~communication~~ communication, whether prerecorded or live, or a facsimile over a telephone line initiated by a telephone solicitor to a residential telephone subscriber for the purpose of soliciting or encouraging the purchase or rental of, or investment in, property, goods, or ~~services; or~~ services; for the purpose of obtaining information that will or may be used for that ~~purpose;~~ purpose; for the purpose of soliciting or encouraging a residential telephone subscriber's participation in any contest, sweepstakes, raffle, or lottery, whether legal or illegal; or for the purpose of obtaining a charitable donation.

(2a) Notwithstanding subdivision (2) of this subsection, 'telephone solicitation' ~~but~~ does not include any of the following telephonic communications:

a. To any person with that person's prior express invitation or ~~permission;~~ permission.

b. To any person with whom the telephone solicitor has an established business ~~relationship;~~ relationship or has had an established business relationship within the prior 18 months.

c. To any person in connection with an existing debt or contract for which payment or performance has not been completed at the time of the call.

~~c.~~d. By or on behalf of a tax-exempt nonprofit organization.

e. To any person when the sole purpose of the call is to obtain a reference on someone other than the intended recipient of the call.

f. By or on behalf of a person, business, or other legal entity that employs fewer than 10 full or part-time direct employees; provided that the telephonic communications are made by the direct employees and the direct employees collectively make or attempt to make no more than 10 unsolicited telephonic communications to residential telephone subscribers per week.

g. To any person for the sole purpose of arranging a subsequent face-to-face meeting between the person initiating the call and the person receiving the call, provided that the person calling does not do any of the following during the course of the call:

1. Seek payment from the person receiving the call in connection with the sale or rental of, or investment in, property, goods, or services.
2. Complete the sale or rental of, or investment in, property, goods, or services.
3. Obtain provisional acceptance of a sale, rental, or investment.
4. Obtain the person's agreement to participate in any contest, sweepstakes, raffle, or lottery.
5. Obtain the person's charitable donation or provisional agreement to make a donation.
6. Make a major sales presentation.
7. Directly following a telephonic communication, go or cause an individual to go to the residential telephone subscriber to collect the payment or charitable donation or deliver any item purchased.

(3) 'Telephone solicitor' means any ~~business~~ person, business, or other legal entity doing business in this State ~~that~~ that, directly or through salespersons or agents, makes or attempts to make telephone solicitations or causes telephone solicitations to be made.

(4) 'Affiliate' means a company that wholly or substantially owns, is wholly or substantially owned by, or is under common ownership with a telephone solicitor.

(5) 'Doing business in this State' means to make or cause to be made any telephone solicitation to residential telephone subscribers, whether the telephone solicitations are made from a location inside North Carolina or outside North Carolina.

(6) 'Established business relationship' means an ongoing, voluntary relationship formed prior to the telephone solicitation between a telephone solicitor or one or more of its affiliates and a residential telephone subscriber, involving an exchange of consideration, that has not been terminated by either party.

(b) No telephone solicitor shall place any telephone solicitation calls to a residential telephone subscriber's telephone number if that residential telephone subscriber's telephone number appears on the latest edition of the No-Call Registry established pursuant to G.S. 75-30.2 or if the residential telephone subscriber previously has communicated to that telephone solicitor a desire to receive no further telephone solicitations from that telephone solicitor.

(b1) Any person who makes a telephonic communication described in subdivision (2a) of subsection (a) of this section or ~~Any~~ any telephone solicitor who makes a telephone solicitation to a residential telephone subscriber whose telephone number is not listed in the latest edition of the No-Call Registry or who previously has not communicated to the telephone solicitor a desire to receive no further telephone solicitations from that telephone solicitor shall:

(1) At the beginning of the call, state clearly the identity of the business, individual, or other legal entity initiating the call, and identify the person making the call by that person's name.

(2) Upon request, provide the telephone subscriber with the telephone number or address at which the person or entity may be contacted.

(3) Terminate the call if the person does not consent to the ~~call.~~call, unless the call is in connection with an existing debt or contract for which payment or performance has not been completed at the time of the call.

(4) If the person called requests to be taken off the contact list of the telephone solicitor, take all steps necessary to remove within 30 business days that person's name and telephone number from the contact records of the business, individual or other legal entity initiating the ~~call.~~call, unless the call is in connection with an existing debt or contract for which payment or performance has not been completed at the time of the call.

(5) Notwithstanding subdivision (4) of this subsection, if a telephone solicitor relies on sub-subdivision b. of subdivision (2a) of subsection (a) of this section to solicit a residential telephone subscriber whose telephone number is listed in the latest edition of the No-Call Registry and the person called communicates a desire to receive no further telephone solicitations from that telephone solicitor or one of its affiliates, the telephone solicitor shall take all steps necessary to remove within 30 business days that person's name and telephone number from the contact records of the telephone solicitor and all of its affiliates.

(c) Every telephone solicitor who makes telephone solicitations in this State shall implement in-house systems and procedures designed to prevent further calls to ~~persons~~

any person who ~~have~~ has asked not to be called ~~again. Compliance with 47 C.F.R. § 64.1200(e) of the Federal Communications Commission's Restrictions on Telephone Solicitation constitutes compliance with this subsection:~~ again or who has placed a telephone number in the No-Call Registry.

~~(d) No telephone solicitor shall initiate a call to a residential telephone subscriber who has communicated to that telephone solicitor a desire to be taken off the contact list of that solicitor.~~

(e) No telephone solicitor shall initiate a call to a residential telephone subscriber after 9:00 P.M. or before 8:00 A.M. at the called party's location.

(f) No telephone solicitor who makes a telephone solicitation to the telephone line of a residential telephone subscriber in this State shall knowingly use any method to block or otherwise circumvent that subscriber's use of a caller identification service. A telephone solicitor who makes a telephone solicitation to the telephone line of a residential subscriber through the use of a private branch exchange (PBX) or other call-generating system that is not capable of transmitting caller identification information shall not be in violation of this subsection. No provider of telephone caller identification services shall be held liable for violations of this subsection committed by other persons or entities.

(g) Every telephone solicitor who makes telephone solicitations in this State shall keep a record for a period of 24 months from the date a call is placed of the legal name and any fictitious name used, resident address, telephone number, and job title of each person who places a telephone solicitation for that telephone solicitor. If callers for a telephone solicitor use fictitious names, each fictitious name shall be traceable to only one specific caller.

(g1) Nothing in this section prohibits a telephone solicitor from contacting by letter, telegram, e-mail message, or other nontelephonic notice a residential telephone subscriber whose telephone number appears on the No-Call Registry to obtain the residential telephone subscriber's express written permission allowing the telephone solicitor to make telephone solicitations. Express invitation or permission does not include any consent or permission included in a contract of adhesion. Such invitation or permission must be registered by the residential telephone subscriber on an independent form. In any dispute regarding whether a residential telephone subscriber has provided this express written permission, the telephone solicitor has the burden of proving that the residential telephone subscriber has provided this permission by producing the original document, a facsimile document, or an electronic form, signed by the residential telephone subscriber, or other authentification that evidences permission.

(g2) Nothing in this section prohibits a telephone solicitor from advertising in a general medium or contacting by letter, telegram, e-mail message or other nontelephonic notice a residential telephone subscriber whose telephone number appears on the No-Call Registry to encourage the person to initiate telephonic communications to the telephone solicitor.

(h) The Attorney General may investigate any complaints received alleging violations of ~~subsections (b) through (g) of this section.~~section, G.S. 75-30, or G.S. 75-30.2. If, after investigating a complaint, the Attorney General finds that there has

been a violation of ~~subsections (b) through (g) of~~ this ~~section,~~section, G.S. 75-30, or G.S. 75-30.2, the Attorney General may bring an action to impose ~~a civil penalty~~ civil penalties and to seek any other appropriate ~~relief,~~ relief pursuant to this Chapter, including equitable relief to restrain the ~~violation pursuant to G.S. 75-14.~~ violation. The Attorney General may also bring an action on behalf of residential telephone subscribers pursuant to subsection (i) of this section. If the Attorney General brings an action on behalf of residential telephone subscribers pursuant to subsection (i) of this section, the Attorney General may not seek treble damages on behalf of residential telephone subscribers pursuant to G.S. 75-16. Actions for civil penalties under this section shall be consistent with the provisions of ~~G.S. 75-15.2~~ this Chapter except that the penalty imposed for a violation of this section shall ~~not exceed five hundred dollars ($500.00) per violation.~~ be:

(1) Five hundred dollars ($500.00) for the first violation, one thousand dollars ($1,000) for the second violation, and five thousand dollars ($5,000) for the third and each subsequent violation within the past two years, or

(2) One hundred dollars ($100.00) for each violation within the past two years; provided that it can be shown that a telephone solicitor has established and implemented in-house systems and procedures designed to prevent further calls in compliance with G.S. 75-30.1(c) or G.S. 75-30.2, has trained its employees and independent contractors in those in-house systems and procedures, has maintained and recorded lists of persons who may not be contacted, and the violations are a result of mistake.

(i) A ~~person~~ residential telephone subscriber who has received ~~more than one~~ a telephone solicitation ~~within any 12-month period by~~ from or on behalf of ~~the same~~ a telephone solicitor in violation of ~~subsections (b) through (g) of~~ this ~~section~~ section, G.S. 75-30, or G.S. 75-30.2 may bring any of the following actions in the General Court of Justice:

(1) An action to enjoin further ~~violations.~~ violations by the telephone solicitor.

(2) An action to recover ~~five hundred dollars ($500.00) in damages for each violation;~~five hundred dollars ($500.00) for the first violation, one thousand dollars ($1,000) for the second violation, and five thousand dollars ($5,000) for the third and each subsequent violation within the past two years.

(i1) No action may be brought pursuant to subsection (i) of this section when a telephone solicitor has established and implemented in-house systems and procedures designed to prevent further calls in compliance with G.S. 75-30.1(c) or G.S. 75-30.2, has trained its employees and independent contractors in those in-house systems and procedures, has maintained and recorded lists of persons who may not be contacted, and the violations are a result of mistake.

(i2) In an action brought pursuant to this ~~section,~~section, G.S. 75-30, or G.S. 75-30.2, a prevailing plaintiff shall be entitled to recover reasonable attorneys' fees and the

court may award reasonable attorneys' fees to a prevailing defendant if the court finds that the plaintiff knew, or should have known, that the action was frivolous and malicious.

(j) A citizen of this State is also entitled to bring an action in the General Court of Justice to enforce the private rights of action established by federal law under 47 U.S.C. § 227(b)(3) and 47 U.S.C. § 227(c)(5).

(k) Actions brought by residential telephone subscribers pursuant to ~~subsections (i) and (j) of~~ this ~~section~~ section, G.S. 75-30, or G.S. 75-30.2 shall be tried in the county where the plaintiff resides at the time of the commencement of the action."

SECTION 3. G.S. 75-30.1(f) reads as rewritten:

"(f) No telephone solicitor who makes a telephone solicitation to the telephone line of a residential telephone subscriber in this State shall knowingly use any method to block or otherwise circumvent that subscriber's use of a caller identification service. ~~A telephone solicitor who makes a telephone solicitation to the telephone line of a residential subscriber through the use of a private branch exchange (PBX) or other call-generating system that is not capable of transmitting caller identification information shall not be in violation of this subsection.~~ No provider of telephone caller identification services shall be held liable for violations of this subsection committed by other persons or entities."

SECTION 4. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-30.2. No-Call Registry.**

The Attorney General shall establish and maintain a No-Call Registry containing the telephone numbers of residential telephone subscribers who do not wish to receive telephone solicitations at those numbers. The No-Call Registry shall be operated as follows:

(1) The telephone number of a residential telephone subscriber shall be placed in the No-Call Registry immediately upon receipt of a request submitted by the residential telephone subscriber pursuant to registration procedures established by the Attorney General. The residential telephone subscriber's number shall remain in the No-Call Registry until the residential telephone subscriber notifies the Attorney General, in accordance with these registration procedures, that it should be removed. A local exchange company, as defined in G.S. 62-3, or a competing local provider, as defined in G.S. 62-3, shall provide the Attorney General a list of disconnected numbers on an annual basis.

(2) Not less than 10 days before commencing telephone solicitations in this State, a telephone solicitor shall register pursuant to G.S. 66-261 and obtain from the Attorney General a copy of the most up-to-date quarterly edition of the No-Call Registry. On the first business day following each January 1, April 1, July 1, and October 1 of each year, the Attorney General shall produce and make available to registered telephone solicitors a revised, quarterly edition of the No-Call

Registry. A telephone solicitor has 30 days to use the updated No-Call Registry to remove residential telephone subscribers from its telemarketing list. A telephone solicitor that relies upon any version of the No-Call Registry beyond the quarter for which it was produced and issued is in violation of this section.

(3) The Attorney General shall make the latest edition of the No-Call Registry available to the registered telephone solicitor in written form upon request, or in an appropriate electronic form.

(4) The Attorney General may contract with an agent to establish and operate the No-Call Registry under this section so long as all of the following are satisfied:

a. The agent has demonstrated the capacity to maintain and operate such a registry.

b. The Attorney General, upon entering into a contract under this section, has ultimate authority over the agent for the approval of procedures for the establishment, maintenance, and dissemination of the listings in the No-Call Registry.

(5) The Attorney General shall transfer into the No-Call Registry the numbers of all residential telephone subscribers who have enrolled in any national do-not-call registries that may be established and operated by agencies of the United States government. The Attorney General shall also arrange to transfer information from the No-Call Registry under this section to such federal agencies so that the wishes of the residential telephone subscribers are recorded in those national do-not-call registries.

(6) No telephone solicitor or other entity shall sell, assign, transfer, or convey any copy of the No-Call Registry to parties other than its employees or its wholly owned subsidiaries. If a telephone solicitor utilizes other telephone solicitors to make telephone solicitations for it in North Carolina on a subcontract, commission, partnership, or similar basis, that other telephone solicitor shall register under G.S. 66-261 and shall procure and utilize its own copy of the current No-Call Registry from the Attorney General in accordance with the provisions of this section. No telephone solicitor may use the information on the No-Call Registry for any purpose other than to remove residential telephone subscribers from its own telephone call lists and to prevent calls from being placed by it to telephone numbers listed in the No-Call Registry.

(7) No information compiled and maintained in the No-Call Registry is a public record under Chapter 132 of the General Statutes. Information contained in the No-Call Registry shall be used only for complying with or enforcing the requirements of this section.

(8) The Attorney General shall produce a bill insert that notifies consumers of the existence of the No-Call Registry and provides

information to consumers on how to use it to object to receiving telephone solicitations. Local exchange companies shall distribute the insert pursuant to G.S. 62-54."

SECTION 5. G.S. 62-54 reads as rewritten:

"**§ 62-54. Notification of opportunity to object to telephone solicitation.**

The Commission shall require each local exchange company and each competing local exchange company certified to do business in North Carolina to notify all persons who subscribe to residential service from that company of the provisions of ~~G.S. 75-30.1,~~G.S. 75-30.1 and G.S. 75-30.2 and of the federal laws and regulations allowing consumers to object to receiving telephone solicitations, ~~and of programs made available by private industry that allow consumers to have their names removed from telemarketing lists, by enclosing that information,~~ at least ~~annually;~~two times per calendar year. ~~in every telephone bill mailed to residential customers.~~ This information shall be disseminated once every two years by a carrier in the form of a bill insert drafted pursuant to G.S. 75-30.2(8) and reprinted at the local exchange company's or competing local exchange company's expense. This information shall also be disseminated three times every two years by the carrier via bill messages or inserts in a manner chosen by the carrier with the approval of the Attorney General and not expressly prohibited by the Commission. The Commission shall also ensure that this information is printed in a clear, conspicuous manner in the consumer information pages of each telephone directory distributed to residential customers."

SECTION 6. G.S. 75-30 reads as rewritten:

"**§ 75-30. Automatic dialing and recorded message players; restriction on use of.**

(a) No person may make an unsolicited telephone call by the use of an automatic dialing and recorded message player ~~unless:~~unless all of the following conditions are satisfied:

(1) Such calling person is a ~~charitable, civic, political or~~ tax-exempt charitable or civic organization; a political party or political candidate; a governmental official; or an opinion polling ~~organization~~ organization, ~~or a~~ radio station, television ~~station~~ station, or broadcast rating service conducting a public opinion ~~poll required by law; and~~ poll.

(1a) No part of the call is used to solicit or encourage the purchase or rental of, or investment in, property, goods, or services; to obtain information that will or may be used to solicit or encourage the purchase or rental of, or investment in, property, goods, or services; or to solicit or encourage the making of a charitable donation.

(2) Such calling person clearly identifies the nature of the call and the name and address of the calling organization.

(b) As an exception to subsection ~~(a)~~ (a) of this section, an unsolicited telephone call may be made by the use of an automatic dialing and recorded message player if the recorded message is preceded by an announcement made by a ~~human~~ live operator ~~who:~~who does all of the following:

(1) States the nature and length in minutes of the recorded ~~message; and~~message.

(2) Identifies the individual, business, group, or organization ~~calling; and~~calling.

(3) Asks ~~the called party whether he is willing to listen to the recorded message; and~~ for and receives the called party's prior approval to play the recorded message.

(4) ~~Disconnects~~ Promptly disconnects from the called party's line ~~if~~ once the called party ~~is unwilling to listen to the recorded message.~~hangs up or otherwise attempts to terminate the call.

(c) For the purpose of this ~~section~~ section, an automatic dialing and recorded message player shall be defined as any automatic equipment which incorporates a storage capability of telephone numbers to be called or a random or sequential number generator capable of producing numbers to be called and the capability, working alone or in conjunction with other equipment, of disseminating a prerecorded message to the telephone number called.

(d) For the purpose of this section, a telephone call shall be deemed to be unsolicited unless pursuant to a prior agreement between the parties the person called has agreed to accept such calls from the person ~~calling.~~ calling, and the person called has not subsequently expressed to the caller a desire not to receive further telephone solicitations in accordance with provisions of G.S. 75-30.1.

~~(e) Violation of this section shall be a Class 3 misdemeanor, punishable only by a fine of one hundred dollars ($100.00), for each occurrence.~~

(f) This section does not apply to calls made in connection with an existing debt or contract for which payment or performance has not been completed at the time of the call."

SECTION 7. Article 33 of Chapter 66 of the General Statutes reads as rewritten:

"Article 33.

"~~Telephonic Seller~~Telephone Solicitor Registration and Bond Requirement.

"**§ 66-260. Definitions.**

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

(1) 'Gift or prize' means any premium, bonus, award, or any other thing of value.

(1a) 'Inbound telephone solicitation' means a voice communication over a telephone line that is initiated by a prospective purchaser in response to any unsolicited letter, telegram, telephone call, television advertising, e-mail message, or other notice that does any one or more of the following:

a. States that the prospective purchaser has won, may have won, or may win any contest, sweepstakes, raffle, or lottery.

b. States that the prospective purchaser may obtain or qualify for credit by contacting the telephone solicitor unless the telephone solicitor is a federally chartered bank, savings institution, or

credit union or any bank, savings institution, or credit union properly licensed by the State or subject to federal regulating authorities.

c. States that the prospective purchaser has an opportunity to receive a free or discounted vacation or travel package.

d. Generates a call during which the telephone solicitor offers the prospective purchaser membership into a discount buying club, as defined in G.S. 66-131.

(2) 'Item' means any good or any service. 'Item' includes coupon books, vouchers, or certificates that are to be used with businesses other than the ~~seller's~~telephone solicitor's business.

~~(3) 'Owner' means a person who owns or controls ten percent (10%) or more of the equity of, or otherwise has a claim to ten percent (10%) or more of the net income of, a telephonic seller.~~

(4) 'Person' includes any individual, firm, association, corporation, partnership, joint venture, or any other business entity.

(5) 'Principal' means an owner, a part-owner holding or controlling ten percent (10%) or more of the equity of, or otherwise having a claim to ten percent (10%) or more of the net income of, a telephone solicitor, an executive officer of a corporation, a general partner of a partnership, a sole proprietor of a sole proprietorship, a trustee of a trust, or any other individual with similar supervisory functions with respect to any person.

(6) 'Purchaser' or 'prospective purchaser' means ~~a person who is solicited to become obligated to a telephonic seller or to make any donation or gift to any person represented by the telephonic seller.~~ the residential telephone subscriber, as defined in G.S. 75-30.1(a)(1), whose telephone number is called or used in a telephone solicitation, and includes any member of the residential telephone subscriber's household who is a party to any telephone solicitation transaction.

~~(7) 'Room operator' means any principal, employee, or agent responsible for the operational management and supervision of facilities from which telephonic sales calls are made or received.~~

~~(8) 'Salesperson' means any individual employed, appointed, or authorized by a telephonic seller, whether referred to by the telephonic seller as an agency, representative, or independent contractor, who attempts to solicit or solicits a sale on behalf of the telephonic seller.~~

~~(9) 'Secretary' means the Office of the Secretary of State.~~

(10) 'Telephone solicitation' or 'attempted telephone solicitation' ~~means any telephonic communication designed to persuade any person to purchase goods or services, to enter a contest, or to contribute to a charity or a person represented to be a charity, regardless of whether the telephone call initiating the solicitation is placed by the (i) telephonic seller or (ii) a person responding to any unsolicited notice~~

~~or notices sent or provided by or on behalf of the seller, which notice or notices represent to the recipient that he or she has won a gift or prize, that the recipient may obtain or qualify for credit by contacting the seller, or that the seller has buyers interested in purchasing the recipient's property.~~ has the same meaning as telephone solicitation in G.S. 75-30.1.

(11) ~~'Telephonic seller' or 'seller' means a person who, directly or through salespersons, causes a telephone solicitation or attempted telephone solicitation to occur. 'Telephonic seller' and 'seller' do not include any of the following:~~

~~a. A securities 'dealer' within the meaning of G.S. 78A-2(2) or a person excluded from the definition of 'dealer' by that provision; a 'salesman' within the meaning of G.S. 78A-2(9); an 'investment adviser' within the meaning of G.S. 78C-2(1) or a person excluded from the definition of 'investment adviser' by that provision; or an 'investment adviser representative' within the meaning of G.S. 78C-2(3); provided that such persons shall be excluded from the terms 'telephonic seller' and 'seller' only with respect to activities regulated by Chapters 78A and 78C.~~

~~b. Any person conducting sales or solicitations on behalf of a licensee of the Federal Communications Commission or holder of a franchise or certificate of public convenience and necessity from the North Carolina Utilities Commission.~~

~~c. Any insurance agent or broker who is properly licensed by the Department of Insurance and who is soliciting within the scope of the agent's or broker's license or any employee or independent contractor of an insurance company licensed by the Department of Insurance conducting sales or solicitations on behalf of that company.~~

~~d. Any federally chartered bank, savings institution, or credit union or any bank, savings institution, or credit union properly licensed by the State or subject to federal regulating authorities.~~

~~e. Any organization that is exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section, or that is organized exclusively for one or more of the purposes specified in section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section and that upon dissolution shall distribute its assets to an entity that is exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section, the United States, or a state; any "charitable solicitor" properly licensed under Article 2 of Chapter 131F of the General Statutes, or any person exempt from Chapter 131F of the General Statutes under G.S. 131F-3.~~

~~f. A person who periodically issues and delivers catalogs to potential purchasers and the catalog:~~
~~1. Includes a written description or illustration and the sales price of each item offered for sale;~~
~~2. Includes at least 24 full pages of written material or illustrations;~~
~~3. Is distributed in more than one state; and~~
~~4. Has an annual circulation of not less than 250,000 customers.~~
~~g. A person engaging in a commercial telephone solicitation where the solicitation is an isolated transaction and not done in the course of a pattern of repeated transactions of a like nature.~~
~~h. A person primarily soliciting the sale of a newspaper of general circulation, a publisher of a magazine or other periodical of general circulation, or an agent of such a publisher acting pursuant to a written agency agreement.~~
~~i. A person soliciting the sale of services provided by a cable television system operating under the authority of a local franchise.~~
~~j. Any passenger airline licensed by the Federal Aviation Administration.~~
~~k. Any person holding a real estate broker's or sales agent's license under Chapter 93A of the General Statutes and who is soliciting within the scope of the broker's or agent's license.~~
~~l. Any person soliciting a transaction regulated by the Commodities Futures Trading Commission, provided the person is registered or temporarily licensed by the Commodities Futures Trading Commission under the Commodity Exchange Act, 7 U.S.C. § 1, et seq.~~
~~m. Any person soliciting a purchase from a business, provided the person soliciting makes reasonable efforts to ensure that the person solicited has actual authority to bind the business to a purchase agreement.~~
~~n. A foreign corporation, limited liability company, or limited partnership that has obtained and maintained a certificate of authority to transact business or conduct affairs in this State pursuant to Chapter 55, 55A, or 57C or Article 5 of Chapter 59 of the General Statutes and that only transacts business or conducts affairs in this State using the name set forth in the certificate of authority.~~
~~o. An issuer or a subsidiary of an issuer that has a class of securities which is subject to section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 781) and which is either registered or exempt from registration under paragraph (A),~~

~~paragraph (B), paragraph (C), paragraph (E), paragraph (F), paragraph (G), or paragraph (H) of subsection (g)(2) of that section.~~

~~p. A person soliciting the sale of food, seeds, or plants when a sale does not involve an amount in excess of one hundred dollars ($100.00) directed to a single address.~~

~~q. A person soliciting:~~

~~1. Without intent to complete or obtain provisional acceptance of a sale during the telephone solicitation;~~

~~2. Who does not make the major sales presentation during the telephone solicitation but arranges for the major sales presentation to be made at a later face-to-face meeting between the salesperson and the purchaser;~~

~~3. Who does not cause an individual to go to the prospective purchaser to collect payment for the purchase or to deliver any item purchased directly following the telephone solicitation; or~~

~~4. Who offers to send the purchaser descriptive literature and does not require payment prior to the purchaser's review of the descriptive literature.~~

~~r. A person soliciting the purchase of contracts for the maintenance or repair of items previously purchased from the person making the solicitation or on whose behalf the solicitation is made.~~

~~s. A book, video, recording, or multimedia club or contractual plan or arrangement:~~

~~1. Under which the seller provides the consumer with a form with which the consumer can instruct the seller not to ship the offered merchandise.~~

~~2. Which is regulated by the Federal Trade Commission trade regulation concerning "use of negative option plans by sellers in commerce".~~

~~3. Which provides for the sale of books, recordings, multimedia products or goods, or videos which are not covered under paragraphs 1. or 2. of this sub-subdivision, including continuity plans, subscription arrangements, standing order arrangements, supplements, and series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive such merchandise on a periodic basis.~~

~~t. A person who for at least two years has been operating under the same name as that used in connection with its telemarketing operations and retail establishment in North Carolina where~~

~~consumer goods are displayed and offered for sale on a continuing basis if a majority of the person's business involves the buyers obtaining services or products at the person's retail establishment.~~

~~u. A person:~~

~~1. Who provides telephone solicitation services under contract to sellers;~~

~~2. Who has been operating continuously for at least three years under the same business name; and~~

~~3. For whom at least seventy-five percent (75%) of the person's contracts are performed on behalf of other persons exempt under this section.~~

~~v. A person soliciting political contributions in accordance with Article 22A of Chapter 163 of the General Statutes.~~

~~w. The seller of a "business opportunity" as defined in G.S. 66-94, while engaged in activities subject to regulation under Article 19 of Chapter 66 of the General Statutes, provided that such seller has complied with the provisions of G.S. 66-97.~~

~~x. A "loan broker" as defined in G.S. 66-106, while engaged in activities subject to regulation under Article 20 of Chapter 66 of the General Statutes, provided that such loan broker has complied with the provisions of G.S. 66-109.~~

~~y. A "membership camping operator" as defined in G.S. 66-232(10) or a "salesperson" as defined in G.S. 66-232(16), while engaged in activities subject to regulation under Article 31 of Chapter 66 of the General Statutes, provided that such persons have complied with the provisions of G.S. 66-234 and 66-237, as applicable.~~

'Telephone solicitor' or 'solicitor' has the same meaning as 'telephone solicitor' in G.S. 75-30.1 and includes any person, business, or other legal entity that receives inbound telephone solicitations.

"**§ 66-261. Registration of ~~telephonic sellers.~~telephone solicitors.**

(a) Not less than 10 days before commencing telephone solicitations in this State, a ~~telephonic seller~~ telephone solicitor shall register with the ~~Secretary~~ Attorney General by filing the information required in G.S. 66-262 and paying a filing fee of ~~one hundred dollars ($100.00).~~one thousand dollars ($1,000) if the telephone solicitor has 500 or more direct employees; seven hundred fifty dollars ($750.00) if the telephone solicitor has between 50 and 500 direct employees; five hundred dollars ($500.00) if the telephone solicitor has between five and 51 direct employees; and two hundred fifty dollars ($250.00) if the telephone solicitor has five or fewer direct employees. A ~~telephonic seller~~ telephone solicitor is doing business in this State if it ~~solicits or attempts to solicit prospective purchasers from locations in this State or solicits or attempts to solicit prospective purchasers who are located in this State.~~makes or causes

to be made any telephone solicitation to prospective purchasers, whether the telephone solicitations are made from a location inside North Carolina or outside North Carolina.

(b) The information required in G.S. 66-262 shall be submitted on a form provided by the ~~Secretary~~ Attorney General and shall contain the notarized signatures of ~~each~~ an authorized principal of the ~~telephonic seller.~~telephone solicitor.

(c) Registration of a ~~telephonic seller~~ telephone solicitor shall be valid for one year from the effective date thereof and may be annually renewed by making the filing required in G.S. 66-262 and paying the filing fee required by subsection (a) of this section.~~of one hundred dollars ($100.00).~~ Registration shall not be deemed effective unless all required information is provided and any deficiencies or errors noted by the ~~Secretary~~ Attorney General have been corrected to the satisfaction of the ~~Secretary.~~Attorney General.

(d) Whenever, prior to expiration of a ~~seller's~~ telephone solicitor's annual registration, there is a change in the information required by G.S. 66-262, the ~~seller~~ telephone solicitor shall, within ~~10~~ 30 days after the change, file an addendum with the ~~Secretary~~ Attorney General updating the information.

"**§ 66-262. Filing information.**

(a) Each filing submitted to the ~~Secretary~~ Attorney General shall contain all of the following information:

(1) The name or names, including any assumed names, under which the ~~telephonic seller~~ telephone solicitor is doing or intends to do business in this State.

(2) The ~~telephonic seller's~~ telephone solicitor's business form and place of ~~organization and, if the seller is a corporation, copies of its articles of incorporation and bylaws and amendments thereto, or if a partnership, a copy of the partnership agreement.~~organization.

(3) Complete street address of the ~~telephonic seller's~~ telephone solicitor's principal place of business.

~~(4) The complete street address of each location from which telephone solicitations are placed by the telephonic seller.~~

~~(5) A listing of all telephone numbers to be used by the telephonic seller, including area codes, and the complete street address of the business premises served by each number.~~

(6) The name and title of each principal.

~~(7) The complete street address of the residence, the date of birth, and the social security number of each principal.~~

~~(8) The true name, street address, date of birth, and the social security number of each room operator, together with the room operator's full employment history during the preceding two years.~~

~~(9) The name and address of all banks or savings institutions where the telephonic seller maintains deposit accounts.~~

~~(10) The name and address of each long-distance telephone carrier used by the telephonic seller.~~

(10a) The name, title, telephone number, fax number (if any), electronic mail address (if any), and mailing address of the party to whom all notices, information regarding changes in North Carolina telemarketing regulations, and current copies of the No-Call Registry established under G.S. 75-30.2 shall be delivered.

(11) A summary of each ~~civil or criminal proceeding~~ civil, criminal, or administrative proceeding, including a consent judgment or consent decree without litigation and including an assurance of discontinuance or an assurance of voluntary compliance in order to resolve any allegation that has been brought by any federal, state, or local government agency or local official within the United States or any federal, provincial, or local government agency or official in Canada, ~~brought against the telephonic seller,~~ in which the telephone solicitor, any of its principals, ~~or any of its room operators~~ subsidiaries, or corporate predecessors has been a party during the ~~preceding five years~~10-year period preceding registration or renewal of registration, ~~by federal, State, or local officials relating to telephonic sales practices of each.~~ and which proceeding involves allegations that regulations, agency rules, ordinances, or statutes pertaining to telephone solicitations have been violated by the telephone solicitor or that the telephone solicitor or any of its principals, subsidiaries, or corporate predecessors have violated any criminal statute prohibiting mail fraud, wire fraud, money laundering, obtaining property by false pretenses, or other forms of fraud. The summary shall include the date each ~~action~~ proceeding was commenced, the ~~criminal or civil charges~~criminal, civil, or administrative violations alleged, the case caption, the court or agency proceeding file number, the ~~court venue,~~ venue of the proceeding, and the disposition or current status of the ~~action.~~ proceeding. ~~For purposes of this section, a 'civil proceeding includes' means assurances of voluntary compliance, assurances of discontinuance, consent judgments, and similar agreements executed with federal, State, or local officials.~~ The summary of settlement agreements, assurances of discontinuance, and assurances of voluntary compliance shall include the date each was executed, the violations alleged or resolved, and the name and address of the agency or official that executed the document with the telephone solicitor.

(b) For purposes of this section, 'street address' does not include a private mail service ~~address.~~address, 'Commercial Mail Receiving Agency' ('CMRA') or 'private mailbox' ('PMB'), as those terms are defined by the United States Postal Service.

(c) The requirements of G.S. 62-262(a)(11) do not apply to any federally or state chartered bank, savings institution, credit union, any licensee of the Federal Communications Commission, or any holder of a franchise or certificate of public convenience and necessity from the North Carolina Utilities Commission; provided that if the Attorney General receives complaints against any such telephone solicitor and

requests the summary of information pursuant to G.S. 66-262(a)(11), then the telephone solicitor shall provide it within 30 days.

"§ 66-263. Bond requirement; prizes and gifts.

(a) At least 10 days before the commencement of any promotion offering any gift or prize with an actual or represented market value of five hundred dollars ($500.00) or more, the ~~telephonic seller~~ telephone solicitor shall notify the ~~Secretary~~ Attorney General in writing of the details of the promotion, fully describing the nature and number of all gifts or prizes and their current market value, the ~~seller's~~ telephone solicitor's rules and regulations governing the promotion, and the date the gifts or prizes are to be awarded. All gifts or prizes offered shall be awarded. Concurrent with notifying the ~~Secretary~~ Attorney General under this subsection, the ~~telephonic seller~~ telephone solicitor shall post a bond with the ~~Secretary~~ Attorney General for the market value or the represented value, whichever is greater, of all gifts or prizes represented as available under the promotion. The bond must be issued by a surety company authorized to do business in this State. The bond shall be in favor of the State of North Carolina for the benefit of any person entitled to receive a gift or prize under the promotion who did not receive it within 30 days of the specified date of award. The amount recoverable by any person under the bond shall not exceed the market value, the represented value of the gift or prize, or the amount of any consideration or contribution paid by that person in response to the telephone solicitation, whichever is greatest.

(b) Within 45 days after the specified date of the award of the gift or prize, the ~~seller~~ telephone solicitor shall provide, in writing, to the ~~Secretary,~~Attorney General, proof that the gifts or prizes were awarded. The writing shall include the name, address, and telephone number of all persons receiving awards or prizes. The bond shall be maintained until the ~~Secretary~~ Attorney General receives reliable proof that the gifts or prizes have been delivered to the intended recipients.

(c) The Attorney General, on behalf of any injured purchaser, or any purchaser who is injured by the bankruptcy of the ~~telephonic seller~~ telephone solicitor or its breach of any agreement entered into in its capacity as a ~~telephonic seller,~~telephone solicitor, may initiate a civil action to recover against the bond.

"§ 66-264. Calls made to minors.

A ~~telephonic seller~~ telephone solicitor must inquire as to whether the prospective purchaser it is contacting is under 18 years of age. If the prospective purchaser purports to be under 18 years of age, the ~~telephonic seller~~ telephone solicitor must discontinue the call immediately.

"§ 66-265. Offers of gifts or prizes.

(a) It shall be unlawful for any ~~telephonic seller~~ telephone solicitor to make a telephone solicitation or attempted telephone solicitation involving any gift or prize when the solicitation or attempted solicitation:

(1) Requests or directs the consumer to further the transaction by calling a 900 number or a pay-per-call number.

(2) Requests or directs the consumer to send any payment or make a donation in order to collect the gift or prize.

(3) Does not comply fully with G.S. 75-30, 75-32, 75-33, or 75-34.

(b) Notwithstanding subsection (a) of this section, a ~~telephonic seller~~ telephone solicitor may offer a gift or prize in connection with the bona fide sale of a product or service.

"**§ 66-265.1. Regulation of contracts secured during telephone solicitations.**

(a) In all transactions involving prospective purchasers, no contract or purchase agreement secured during a telephone solicitation is valid, and no money from the prospective purchaser is due thereunder, unless all of the following conditions are satisfied:

(1) The contract is reduced to writing and signed by the consumer.

(2) The contract complies with all other applicable laws.

(3) The contract contains the name, address, and business telephone number of the seller, the total price of the contract, and a detailed description of the goods or services being sold.

(4) The goods or services subject to the contract comply with the description principally used in the telephone solicitation.

(5) The contract contains, in bold, conspicuous type, immediately preceding the signature, the words: 'You are not obligated to pay any money unless you sign this contract and return it to the seller.'

(6) The contract does not exclude from its terms any oral or written representations made by the telephone solicitor to the consumer in connection with the transaction.

(b) A telephone solicitor or a merchant who engages a telephone solicitor to make or cause to be made a telephone solicitation to a prospective purchaser shall not do any of the following until the merchant receives from the prospective purchaser a copy of the written contract, signed by the consumer, that complies with this section:

(1) Make or submit a charge to a consumer's credit card account, debit card account, checking account, savings account, or other account.

(2) Make or cause to be made any electronic transfer of funds.

(c) The provisions of this section do not apply to any transaction in which the prospective purchase has a right to cancel a contract or offer to purchase made during a telephone solicitation and receive a full refund, provided that all of the following conditions are satisfied:

(1) In telephone solicitation sales involving goods, the prospective purchaser shall have a right to cancel a contract or offer to purchase within seven days of receiving the goods and receive a full refund.

(2) In telephone solicitation sales involving goods, an invoice and cancellation notice must accompany the goods. The cancellation notice shall be written in twelve-point bold face type and state that the purchaser has a right to cancel the transaction within seven days of receipt and not be billed for the goods if no prior payment is made or receive a full refund if prior payment is made.

(3) In telephone solicitation sales involving services or free trial periods, the prospective purchaser shall have a right to cancel a contract or

offer to purchase within 30 days of receiving the bill or monthly statement of the account charged and receive a full refund.

(4) Notice of cancellation by the buyer may occur either by use of the cancellation notice or any other form of written expression of the intent of the prospective purchaser not to be bound by the telephone solicitation sale.

(5) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the cancellation notice, contract, or offer to purchase.

(6) Notice of cancellation by the prospective purchaser to the telephone solicitor or merchant, if given by mail, is given when it is deposited in the United States mail properly addressed and postage prepaid.

(7) The telephone solicitor shall process a full refund within 30 days of receipt of the returned goods or a cancellation notice of services.

(d) Nothing in subsection (c) of this section shall be construed to relieve the purchaser of any obligation of payment for any consumption of goods or use of services prior to return or notice of cancellation.

(e) The provisions of subsection (c) of this section do not apply to any transaction that by its nature cannot be canceled or reversed.

"**§ 66-265.2. Previously obtained account numbers.**

(a) This section does not apply to a telephone solicitor who has an established business relationship, as defined in G.S. 75-30.1, with a prospective purchaser and who is charging an account maintained by that prospective purchaser.

(b) A telephone solicitor shall not charge or debit a prospective purchaser's previously obtained account number in a telephone solicitation unless the telephone solicitor has first obtained authorization, either in writing or verbally, from the prospective purchaser for the specific charge or debit discussed during the telephone solicitation. For purposes of this section, 'account' shall mean the credit or debit cared, checking, savings, loan, telephone service, utility, or other similar account.

(c) Verbal authorizations must comply with all of the following requirements:

(1) The telephone solicitor shall advise the prospective purchaser in a normal tone and at a normal pace during the call of the following information:

a. That the telephone solicitor has the prospective purchaser's account number or the ability to charge the account if the telephone solicitor does not have an account number.

b. That the telephone solicitor is going to charge the prospective purchaser's account.

c. The digits of the account number, unless the telephone solicitor does not know the account number because federal law precludes a financial institution from sharing the account number with the telephone solicitor or the telephone solicitor otherwise does not have the account number. In such cases, the telephone solicitor shall disclose again that it has the ability to

charge the account number, although it does not have the account number of the prospective purchaser.

d. The specific amount that will be charged to the prospective purchaser's account.

e. A clear, accurate, and concise description of the product or service being purchased.

f. All material terms and conditions of the sale, including cancellation rights.

g. The name, address, and telephone number of the person who will be charging the account number.

(2) The telephone solicitor shall audio tape the authorization and shall advise the prospective purchaser that the authorization is being recorded.

(3) The authorization shall be kept and maintained for a period of two years and shall be made available to the purchaser upon written request.

"**§ 66-266. Penalties.**

(a) Any violation of this Article shall constitute an unfair and deceptive trade practice in violation of ~~G.S. 75-1.1.~~G.S. 75-1.1, except for inadvertent errors in the application process.

(b) In an action by the Attorney General against a ~~telephonic seller~~ telephone solicitor for violation of ~~this Article,~~ G.S. 66-262(a)(11), 66-263, 66-265, 66-265.1, or 66-265.2 or for any other act or practice by a ~~telephonic seller~~ telephone solicitor constituting a violation of G.S. 75-1.1, the court may impose civil penalties of up to twenty-five thousand dollars ($25,000) for each violation involving North Carolina purchasers or prospective purchasers who are 65 years of age or older.

(c) The remedies and penalties available under this section shall be supplemental to others available under the law, both civil and criminal.

(d) Compliance with this Article does not satisfy or substitute for any other requirements for license, registration, or conduct imposed by law.

(e) In any civil proceeding alleging a violation of this Article, the burden of proving an exemption or an exception from a definition is upon the person claiming it, and in any criminal proceeding alleging a violation of this Article, the burden of producing evidence to support a defense based upon an exemption or an exception from a definition is upon the person claiming it,"

SECTION 8. Should one or more of the terms or provisions of this act or any application thereof be held or declared unenforceable or invalid to any extent, the remainder of this act, and the applications thereof that have not been held or declared unenforceable or invalid, shall remain in effect.

SECTION 9. Consistent with protected speech rights of businesses that engage in telephone solicitations, the provisions of this act shall be given broad construction so as to protect residential telephone subscribers from unwanted telephone solicitations and from problematic sales techniques and payment procedures often associated with these solicitations.

SECTION 10. Section 3 of this act becomes effective January 1, 2006. G.S. 62-54, as amended by Section 5 of this act, applies to all telephone directories printed on or after April 1, 2003. All other sections of this act become effective January 1, 2003, and apply to telephone solicitations made on or after that date.

SECTION 11. Notwithstanding Section 10 of this act, Sections 1 through 10 of this act become effective only if a bill to modify the current operations appropriations for the 2002-2003 fiscal year becomes law and that bill contains a provision that is equivalent to Section 15.2(a) of the Senate Bill 1115, Third Edition Engrossed 6/19/02.

HOUSE BILL 1612:
Stop Unwanted Telephone Solicitations

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representatives Baddour and Redwine
Date:	August 15, 2002		
Version:	Proposed Committee Substitute H1612-CSSBf-SB-73 [v.5]	**Summary by:**	Jeff Hudson, Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 1612, would direct the Attorney General to establish a No-Call Registry and would prohibit telephone solicitors from calling the telephone number of a residential telephone subscriber if the subscriber's telephone number appears in the No-Call Registry. The Proposed Committee Substitute would also increase the filing fees for telephone solicitors and regulate the formation of contracts via telephone solicitations.***

BILL ANALYSIS:

Section 1. Findings

Section 2. Restrictions on Telephone Solicitations

Under current law, a telephone solicitor may not call a residential telephone subscriber who has communicated to that telephone solicitor a desire to be taken off the telephone solicitor's contact list. Section 2 prohibits a telephone solicitor from calling the telephone number of a residential telephone subscriber if the subscriber's telephone number appears in the No-Call Registry.

Section 2 also:

- Amends the definitions related to the regulation of telephone solicitations as follows:
  - Expands the definition of "telephone solicitation" to include telephone calls for the purpose of soliciting or encouraging participation in a contest, sweepstakes, raffle, or lottery and for the purpose of obtaining a charitable donation.
  - Amends the list of exemptions from the definition of "telephone solicitation" as follows:
    - The established business relationship exemption applies to existing business relationships as well as business relationships that have existed within the prior 18 months. An established business relationship is an ongoing, voluntary relationship formed prior to the telephone solicitation between a telephone solicitor or one or more of its affiliates and a residential telephone subscriber.
    - An exemption is added for calls that are in connection with an existing debt or contract.
    - An exemption is added for reference checks.
    - An exemption is added for persons, businesses, or other legal entities that employ fewer than 10 direct employees and those direct employees collectively make or attempt to make no more than 10 unsolicited calls per week.
    - An exemption is added for arranging face-to-face meetings.

  - Defines "doing business in this State" as making or causing to be made any telephone solicitation to residential telephone subscribers, whether the telephone solicitations are made from a location inside or outside North Carolina. **Note:** This definition is designed to address the issue of whether North Carolina has jurisdiction to enforce telephone solicitation laws against out-of-state telephone solicitors.

- Provides that if a telephone solicitor makes a call to a residential telephone subscriber whose number is in the No-Call Registry based on an existing or past business relationship and the subscriber communicates a desire to receive no further telephone solicitations from that telephone solicitor or one of its affiliates, the telephone solicitor will remove that person's number from its contact records and the contact records of all of its affiliates within 30 days.
- Provides that a telephone solicitor may contact a residential telephone subscriber whose telephone number appears in the No-Call Registry via non-telephonic means in order to obtain the subscriber's express written permission allowing the telephone solicitor to make telephone solicitations to the subscriber.
- Provides that a telephone solicitor may advertise in a general medium or contact a residential telephone subscriber whose telephone number appears in the No-Call Registry via non-telephonic means in order to encourage the subscriber to initiate telephonic communications to the telephone solicitor.
- Authorizes the Attorney General to bring an action to impose the following civil penalties for violations of telephone solicitation laws:
  - $500 for the first violation, $1,000 for the second violation, and $5,000 for the third and each subsequent violation within the past two years.
  - $100 for each violation within the past two years if the telephone solicitor has established in-house procedures to comply with telephone solicitation requirements, has maintained a list of persons that may not be contacted, and the violations are the result of a mistake.
- Authorizes the Attorney General to initiate an action on behalf of residential telephone subscribers. The Attorney General may not, however, seek treble damages under this provision.
- Authorizes a residential telephone subscriber who has received telephone solicitations in violation of the telephone solicitation laws to bring an action to recover $500 for the first violation, $1,000 for the second violation, and $5,000 for the third and each subsequent violation within the past two years.
- Provides that no action may be brought by or on behalf of residential telephone subscribers under this provision if the telephone solicitor has established in-house procedures to comply with telephone solicitation requirements, has maintained a list of persons that may not be contacted, and the violations are the result of a mistake

Section 3. Caller Identification Block

Under current law, a telephone solicitor may not knowingly block a residential telephone subscriber's caller identification service. Use of a call generating system that does not transmit caller identification information, however, is not a violation of this prohibition. Section 3 repeals the exemption for call generating systems effective January 1, 2006.

Section 4. No-Call Registry

Section 4 directs the Attorney General to establish and maintain a No-Call Registry containing the telephone numbers of residential telephone subscribers who do not wish to receive telephone solicitations at those numbers. The No-Call Registry will be operated in the following manner:

- The telephone number of a residential telephone subscriber will be placed in the No-Call Registry upon the request of the subscriber and will remain in the No-Call Registry until the subscriber requests its removal or the Attorney General is notified that the number has been disconnected.
- Not less than 10 days before commencing telephone solicitations, a telephone solicitor must register with the Attorney General, pay a filing fee, and obtain the latest edition of the No-Call Registry.
- A telephone solicitor may not sell, assign, transfer, or convey a copy of the No-Call Registry to parties other than its employees or its wholly owned subsidiaries.
- Information contained in the No-Call Registry may only be used to remove residential telephone subscribers from telephone call lists and to prevent calls from being placed to telephone numbers listed in the No-Call Registry. Information contained in the No-Call Registry is not a public record.

Section 5. Notification of Opportunity to Object to Telephone Solicitations

Under current law, each local exchange company must notify each residential telephone subscriber, at least annually, of various provisions of State and federal law that allow consumers to object to receiving telephone solicitations and that allow consumers to have their names removed from telemarketing lists. This information must also be contained in the consumer information pages of each telephone directory.

Section 5 requires both local exchange companies and competing local exchange companies to disseminate a bill insert produced by the Attorney General once every two years and disseminate a bill insert produced by the local exchange companies or competing local exchange companies three times every two years. This section applies to telephone directories printed on or after April 1, 2003.

Section 6. Restriction on Use of Automatic Dialing and Recorded Message Players

Under current law, no person may use an automatic dialing and recorded message player to make unsolicited telephone calls unless the person is a charitable, civic, political, or opinion polling organization, or a radio station, television station, or broadcast rating service conducting a public opinion poll and the person clearly identifies the nature of the call and the name and address of the calling organization. Violation of this prohibition is a Class 3 misdemeanor punishable only by a fine of $100 per occurrence.

Section 6 adds the requirement that no part of an unsolicited telephone call from an automatic dialing and recorded message player may be used to solicit or encourage the purchase or rental of, or investment in, property, goods, or services; to obtain information that will or may be used to solicit or encourage the purchase or rental of, or investment in, property, goods, or services; or to solicit or encourage the making of a charitable donation.

Section 6 also:

- Provides that a call is unsolicited if the telephone number of the person called appears in the No-Call Registry.
- Deletes the penalty for violation of this section.
- Provides that this section does not apply to calls made in connection with an existing debt or contract.

Section 7. Telephone Solicitor Registration and Bond Requirement

Under current law, not less than 10 days before commencing telephone solicitations, a telephone solicitor must register with the Secretary of State and pay a $100 filing fee. Section 7 requires telephone solicitors to register with the Attorney General not less than 10 days before commencing telephone solicitations and pay the following fees:

- $1,000 if the telephone solicitor employs 500 or more direct employees.
- $750 if the telephone solicitor employs between 50 and 500 direct employees.
- $500 if the telephone solicitor employs between 5 and 51 direct employees.
- $250 if the telephone solicitor employs 5 or fewer direct employees.

Section 7 also:

- Amends the definitions related to the registration and bonding of telephone solicitors as follows:
  - Defines "telephone solicitor" to also include any person, business, or other legal entity that receives inbound telephone solicitations.
  - Defines "inbound telephone solicitation" as a telephone call initiated by a prospective purchaser in response to any notice that the prospective purchaser has won a contest, may qualify for credit, may receive a free or discounted vacation, or may receive a membership into a discount buying club.
  - Defines "prospective purchaser" as a residential telephone subscriber and any member of the residential telephone subscriber's household.
- Provides that for a contract or purchase agreement secured during a telephone solicitation to be valid:
  - The contract must be reduced to writing and signed by the consumer.
  - The contract complies with all other applicable laws.
  - The contract contains the name, address, and business telephone number of the seller; the total price of the contract; and a detailed description of the goods or services being sold.
  - The goods or services comply with the description used in the telephone solicitation.
  - The contract contains a statement that the prospective purchaser is not obligated to pay unless the prospective purchaser signs the contract and returns it to the seller.
  - The contract does not exclude any representations made by the telephone solicitor.

  This provision does not apply to any transaction in which the prospective purchaser has a right to cancel a contract or offer to purchase and receive a full refund.

- Provides that a telephone solicitor or a merchant who engages a telephone solicitor to make telephone solicitations to a prospective purchaser may not make or submit a charge to the prospective purchaser's accounts or make an electronic transfer of funds until the merchant receives a signed copy of the written contract from the prospective purchaser. This provision does not apply to any transaction in which the prospective purchaser has a right to cancel a contract or offer to purchase and receive a full refund.
- Provides that a telephone solicitor cannot charge or debit a prospective purchaser's previously obtained account number in a telephone solicitation unless the telephone solicitor has obtained a written or verbal authorization from the prospective purchaser for the specific charge or debit discussed during the telephone solicitation.

Section 8. Severability Clause

If any provision of the act is held to be unenforceable or invalid, the remainder of the act that has not been held to be unenforceable or invalid shall remain in effect.

Section 9. Construction of Act

Consistent with protected speech rights, this act shall be construed broadly to protect residential telephone subscribers from unwanted telephone solicitations and from problematic sales techniques and payment procedures often associated with these solicitations. **Note:** This provision is designed to address concerns that may arise due to the act's regulation of various forms of speech.

Section 10. Effective Dates

Except as otherwise noted, this act is effective January 1, 2003 and applies to telephone solicitations made on or after that date.

Section 11. Effectiveness Contingent on Appropriation

This act becomes effective only if a Budget Bill that contains a provision that is equivalent to Section 15.2(a) of the Senate Budget Bill becomes law. Section 15.2(a) of the Senate Budget Bill provides that the Department of Justice may use up to one million dollars ($1,000,000) of the funds available to the Department during the 2002-2003 fiscal year to establish and implement a no-call registry to stop unwanted telemarketing calls and to increase protections for consumers in transactions initiated by telemarketers. Section 15.2(a) of the House Budget Bill provides that the Department of Justice may use up to seven hundred thousand dollars ($700,000) of the funds available to the Department during the 2002-2003 fiscal year to establish and implement a no-call registry to stop unwanted telemarketing calls and to increase protections for consumers in transactions initiated by telemarketers.

Following are the substantive changes that have been made to House Bill 1612 (Stop Unwanted Telephone Solicitations) since it was presented in House Judiciary II on July 9, 2002.

Proposed Committee Substitute H1612-CSSBf-73 [v.5]:

- Provides that the established business relationship exception to the definition of telephone solicitation applies to exiting business relationships as well as business relationships that have existed within the prior 18 months. Also defines "established business relationship" and "affiliate". (page 2, lines 42 through 44; page 3, lines 38 through 40; page 4, lines 1 through 5)

- Returns the tax-exempt organization exception to current law so that calls do not have to be made by direct employees of the organization or unpaid volunteers (page 3, line 4)

- Provides an exception to the definition of telephone solicitation for arranging a face-to-face meeting between the person initiating the call and the person receiving the call. (page 3, lines 14 through 33)

- Provides that if a telephone solicitor makes a call to a residential telephone subscriber whose number is in the No-Call Registry based on an existing or past business relationship and the subscriber communicates a desire to receive no further telephone solicitations from that telephone solicitor or one of its affiliates, the telephone solicitor will remove that person's number from its contact records and the contact records of all of its affiliates within 30 days. (page 4, lines 33 through 42)

- Provides that the Attorney General may initiate an action on behalf of residential telephone subscribers pursuant to G.S. 75-30.1(i). The Attorney General may not, however, seek treble damages under this provision. (page 6, lines 4 through 9)

- Provides that the increased penalties for multiple violations of the no call prohibition must occur within a two-year period. (page 6, lines 16, 17, and 36)

- Deletes the provision that allowed telephone subscribers to bring an action to recover $100 per violation of the no-call prohibition when the telephone solicitor had otherwise generally complied with telephone solicitation laws and procedures. Now provides that no action may be brought by or on behalf of residential telephone subscribers if the telephone solicitor generally complied with telephone solicitation laws and procedures. (was at page 6, between lines 36 and 37)

- Changes the requirement that local exchange companies notify the Attorney General when telephone numbers are disconnected to a requirement that local exchange companies provide the Attorney General a list of disconnected numbers on an annual basis. (page 7, lines 34 through 37)

- Removes the "technically feasible and economically practicable" language from the requirement that the Attorney General transfer telephone numbers from any federal do-not-call registry to the State No-Call Registry. (was at page 8, line 18)

- Provides that a telephone solicitor or other entity may not transfer a copy of its No-Call Registry to any party other than its employees or wholly owned subsidiaries. This provision no longer allows a telephone solicitor to transfer a copy of its No-Call Registry to independent contractors with whom the telephone solicitor has a business relationship. (page 8, lines 26 through 38)

- Reduces the requirement on local exchange companies to notify residential telephone subscribers of their opportunities to object to telephone solicitations. The bill insert produced by the Attorney General must be disseminated once every two years rather than once each year. The bill insert produced by the local exchange company must be disseminated three times every two years rather than once each year. (page 9, lines 5 through 21)

- Provides that the prohibition on using automatic dialing and recorded message players to make telephone solicitations also applies to telephone solicitations for charitable donations. (page 9, lines 36 and 37)

- Expands the definition of "inbound telephone solicitations" to include calls that are initiated in response to telephone calls and television advertising. Also expands the definition to include calls about free or discounted vacation or travel packages and memberships in discount buying clubs. (page 10, lines 37 and 38; page 11, lines 4 through 8)

- Bases the amount of the filing fee on the number of direct employees of the telephone solicitor rather than the employees and independent contractors. (page 15, line 32 through page 16, line 2)

- Excepts certain financial institutions that are acting as telephone solicitors from the requirement that they submit to the Attorney General information related to civil, criminal, or administrative proceedings involving certain forms of financial fraud. (page 17, line 40 through page 18, line 2)

- Provides that the regulation of contracts secured during telephone solicitations provisions do not apply to any transaction in which the prospective purchaser has a right to cancel a contract or offer to purchase and receive a full refund. (page 19, line 29 through page 10, line 19)

- Provides that a telephone solicitor cannot charge or debit a prospective purchaser's previously obtained account number in a telephone solicitation unless the telephone solicitor has obtained a written or verbal authorization from the prospective purchaser for the specific charge or debit discussed during the telephone solicitation. (page 20, line 20 though page 21, line 16)

- Expands violations that constitute unfair and deceptive trade practices to include violations of any provision of Article 33 (G.S. 66-260 through 266 --Telephonic Seller Registration) of Chapter 66 of the General Statutes, rather than just G.S. 66-262(a)(11) (filing information on proceedings related to financial fraud); G.S. 66-263 (Bond requirements; prizes and gifts); G.S. 66-264 (Calls made to minors); G.S. 66-265 (Offers of gifts or prizes); and G.S. 66-265.1 (Regulation of contracts secured during telephone solicitations). (page 21, lines 18 through 20)

Comparison of No-Call List and General Telephone Solicitation Laws by State

State	No-Call List or General Telephone Solicitation Law	List compiled by	Who notifies consumers	Time length on list	Cost to Consumer	Cost for Solicitors	Exemptions	Enforcement by	Civil/Criminal Penalties	Private Right of Action & Attorneys' Fees	Defenses
North Carolina											
HB 1612, First Edition	No-Call List	Attorney General (AG)	Local exchange companies	Until consumer notifies AG to remove name	No cost	$1,000 annual filing fee	Yes (see First Edition)	Attorney General	**Civil:** Up to $5,000 per violation	-Consumers have private cause of action -Can recover attorneys' fees	N/A
PCS for H1612 CSSBf-73 [v.5]	Same	Same	Local exchange companies and competing local exchange companies certified in NC	Until consumer notifies AG to remove name or until local exchange company or competing local provider notifies AG on annual basis that the number has been disconnected	Same	Annual filing fee based on number of direct employees: $1,000 - 500 or more employees; $750 - Between 50 and 500 employees; $500 - Between five and 51 employees; $250 - Five or fewer employees	Yes (see PCS)	Same	**Civil:** $500 for 1st violation, $1,000 for 2nd violation, $5,000 for the 3rd and each subsequent violation within 2 years. $100 for each violation within past 2 years if it can be shown that the solicitor has established and implemented an in-house system designed to prevent further calls and the violations are a result of mistake.	$500 for 1st violation, $1,000 for 2nd violation, $5,000 for the 3rd and each subsequent violation within past 2 years. Attorney General may bring action on behalf of residential telephone subscribers, but may not seek treble damages.	No action may be brought by or on behalf of residential telephone subscribers if telephone solicitor has established and implemented an in-house system designed to prevent further calls and the violations are a result of mistake
G.S. 75-30.1	General Telephone Solicitation Law	Telemarketers each maintains list of persons that have requested not to be called	Local exchange companies	N/A	N/A	N/A	N/A	Attorney General	**Civil:** consumer - $500 per violation Attorney General - up to $500 per violation	-Consumers have private cause of action -Can recover attorneys' fees	No

Comparison of No-Call List and General Telephone Solicitation Laws by State

Other States

State	No-Call List or General Telephone Solicitation Law	List compiled by	Who notifies consumers	Time length on list	Cost to Consumer	Cost for Solicitors	Exemptions	Enforcement by	Civil/Criminal Penalties	Private Right of Action & Attorneys' Fees	Defenses
Alabama ALA Code 8-19A-3	No-Call List	Public Service Commission	Local exchange companies	2 years	None	$500 annual	Yes (see attached)	Public Service Commission	**Civil:** up to $2,000 per violation	-Consumers have private cause of action -Can recover attorneys' fees	-Established & implemented with due care -Reasonable practices & procedures
Alaska Sec. 45.50.475	No-Call List	Public Service Commission	Local exchange companies	until request removal	$5	$25-50 annual	Yes (see attached)	Attorney General	**Civil:** consumer - up to $500 per violation Attorney General - up to $5,000 per violation	-Consumers have private cause of action -Can recover attorneys' fees	Written procedures, trained personnel, maintain no-call list, AND calls are infrequent 44-1278(B)(2)
Arizona A.R.S. 44-1271, 1278(B)(3)	General Telephone Solicitation Law	Telemarketers each maintains list of persons that have requested not to be called	N/A	N/A	N/A	N/A	Yes (see attached)	Attorney General	**Civil:** up to $10,000 per violation	-Consumers have private cause of action -Can recover attorneys' fees	Written procedures, trained personnel, maintain no-call list, AND call was in error 44-1278(B)(2)
Arkansas A.R.S. 4-99-404	No-Call List	Attorney General establishes and operates list	Attorney General	1 year	$5 per phone number $5 annual renewal	Free	Yes (see attached)	Attorney General	**Civil:** -up to $10,000 per violation -Additional penalty of up to $10,000 if committed against elderly **Criminal:** Class A misdemeanor	-Consumers have private cause of action -Can recover reasonable attorneys' fees	None enumerated

Comparison of No-Call List and General Telephone Solicitation Laws by State

State	No-Call List or General Telephone Solicitation Law	List compiled by	Who notifies consumers	Time length on list	Cost to Consumer	Cost for Solicitors	Exemptions	Enforcement by	Civil/Criminal Penalties	Private Right of Action & Attorneys' Fees	Defenses
California	No-Call List	Attorney General	N/A	3 years	$1	$1,000 annual; $250 quarter	Yes	Attorney General	**Civil:** -up to $500 for 1st violation -$1,000 for additional violations **Criminal:** Class A misdemeanor	-Consumers have private cause of action -Can recover reasonable attorneys' fees	Had list, written procedures, trained personnel, maintain no-call list, AND call was in error
Colorado	No-Call List	Public Utilities Commission	N/A	1 year	Free	$0-500	Yes (see attached)	Attorney General	N/A	-Consumers have private cause of action -Can recover attorneys' fees	N/A
Connecticut	No-Call List	Department of Consumer Protection (DCP)	N/A	until written request for removal received	Free	$415 annual	Yes (see attached)	Department of Consumer Protection (DCP)	**Civil:** consumer - up to $500 per violation DCP - $5,000 to $25,000 per violation	N/A	Written procedures, trained personnel, maintain no-call list, and call was in error
Delaware	None										
Florida F.S.C. 501.059	No-Call List	Dept. of Agriculture and Consumer Services	Local exchange companies	For as long as subscribed	$10 initial $5 annual	$100 per area code quarterly or $400 for entire state quarterly	Yes (see attached)	Dept. of Agriculture and Consumer Services or Department of Legal Affairs	**Civil:** up to $10,000 per violation	-Consumers have private cause of action -Can recover attorneys' fees	None enumerated
Georgia O.C.G.A. 46-5-27	No-Call List	Public Service Commission	Local exchange companies	2 years	$5	$10 annual	Yes (see attached)	Governor's Office of Consumer Protection	**Civil:** up to $2,000 per violation	-Consumers have private cause of action -No specific recovery of attorneys' fees	Established & implemented with due care, reasonable practices & procedures

Comparison of No-Call List and General Telephone Solicitation Laws by State

State	No-Call List or General Telephone Solicitation Law	List compiled by	Who notifies consumers	Time length on list	Cost to Consumer	Cost for Solicitors	Exemptions	Enforcement by	Civil/Criminal Penalties	Private Right of Action & Attorneys' Fees	Defenses
Hawaii H.R.S. 481P-4 thru 6, 480-2	General Telephone Solicitation Law	Telemarketers	None	N/A	N/A	N/A	Yes (see attached)	Attorney General; Office of Consumer Protection	**Civil:** $500-$10,000 per violation	-Consumers have private cause of action -Can recover attorneys' fees	None enumerated
Idaho	No-Call List	Attorney General	Local exchange companies	3 years	$10 initial, $5 renewal	$25 quarter, $100 year	Yes (see attached)	Attorney General	Yes	-Consumers have private cause of action - Can recover attorneys' fees	None enumerated
Illinois 815 ILCS 413/15(b)3	General Telephone Solicitation Law	Telemarketers each maintains list of persons that have requested not to be called	N/A	N/A	N/A	N/A	Yes (see attached)	Attorney General	**Civil:** Action by Attorney General, not to exceed $50,000 per violation	-Consumers have private cause of action for reasonable actual damages -Can recover attorneys' fees	None enumerated
Indiana	No-Call List	Attorney General	N/A	until request removal	Free	$300 annual	Yes (see attached)	Attorney General	**Civil:** $10,000 for 1st violation, $25,000 additional violations	-Consumers have private cause of action -Can recover attorneys' fees	None enumerated
Iowa	None										
Kansas	No-Call List	N/A	N/A	N/A	N/A	N/A	Yes (see attached)	N/A	N/A	N/A	N/A
Kentucky KRS 367.461	No-Call List	Attorney General	N/A	1 year	Free	$300 registration fee; $50,000 surety bond; $50 renewal fee	Yes (see attached)	Attorney General	**Civil:** $2,000 per willful violation **Criminal:** Class B misdemeanor for first offense; Class A misdemeanor for subsequent offenses	None	None enumerated

Comparison of No-Call List and General Telephone Solicitation Laws by State

State	No-Call List or General Telephone Solicitation Law	List compiled by	Who notifies consumers	Time length on list	Cost to Consumer	Cost for Solicitors	Exemptions	Enforcement by	Civil/Criminal Penalties	Private Right of Action & Attorneys' Fees	Defenses
Louisiana	No-Call List	Public Service Commission	N/A	5 years	Free	$800 annual fee;$20,000 surety bond	Yes (see attached)	Public Service Commission	**Civil:** up to $1,500 per violation and up to $3,000 when concerning consumers aged 65 or older	N/A	N/A
Maine	No-Call List	DMA	N/A	N/A	$5	$781 for the DMA list	Yes (see attached)	Attorney General	No	N/A	N/A
Maryland	None										
Massachusetts	None										
Michigan	None										
Minnesota	No-Call List	Department of Commerce	N/A	4 years	Free	$125 per quarter in 2003, $90 in 2004, and $75 in 2005 and each year thereafter	Yes (see attached)	Department of Commerce	**Civil:** $1,000 per violation	N/A	N/A
Mississippi	None										
Missouri	No-Call List	Attorney General	Local exchange companies	1 year	Free	$25 quarter per area code; $600 year	Yes (see attached)	Attorney General	**Civil:** up to $5,000 per violation	-Consumers have private cause of action -Can recover attorneys' fees	Established & implemented practices & procedures
Montana M.C.A. 30-14-1412(1)	General Telephone Solicitation Law	Telemarketers each maintains list of persons that have requested not to be called	N/A	N/A	Free	N/A	Yes (see attached)	Attorney General; Department of Administration; county attorneys	**Civil:** actual damages or $500 per violation **Criminal:** up to $500 fine or up to 6 mos. imprisonment; subsequent conviction up to $5,000 fine or up to 5 years imprisonment	-Consumers have private cause of action -Can recover attorneys' fees	None enumerated

Comparison of No-Call List and General Telephone Solicitation Laws by State

State	No-Call List or General Telephone Solicitation Law	List compiled by	Who notifies consumers	Time length on list	Cost to Consumer	Cost for Solicitors	Exemptions	Enforcement by	Civil/Criminal Penalties	Private Right of Action & Attorneys' Fees	Defenses
Nebraska	General Telephone Solicitation Law	Telemarketers each maintains list of persons that have requested not to be called	N/A	N/A	N/A	N/A	Yes (see attached)	Public Service Commission, Attorney General, county attorneys	**Civil:** up to $2,000 per violation **Criminal:** Class I misdemeanor	-Consumers have private cause of action -Can recover reasonable attorneys' fees	None enumerated
Nevada	Telephone Solicitation Fraud law	Consumer Affairs Division of Department of Business and Industry	N/A	N/A	N/A	$6,000 registration fee; $50,000 surety bond	N/A	Attorney General	Yes	-Consumers have private cause of action -Can recover reasonable attorneys' fees	N/A
New Hampshire	None										
New Jersey 48:17-25	None	N/A	Local exchange companies	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
New Mexico	None										
New York Chapter 547, section 399-z	No-Call List	New York State Consumer Protection Board	N/A	3 years	Free	$500 annual	Yes (see attached)	New York State Consumer Protection Board	**Civil:** up to $5,000 per violation	N/A	Had list, written procedures, trained personnel, maintain no-call list, AND call in error
North Dakota	None										
Ohio	None										
Oklahoma	None										

Comparison of No-Call List and General Telephone Solicitation Laws by State

State	No-Call List or General Telephone Solicitation Law	List compiled by	Who notifies consumers	Time length on list	Cost to Consumer	Cost for Solicitors	Exemptions	Enforcement by	Civil/Criminal Penalties	Private Right of Action & Attorneys' Fees	Defenses
Oregon ORS 646.569	No-Call List	List Administrator	Local exchange companies	1 year	$6.50 per number; $3 annual renewal	$120 annual	Yes (see attached)	Attorney General	**Civil:** up to $25,000 per violation	-Consumers have private cause of action if can prove ascertainable loss of money or property -Can recover attorneys' fees	None enumerated
Pennsylvania 73 P.S. 2245(a)(2)	No-Call List	Telemarketers each maintains list of persons that have requested not to be called	N/A	5 years	None	$500 fee every 2 years; $50,000 surety bond	Yes (see attached)	Attorney General	**Civil:** up to $1,000 per violation or $3,000 if person 65 or older	-Consumers have private cause of action -Can recover reasonable attorneys' fees	Established & implemented procedures to comply, trained personnel maintained lists, and call in error
Rhode Island	None										
South Carolina S.C.C.A. 16-17-445	General Telephone Solicitation Law	Telemarketers each maintains list of persons that have requested not to be called	N/A	5 years	Free	N/A	Yes (see attached)	Department of Consumer Affairs	**Civil:** $100 for first violation; $200 for second; and up to $1,000 for subsequent violations **Criminal:** Misdemeanor; fine of not more than $200 and/or 30 days imprisonment	None	None enumerated
South Dakota	None										

Comparison of No-Call List and General Telephone Solicitation Laws by State

State	No-Call List or General Telephone Solicitation Law	List compiled by	Who notifies consumers	Time length on list	Cost to Consumer	Cost for Solicitors	Exemptions	Enforcement by	Civil/Criminal Penalties	Private Right of Action & Attorneys' Fees	Defenses
Tennessee T.C.A. Section 65-4-401 et seq	No-Call List	Tennessee Regulatory Authority	Local exchange companies	5 years	Free	$500 annual	Yes (see attached)	Tennessee Regulatory Authority	**Civil:** up to $2,000 per violation	None	Established & implemented with due care, reasonable practices & procedures
Texas	No-Call List	Public Utility Commission	Local exchange company	3 years	$2.25 per phone number	$45 per quarter	Yes (see attached)	Public Utility Commission, Attorney General	**Civil:** consumer - up to $500 per violation; Attorney General - up to $1,000 to $3,000 per violation	-Consumers have private cause of action -Can recover reasonable attorneys' fees	None enumerated
Utah	None										
Vermont	General Telephone Solicitation Law	Telemarketers each maintains list of persons that have requested not to be called	Local exchange companies	N/A	N/A	N/A	N/A	Attorney General	**Civil:** consumer - up to $500 per violation	-Consumers have private cause of action -Can recover reasonable attorneys' fees	N/A
Virginia	General Telephone Solicitation Law	Telemarketers each maintains list of persons that have requested not to be called	N/A	N/A	N/A	N/A	N/A	Attorney General	**Civil:** consumer - $500 to $1500 per violation; Attorney General - $500 to $1,000 per violation	-Consumers have private cause of action -Can recover reasonable attorneys' fees	Established & implemented with due care, reasonable practices & procedures
Washington RCW 19.158.110	General Telephone Solicitation Law	Telemarketers each maintains list of persons that have requested not to be called	Local exchange companies	N/A	N/A	N/A	N/A	Attorney General	**Civil:** up to $2,000 per violation	-Consumers have private cause of action -Can recover reasonable attorneys' fees	None enumerated
West Virginia	None										

Comparison of No-Call List and General Telephone Solicitation Laws by State

State	No-Call List or General Telephone Solicitation Law	List compiled by	Who notifies consumers	Time length on list	Cost to Consumer	Cost for Solicitors	Exemptions	Enforcement by	Civil/Criminal Penalties	Private Right of Action & Attorneys' Fees	Defenses
Wisconsin W.A.C. 127.16(4)	General Telephone Solicitation Law	Telemarketers each maintains list of persons that have requested not to be called	N/A	N/A	N/A	N/A	Yes (see attached)	Department of Agriculture, Trade, and Consumer Protection	**Civil:** $100-$10,000 per violation **Criminal:** fine of not less than $25 nor more than $5,000 and/or imprisonment of up to 1 year	-Consumers have private cause of action for double damages, costs -Can recover reasonable attorneys' fees	Established and implemented procedures to comply, trained personnel, maintained list, call is good faith error
Wyoming	No-Call List	Telemarketers each maintains list of persons that have requested not to be called	N/A	N/A	N/A	N/A	N/A	Attorney General	N/A	N/A	N/A

not distributed

Exemptions to State No-Call Lists or General Telephone Solicitation Laws

Compiled by Kristen Crosson, Research Division, North Carolina General Assembly
July 9, 2002

Alabama

- Solicitations for an isolated transaction not done in the course of a pattern of repeated transactions
- Calls for religious, charitable, political, educational, or other noncommercial purposes or someone soliciting for a nonprofit corporation, including rural electric cooperatives
- Calls from anyone who doesn't intend to complete a sale during the call or who doesn't make the major sales presentation during the call. Also, anyone who doesn't complete the sales presentation during the call but who completes the sales presentation at a follow-up meeting
- Solicitations from any licensed securities, commodities, or investment broker, dealer, or investment adviser
- Solicitations from any licensed associated person of a securities, commodities, or investment broker, dealer, or investment adviser, when soliciting within the scope of his or her license
- Solicitations for the sale of a newspaper, periodical, or magazine
- Solicitations for a book, video, or record club or contractual plan or arrangement
- Solicitations from a commercial bank, trust company, savings and loan association, mutual savings bank, credit union, industrial loan company, consumer finance lender, commercial finance lender, or insurer
- Solicitations from any licensed insurance broker, agent, customer representative, or solicitor
- Solicitations for the sale of cable television services
- Solicitations for some types of business-to-business sales
- Solicitations for sales or advertising in a catalog, periodical, or magazine of the seller's merchandise or ad purchasers, merchandise to prospective purchasers
- Solicitations for maintenance or repair contracts for goods that were bought from the solicitor
- Solicitations from a telephone company or utility company regulated by the Alabama Public Service Commission
- Solicitations for funeral services
- Solicitations from a licensed commercial telephone seller
- An issuer or a subsidiary of an issuer that has a class of securities subject to Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. Section 781)
- Solicitations for telephone answering services
- Solicitations for transactions regulated by the Commodity Futures Trading Commission
- Solicitations for the sale of food or produce if for less than $500
- Solicitations to consumers who have an existing business relationship with the caller
- Solicitations from a retail business in operation for at least a year whose products or services are offered for sale at the place of business
- Solicitations for vacation time-sharing plans
- Solicitations from a telemarketing company with 75% of its contracts to exempt entities
- Solicitations for the sale of an annual publication of notable individuals

Alaska

- An act or transaction regulated under laws administered by the state, by a regulatory board or commission except as provided by AS 45.50.471(b)(27) and (30), or officer acting under statutory authority of the state or of the United States, unless the law regulating the act or transaction does not prohibit the practices declared unlawful in AS 45.50.471;
- An act done by the publisher, owner, agent, or employee of a newspaper, periodical, or radio or television station in the publication or dissemination of an advertisement, when the owner, agent, or employee did not have knowledge of the false, misleading, or deceptive character of the advertisement or did not have a direct financial interest in the sale or distribution of the advertised product or service;
- An act or transaction regulated under AS 21.36 or AS 06.05 or a regulation adopted under the authority of those chapters.

Arizona

- A person who is registered with the secretary of state pursuant to section 44-6552 or who is exempt from registration pursuant to section 44-6553.
- A person making telephone solicitations without the intent to complete and who does not complete the sales presentation during the telephone solicitation but completes the sales presentation at a later face-to-face meeting between the solicitor and the consumer provided that the later face-to-face meeting is not for the purpose of collecting the payment or delivering any item purchased.
- A person who after making a telephone contact with a consumer sends the consumer descriptive literature and does not require payment before the consumer's review of the descriptive literature and the person is not conducting a solicitation involving any of the following:
  - The sale of an investment or an opportunity for an investment that is not registered with any state or federal authority.
  - A prize promotion or premium.
  - A recovery service.
- A person or solicitor for a person who operates a retail business establishment under the same name as the name used in the solicitation of sales by telephone, if on a continuing basis all of the following apply:
  - Merchandise is displayed and offered for sale or services are offered for sale and provided at the person's business establishment.
  - At least fifty per cent of the person's business involves the buyer obtaining the merchandise at the person's business establishment.
  - The person holds a transaction privilege tax license pursuant to title 42, chapter 5.

Arkansas

- Anyone with written permission to call you.
- Businesses with whom you have had a relationship with in the past 36 months.
- Anyone calling regarding an outstanding debt or obligation.
- Motor vehicle dealers, insurance agents, real estate agents, funeral establishments or from licensed investment brokers regarding the sale of their products and services.
- Volunteers calling on behalf of a charitable organization.
- Newspapers regarding advertising or sales.
- Banks relating to banking services other than credit card offers.

California

- Tax-exempt charitable organizations
- Local small businesses w/in 50 mile radius
- Established business relationship
- Subscriber-identified exclusions
- Debt collection
- Seasonal goods/services (offered less than 4 months of year)
- Express request

Colorado

- To any residence with that resident's prior express invitation or permission.
- By or on behalf of any person or entity with whom a resident has an established business relationship.
- For 30 days after a resident has contacted a business to inquire about the potential purchase of goods or services or until the resident requests that no further calls be made, whichever occurs first.
- By or on behalf of a charitable organization that is required to and that has complied with the notice and reporting requirements of section 6-16-104 C.R.S. or is excluded from such notice and reporting requirements by section 6-16-103(7) C.R.S.
- Made for the sole purpose of urging support for or opposition to a political candidate or ballot issue; or
- Made for the sole purpose of conducting political polls or soliciting the expression of opinions, ideas or votes.

Connecticut

- Calls made in response to your written or verbal request or permission,
- Tax-exempt, non-profit organizations, including their paid phone solicitors,
- Telephone companies compiling their own directories,
- Calls in response to your visit to a business that has a fixed location, such as a car dealer you visited,
- Calls made to an existing customer, such as the bank you have a checking account with,
- Calls made regarding an existing debt or contract where the payment or the performance of the contract is not yet completed,
- Calls from a solicitor first doing business in Connecticut after January 1, 2001. In this case, they may call you during their first year in business, unless you tell them not to, and
- Calls made for non-commercial purposes such as polls and surveys.

Delaware– no law

Florida

- In response to an express request by the person called.
- In reference to an existing debt, contract, payment or performance.
- To any person with whom the telephone solicitor has a prior or existing business relationship.
- About the newspaper business, including newspaper publishers, agents or employees.
- On behalf of charitable organizations.
- On behalf of political candidates and political parties.

Georgia

- Businesses that have a previous or current relationship with the customer;
- Recognized charitable or religious organizations; or
- Political pollsters or candidates for public office.

Hawaii

- A person who initiates telephone calls to a residence for the sole purpose of polling or soliciting the expression of ideas, opinions, or votes, or a person soliciting solely for a political or religious cause or purpose;
- A securities broker-dealer, salesperson, investment [adviser], or investment [adviser] representative who is registered with this State to sell securities or who is authorized to sell securities in this State pursuant to federal securities laws, when soliciting over the telephone within the scope of the person's registration;
- A financial institution that is authorized to accept deposits under its chartering or licensing authority where such deposits are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, such as a bank, savings bank, savings and loan association, depository financial services loan company, or credit union, or a nondepository financial services loan company that is licensed or authorized to conduct business in this State by the commissioner of financial institutions, or an affiliate or subsidiary of a financial institution as defined in chapter 412;
- A person or organization that is licensed or authorized to conduct business in this State by the commissioner of insurance including but not limited to an insurance company and its employees, while engaged in the business of selling or advertising the sale of insurance products or services;
- A college or university accredited by an accrediting organization recognized by the United States Department of Education;
- A person who publishes a catalog of at least fifteen pages, four times a year, with a circulation of at least one hundred thousand, where the catalog includes clear disclosure of sale prices, shipping, handling, and other charges;
- A political subdivision or instrumentality of the United States, or any state of the United States;
- The sale of goods or services by telecommunications or landline (i.e., cable) or wireless video service providers, for which the terms and conditions of the offering, production, or sale are regulated by the public utilities commission or the Federal Communications Commission, or pursuant to chapter 440G, including the sale of goods or services by affiliates of these telecommunications or video service providers; provided that

nothing herein shall be construed to preclude or preempt actions brought under any other laws including chapter 480;

- A real estate broker or salesperson who is licensed by this State to sell real estate, when soliciting within the scope of the license; or
- A travel agency that is registered with this State, when engaging in the business of selling or advertising the sale of travel services. [L 1999, c 170, pt of §1]

Idaho

- Existing business relationship
- Those seeking charitable donations

Illinois

- Autodialers
- Secutiries brokers and investment advisors
- Insurance agent if existing policy holders

Indiana

- Charitable organizations who use volunteers or employees to make the calls and immediately disclose A) the caller's true first and last name, and B) the name, address and phone number of the organization;
- Newspapers who use volunteers or employees to make the calls;
- Insurance agents licensed when the individual is soliciting an application for insurance or negotiating a policy of insurance on behalf of an insurer
- Realtors licensed if A) the sale of goods or services is not completed; and B) the payment or authorization of payment is not required until after a face to face sales presentation by the seller.

Iowa – no law

Kansas

- Organizations soliciting for charitable donations
- Calls concerning political candidates or issues
- Expressly requested a company to call
- Established business relationship has been developed within the past three years between the consumer and the company.

Kentucky

- Telemarketers who have a prior or existing business relationship with you.
- Telemarketers who have received an express request from you to call.
- Telemarketers with whom you have an existing debt or contract.
- Telemarketers soliciting only donations for charities.
- Colleges and universities
- Public schools
- Charities and exempt organizations
- Real estate brokers
- Stock brokers
- Insurance agents
- Employment agencies
- Subscriptions for newspapers, magazines, cable TV
- Merchant regulated by Public Service Commission
- Sale of food costing less than $100 per address
- Sales catalog publishers
- Banks and other financial institutions
- Merchant regulated by FCC
- Book, video, and record clubs

- Merchants scheduling "face to face" sales pitch
- Telemarketers operating continuously for at least 5 years under the same name and providing 75% of their services to merchants exempted under the act

Louisiana
- In response to an express request of the person called.
- Primarily in connection with an existing debt or contract, payment or performance of which has not been completed at the time of such call.
- To any person with whom the telephonic solicitor has an existing business relationship, or a prior business relationship that was terminated or lapsed within six (6) months of such call.
- On behalf of an organization, which has non-profit status.
- For the purpose of conducting marketing research, public opinion polling, or similar activities that do not involve telephonic solicitation or selling.
- Constituting political activity

Maine
- Established business relationship

Maryland – no law

Massachusetts – no law

Michigan – no law

Minnesota
- Non profit organizations
- Political organizations
- Businesses with a prior relationship with the customer (such as banks, credit card companies and telephone companies)
- Businesses that do not complete the sale over the phone, but rather complete the transaction in a face-to-face setting (such as home repair services, lawn services, and mortgage companies)

Mississippi – no law

Missouri
- Telephone companies.
- Those that have a current business relationship with you.
- Those that you have expressly invited or permitted (for example, filling your name and number on an entry form).
- Certain not-for-profit groups if the person calling is a member of the group.
- Persons calling on a referral or working from their homes, or any person licensed for a trade or profession who is setting or attempting to set an appointment.

Montana
- Any securities, commodities, or investment brokers, dealers, or investment advisers or any associates of securities, commodities, or investment brokers, dealers, or investment advisers who are subject to licensure or registration by the securities and exchange commission, the national association of securities dealers, or another self-regulatory organization, as defined by 15 U.S.C. 78(c), or by an agency of this state or any other state and who are soliciting within the scope of their license or registration;
- A person engaged in solicitation for a religious, charitable, political, educational, or other noncommercial purpose or a person soliciting for a domestic or foreign nonprofit corporation that is registered with the Montana secretary of state;
- A business-to-business sale;

- A person that solicits sales by periodically publishing and delivering a catalog of the person's merchandise to prospective purchasers, if the catalog:
  (a) contains a written description or illustration of each item offered for sale;
  (b) includes the business or home address of the person soliciting the sale;
  (c) includes at least 20 pages of written material and illustrations;
  (d) is distributed in more than one state; and
  (e) has a circulation by mailing of not less than 150,000;
- A person who solicits contracts for maintenance or repair of goods previously purchased from that person or from the person on whose behalf the solicitation is made;
- A person soliciting a transaction regulated by the commodity futures trading commission if the person is registered or temporarily licensed with the commodity futures trading commission under the Commodity Exchange Act, Title 7, chapter 1, of the United States Code, and the person's registration or license is not expired, suspended, or revoked;
- A supervised financial organization or parent, subsidiary, or affiliate of a supervised financial organization;
- An insurer authorized to transact insurance under Title 33, chapter 2, part 1, a person licensed as an insurance producer under Title 33, chapter 17, part 2, or staff members, licensed or unlicensed, of the producer;
- A person soliciting the sale of services provided by a satellite or cable television system or a radio or television station authorized by the federal government or this state to provide services in this state;
- A telephone company or its subsidiary or agent or other business regulated by the Montana public service commission, the federal communications commission, a rural telephone cooperative or its subsidiary or agent, or a federally licensed cellular telephone or radio telecommunication service provider;
- A person soliciting business from consumers that have an existing business relationship with or have previously purchased from the business enterprise for which the person is soliciting;
- A person operating a retail business establishment under the same name as that used in the solicitation and:
  (a) the products or services are displayed and offered for sale at the business establishment; and
  (b) a majority of the person's business involves the consumer obtaining the products or services at the business establishment;
- A person soliciting for the sale of a magazine or newspaper of general circulation;
- An issuer or a subsidiary of an issuer that is authorized to offer securities for sale in this state;
- A book, video, record, or multimedia club, contractual plan, or arrangement:
  (a) under which the seller provides the consumer with a form that the consumer may use to instruct the seller not to ship the offered merchandise;
  (b) that is regulated by the federal trade commission regulation, 16 CFR 425, concerning the use of negative option plans by sellers in commerce; or
  (c) that provides for the sale of books, videos, records, multimedia products, or other goods that are not covered by subsection (15)(a) or (15)(b), including continuity plans, subscription arrangements, standing order arrangements, single sales, supplements, or series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive the merchandise on a periodic basis;
- A real estate salesperson or broker licensed by this state;
- A person that has provided telemarketing sales services under the same name and derives 50% of gross telemarketing sales revenue from contracts with persons exempted under this section from registration requirements;
- A person soliciting the sale of food or food products if the solicitation is not intended to and does not result in a sale in excess of $100 to a single address.

Nebraska

- Made to any person with the person's prior express invitation or permission,
- Made to any person with whom the caller has an established business relationship,
- Made by a tax-exempt nonprofit organization,
- Not made for commercial purposes,
- Made for a commercial purpose but which does not include the transmission of an unsolicited advertisement, or
- Placed by a live operator and a prerecorded message is not utilized

Nevada – no law

New Hampshire – no law

New Jersey –no law

New Mexico – no law

New York

- Charitable organizations;
- Religious corporations;
- Political parties and committees;
- Companies with which you have a prior business relationship; and
- Telemarketers who wish to arrange for a face-to-face meeting before concluding a sales transaction.

North Carolina – no law

North Dakota – no law

Ohio – no law

Oklahoma – no law

Oregon

- You asked them to call you (however, on occasion consumers inadvertently ask telemarketers to call them when entering contests or accepting free trials);
- The telemarketer calls on behalf of a public agency or a charitable organization to which you belong, or to which you have previously donated or have expressed an interest in making a donation;
- The call is a political poll or opinion survey unrelated to the marketing of any property, goods, or services; or
- The call is from a business you have bought from in the past, including a "predecessor of a business enterprise" for certain financial institutions.

Pennsylvania

- Made in response to a consumer's previous express request; in reference to an existing debt, contract, payment, or performance;
- Where an established business relationship between the consumer and the entity making the call currently exists;
- Made on behalf of a tax-exempt charitable or fraternal organization;
- Made on behalf of a veterans' organization; or,
- Made on behalf of a political candidate.

Rhode Island – no law

South Carolina

- Response to request
- Existing debt or contract
- Existing or previous business relationship
-

South Dakota – no law

Tennessee

- Express invitation or permission by the person being called
- Not-for-profit organization if the call is made by a member of the specific not-for-profit organization.
- Business relationship with the person being called within the previous twelve (12) months.
- Business calling does not sell or engage in telephone solicitation and does not make more than three (3) calls in any one calendar week.

Texas

- With whom they have an established business relationship;
- If the customer requests contact;
- To collect a debt; or
- If the telemarketer is a state licensee (for example – insurance or real estate agent, etc.) and:
  - the call is not made by an automated device;
  - the solicited transaction is not completed without a face-to-face presentation to complete a sales transaction and make payment;
  - the consumer has not previously told the licensee that the consumer does not wish to be called.

Utah – no law

Vermont – not provided

Virginia – not provided

Washington – not provided

West Virginia – no law

Wisconsin

- Banks & savings and loans
- Insurance companies
- Public utility
- Telecommunications carrier
-

Wyoming - not provided

VISITOR REGISTRATION SHEET

DATE 8/15/02

J. H.

VISITOR: Please sign below and return to clerk.

NAME	FIRM OR STATE AGENCY	TELEPHONE
Chris Hollis	Hollis & Assoc.	632-5043
Ally MacKenzie	Sunset Beach	711-7424
Paul Stock	NC Bankers Assn	781-7979
FRAN PRESTON	NCRMA	832 0811
ANDY ELLEN	NCRMA	832 0811
RON OTTAVIO	WACHOVIA	881-7021
Stan Pace	VERIZON	317-7656
Gretchen Kelly	WorldCom	919-215-0271
Alice Garland	EC	7606336
BILL SLOGGIN	KENNEDY COVINGTON	743 7307
Jim Mann	Sprint	514 7238
Natalie English	Charlotte Chamber	704-378-1353
Amy Fulbright	Hunton & Williams	899-3043
Pam Dascott	Sprint	919-554-7239
Dwight Allen	CarolinaLink	919-954-9625
Ed TURLINGTON	Brooks Pierce	

VISITOR REGISTRATION SHEET

J. II
Name of Committee

8/15/02
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sandy Sands	WCSR
John McHugh	Gov Office
Elizabeth Dalton	Bone & Associates
Erin Culbreth	LBA
Michelle Frazier	NC Bar Ass'n
[illegible]	Capitol [illegible]
Rob Schofield	NC Justice Center
Helen Savage	AARP
[illegible]	Atty Gen.
STEVE ROBERTS	AARP
BOB FARNER	AARP
JOHN BUSSIAN	NCPA
Jon Carr	Jordan Price
[illegible]	NCSEA/FLCCO
[illegible]	LBA
[illegible]	Bonner & Moore —
[illegible]	Carlton & Associates PLLC
[illegible]	AARP
Becky Mercer	Linwood Mercer & Assoc.
CAM Cover	BPMHL
Chad Essick	Edmisten & Webb

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

August 20, 2002

The House Committee on Judiciary II met on Tuesday, August 20, 2002 in room 421 LOB at 1:00 p.m. The following members were present: Rep. Baddour, Chair and Reps. Bowie, Decker, Gulley, Hall, Jeffus, Justus, Miller, Pope, Sherrill, Weiss and Willingham. Bill sponsor, Rep. Redwine was additionally present. Staff including Tracy Dixon and Jeff Hudson were in attendance. A Visitor Registration sheet is attached and made part of these minutes.

Chairman Baddour called the meeting to order to continue discussion on HB 1612, A BILL TO BE ENTITLED AN ACT TO ESTABLISH AND MAINTAIN A NO–CALL REGISTRY FOR CONSUMERS WHO WISH TO STOP UNWANTED TELEPHONE SOLICITATION CALLS AND TO INCREASE THE PROTECTIONS FOR CONSUMERS IN TRANSACTIONS INITIATED BY TELEMARKETERS.

Rep. Baddour introduced a Dateline NBC video, "Telemarketers–No–Call Registry," that aired on July 16, 2002. Following the video, Rep. Redwine stated North Carolina must find a way to accommodate the right of the consumers who do not want to have the inconvenience of unwanted telephone calls.

Josh Stein, Attorney General's Office, listed the companies that supported the technical corrections in the bill and in turn would remove their opposition to the bill.

Rep. Gulley questioned why a telemarketer could not just remove a person's number immediately with a button. Mr. Stein stated he had no opposition in theory but it was a question of available technology and stated the bill would accomplish the same goal. Rep. Miller stated the technology was not a problem but that enacting this measure would require standardization. He noted that this bill was the first step and perhaps later, North Carolina could move to the technology approach.

Rep. Justus asked if members could get a copy of the companies that had withdrawn their opposition. Rep. Baddour stated a list would be sent to members either today or tomorrow morning.

Rep. Hall questioned why this bill was needed since people could just hang up the phone. Rep. Redwine responded that the problem comes when phone calls are received one after the other and the calls become disruptive.

Rep. Pope followed up on his question from the last meeting about an exemption for small businesses that make calls for a special sale or event and asked if there had been any discussion on how to deal with this issue. Mr. Stein responded that the bill would

allow for calls that result in a face–to–face meeting. Rep. Pope stated he thought that the calls could not lead to sales and suggested clarifying language and brought up his suggestion from the last meeting of making the small business clause per establishment. Mr. Hudson referred Rep. Pope to page 3, line 14. Rep. Baddour noted that there would be no vote taken on the bill today but did suggest an amendment may be in line for both issues and asked Mr. Stein to work on language.

Rep. Bowie stated concern over out–of–state phone calls and written contracts on Page 19, line 4. Mr. Hudson directed the members to subsection c of this section. Mr. Stein added that written permission is needed when a person on the no call registry wants to hear from a company and they do not have the defined existing business relationship.

Rep. Hall suggested an amendment to page 3, lines 33 –34 that added newspapers, cable television, etc. to the list of exemptions. Mr. Stein stated the AG's office is opposed to such an amendment because it is carving out a specific industry. Rep. Miller additionally opposed the amendment and asked for the reasoning behind the 18-month past business relationship. Mr. Stein explained the origin of the compromise for existing business relationships.

Rep. Gulley questioned if a person could continue on a sales pitch once the customer has placed an order. Mr. Stein stated it would depend on the substance of the call and directed members to a provision dealing with inbound calls on page 10, line 35.

Mr. Stein responded to Rep. Bowie's question about how the no call registry would be implemented and how many new staff would be required by sharing the discussions the AG's office has had with other states. Mr. Stein thought four people would be sufficient to run the program and an outside vendor would be hired to manage the database. Rep. Bowie followed up by asking if businesses had the option not to do this and what happens if a company violates the list. Mr. Stein stated telemarketer businesses would have to register with the AG's office and that this had worked fine in other states. He responded that if a telemarketer violates this list then the consumer would have to file a complaint with the AG's office and the AG's office would demand the company comply with the law.

Rep. Justus asked how many people were expected to sign up on this list. Mr. Stein stated there is a large range of possibilities: some states 10 percent of the people signed up and in other states, the total was 40 percent. Rep. Justus followed up by asking if this bill had a fiscal note and how many people would need to be hired. Mr. Baddour commented that a fiscal note has been requested and Mr. Stein stated that the program could operate with minimal staff and he expected hiring four people plus a contracting with a vendor to be sufficient.

Mr. Stein responded to Rep. Sherrill's concerns that communication to small businesses may be difficult by stating there would be a public education campaign to get the word out and that the AG's office would understand if there were initial misunderstanding.

Rep. Baddour stated the committee and staff would continue to work on the bill and adjourned the meeting at 1:45 p.m.

Copies of the PCS, bill summary and a list of companies no loner opposed to the bill, provided by the AG's office, are attached as part of these minutes.

Representative Philip A. Baddour, Jr.
Chairman

Tracy Dixon
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1612
PROPOSED COMMITTEE SUBSTITUTE H1612-CSSBf-73 [v.5]

Short Title: Stop Unwanted Telephone Solicitations. (Public)

Sponsors:

Referred to:

June 11, 2002

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH AND MAINTAIN A NO-CALL REGISTRY FOR CONSUMERS WHO WISH TO STOP UNWANTED TELEPHONE SOLICITATION CALLS AND TO INCREASE THE PROTECTIONS FOR CONSUMERS IN TRANSACTIONS INITIATED BY TELEMARKETERS.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly of North Carolina makes the following findings:

(1) The use of the telephone to market goods and services to the home is now pervasive due to the increased use of cost-effective telemarketing technologies and techniques.

(2) While some consumers enjoy and benefit from unsolicited telemarketing contacts from legitimate telemarketers, many others object to these contacts as an intrusive invasion of an individual's right of privacy in the home.

(3) In addition, the proliferation of unsolicited telemarketing calls, especially during the evening hours, creates a nuisance and a disturbance upon the home and family life of North Carolina residents during a time of day used by many families for traditional family activities.

(4) North Carolina residents should have the freedom to choose whether or not to permit telemarketers to contact them.

(5) Individual privacy rights, personal safety, prevention of fraud, and commercial freedom of speech and trade must be balanced in a way that protects the privacy of individuals and permits legitimate telemarketing practices.

(6) Legitimate telemarketers have no interest in continuing to invade the privacy of those consumers who affirmatively express their objections to such contact.

(7) Many North Carolina consumers who have transacted business with firms that employ telemarketing have experienced problems with their checking and credit card accounts being debited before they can evaluate the terms and conditions of the transaction, before they can evaluate the merchandise or service to be delivered, or without their agreement to enter into the transaction or authorize such transactions in the first place.

(8) New technologies that make telemarketing more cost-effective also allow for the creation of a State No-Call Registry through which North Carolina consumers can easily register their desires not to receive further telemarketing calls and telemarketers can easily access and employ lists of consumers who have registered those desires.

(9) The public interest requires an efficient mechanism for North Carolina residents to notify telemarketers that their telephone numbers cannot be called and additional protections for North Carolina residents who enter into consumer transactions initiated through telemarketing calls.

SECTION 2. G.S. 75-30.1 reads as rewritten:

"**§ 75-30.1. Restrictions on telephone solicitations.**

(a) For purposes of this ~~section:~~Article:

(1) 'Residential telephone subscriber' means a person who subscribes to residential telephone service from a local exchange company and uses that service primarily for residential purposes, or the persons living or residing with that person.

(2) 'Telephone solicitation' means a voice ~~communication~~ communication, whether prerecorded or live, or a facsimile over a telephone line initiated by a telephone solicitor to a residential telephone subscriber for the purpose of soliciting or encouraging the purchase or rental of, or investment in, property, goods, or ~~services, or~~ services; for the purpose of obtaining information that will or may be used for that ~~purpose,~~ purpose; for the purpose of soliciting or encouraging a residential telephone subscriber's participation in any contest, sweepstakes, raffle, or lottery, whether legal or illegal; or for the purpose of obtaining a charitable donation.

(2a) Notwithstanding subdivision (2) of this subsection, 'telephone solicitation' ~~but~~ does not include any of the following telephonic communications:

a. To any person with that person's prior express invitation or ~~permission;~~ permission.

b. To any person with whom the telephone solicitor has an established business ~~relationship;~~ relationship or has had an established business relationship within the prior 18 months.

c. To any person in connection with an existing debt or contract for which payment or performance has not been completed at the time of the call.

e.d. By or on behalf of a tax-exempt nonprofit organization.

e. To any person when the sole purpose of the call is to obtain a reference on someone other than the intended recipient of the call.

f. By or on behalf of a person, business, or other legal entity that employs fewer than 10 full or part-time direct employees; provided that the telephonic communications are made by the direct employees and the direct employees collectively make or attempt to make no more than 10 unsolicited telephonic communications to residential telephone subscribers per week.

g. To any person for the sole purpose of arranging a subsequent face-to-face meeting between the person initiating the call and the person receiving the call, provided that the person calling does not do any of the following during the course of the call:

1. Seek payment from the person receiving the call in connection with the sale or rental of, or investment in, property, goods, or services.
2. Complete the sale or rental of, or investment in, property, goods, or services.
3. Obtain provisional acceptance of a sale, rental, or investment.
4. Obtain the person's agreement to participate in any contest, sweepstakes, raffle, or lottery.
5. Obtain the person's charitable donation or provisional agreement to make a donation.
6. Make a major sales presentation.
7. Directly following a telephonic communication, go or cause an individual to go to the residential telephone subscriber to collect the payment or charitable donation or deliver any item purchased.

(3) 'Telephone solicitor' means any ~~business~~ person, business, or other legal entity doing business in this State ~~that~~ that, directly or through salespersons or agents, makes or attempts to make telephone solicitations or causes telephone solicitations to be made.

(4) 'Affiliate' means a company that wholly or substantially owns, is wholly or substantially owned by, or is under common ownership with a telephone solicitor.

(5) 'Doing business in this State' means to make or cause to be made any telephone solicitation to residential telephone subscribers, whether the telephone solicitations are made from a location inside North Carolina or outside North Carolina.

(6) 'Established business relationship' means an ongoing, voluntary relationship formed prior to the telephone solicitation between a telephone solicitor or one or more of its affiliates and a residential telephone subscriber, involving an exchange of consideration, that has not been terminated by either party.

(b) No telephone solicitor shall place any telephone solicitation calls to a residential telephone subscriber's telephone number if that residential telephone subscriber's telephone number appears on the latest edition of the No-Call Registry established pursuant to G.S. 75-30.2 or if the residential telephone subscriber previously has communicated to that telephone solicitor a desire to receive no further telephone solicitations from that telephone solicitor.

(b1) Any person who makes a telephonic communication described in subdivision (2a) of subsection (a) of this section or ~~Any~~ any telephone solicitor who makes a telephone solicitation to a residential telephone subscriber whose telephone number is not listed in the latest edition of the No-Call Registry or who previously has not communicated to the telephone solicitor a desire to receive no further telephone solicitations from that telephone solicitor shall:

(1) At the beginning of the call, state clearly the identity of the business, individual, or other legal entity initiating the call, and identify the person making the call by that person's name.

(2) Upon request, provide the telephone subscriber with the telephone number or address at which the person or entity may be contacted.

(3) Terminate the call if the person does not consent to the ~~call.~~call, unless the call is in connection with an existing debt or contract for which payment or performance has not been completed at the time of the call.

(4) If the person called requests to be taken off the contact list of the telephone solicitor, take all steps necessary to remove within 30 business days that person's name and telephone number from the contact records of the business, individual or other legal entity initiating the ~~call.~~call, unless the call is in connection with an existing debt or contract for which payment or performance has not been completed at the time of the call.

(5) Notwithstanding subdivision (4) of this subsection, if a telephone solicitor relies on sub-subdivision b. of subdivision (2a) of subsection (a) of this section to solicit a residential telephone subscriber whose telephone number is listed in the latest edition of the No-Call Registry and the person called communicates a desire to receive no further telephone solicitations from that telephone solicitor or one of its affiliates, the telephone solicitor shall take all steps necessary to remove within 30 business days that person's name and telephone number from the contact records of the telephone solicitor and all of its affiliates.

(c) Every telephone solicitor who makes telephone solicitations in this State shall implement in-house systems and procedures designed to prevent further calls to ~~persons~~

any person who ~~have~~ has asked not to be called ~~again. Compliance with 47 C.F.R. § 64.1200(e) of the Federal Communications Commission's Restrictions on Telephone Solicitation constitutes compliance with this subsection:~~ again or who has placed a telephone number in the No-Call Registry.

~~(d) No telephone solicitor shall initiate a call to a residential telephone subscriber who has communicated to that telephone solicitor a desire to be taken off the contact list of that solicitor.~~

(e) No telephone solicitor shall initiate a call to a residential telephone subscriber after 9:00 P.M. or before 8:00 A.M. at the called party's location.

(f) No telephone solicitor who makes a telephone solicitation to the telephone line of a residential telephone subscriber in this State shall knowingly use any method to block or otherwise circumvent that subscriber's use of a caller identification service. A telephone solicitor who makes a telephone solicitation to the telephone line of a residential subscriber through the use of a private branch exchange (PBX) or other call-generating system that is not capable of transmitting caller identification information shall not be in violation of this subsection. No provider of telephone caller identification services shall be held liable for violations of this subsection committed by other persons or entities.

(g) Every telephone solicitor who makes telephone solicitations in this State shall keep a record for a period of 24 months from the date a call is placed of the legal name and any fictitious name used, resident address, telephone number, and job title of each person who places a telephone solicitation for that telephone solicitor. If callers for a telephone solicitor use fictitious names, each fictitious name shall be traceable to only one specific caller.

(g1) Nothing in this section prohibits a telephone solicitor from contacting by letter, telegram, e-mail message, or other nontelephonic notice a residential telephone subscriber whose telephone number appears on the No-Call Registry to obtain the residential telephone subscriber's express written permission allowing the telephone solicitor to make telephone solicitations. Express invitation or permission does not include any consent or permission included in a contract of adhesion. Such invitation or permission must be registered by the residential telephone subscriber on an independent form. In any dispute regarding whether a residential telephone subscriber has provided this express written permission, the telephone solicitor has the burden of proving that the residential telephone subscriber has provided this permission by producing the original document, a facsimile document, or an electronic form, signed by the residential telephone subscriber, or other authentification that evidences permission.

(g2) Nothing in this section prohibits a telephone solicitor from advertising in a general medium or contacting by letter, telegram, e-mail message or other nontelephonic notice a residential telephone subscriber whose telephone number appears on the No-Call Registry to encourage the person to initiate telephonic communications to the telephone solicitor.

(h) The Attorney General may investigate any complaints received alleging violations of ~~subsections (b) through (g) of this section.~~section, G.S. 75-30, or G.S. 75-30.2. If, after investigating a complaint, the Attorney General finds that there has

been a violation of ~~subsections (b) through (g) of~~ this ~~section,~~section, G.S. 75-30, or G.S. 75-30.2, the Attorney General may bring an action to impose ~~a civil penalty~~ civil penalties and to seek any other appropriate ~~relief,~~ relief pursuant to this Chapter, including equitable relief to restrain the ~~violation pursuant to G.S. 75-14.~~ violation. The Attorney General may also bring an action on behalf of residential telephone subscribers pursuant to subsection (i) of this section. If the Attorney General brings an action on behalf of residential telephone subscribers pursuant to subsection (i) of this section, the Attorney General may not seek treble damages on behalf of residential telephone subscribers pursuant to G.S. 75-16. Actions for civil penalties under this section shall be consistent with the provisions of ~~G.S. 75-15.2~~ this Chapter except that the penalty imposed for a violation of this section shall ~~not exceed five hundred dollars ($500.00) per violation.~~ be:

(1) Five hundred dollars ($500.00) for the first violation, one thousand dollars ($1,000) for the second violation, and five thousand dollars ($5,000) for the third and each subsequent violation within the past two years, or

(2) One hundred dollars ($100.00) for each violation within the past two years; provided that it can be shown that a telephone solicitor has established and implemented in-house systems and procedures designed to prevent further calls in compliance with G.S. 75-30.1(c) or G.S. 75-30.2, has trained its employees and independent contractors in those in-house systems and procedures, has maintained and recorded lists of persons who may not be contacted, and the violations are a result of mistake.

(i) A ~~person~~ residential telephone subscriber who has received ~~more than one~~ a telephone solicitation ~~within any 12-month period by~~ from or on behalf of ~~the same~~ a telephone solicitor in violation of ~~subsections (b) through (g) of~~ this ~~section~~ section, G.S. 75-30, or G.S. 75-30.2 may bring any of the following actions in the General Court of Justice:

(1) An action to enjoin further ~~violations.~~ violations by the telephone solicitor.

(2) An action to recover ~~five hundred dollars ($500.00) in damages for each violation;~~five hundred dollars ($500.00) for the first violation, one thousand dollars ($1,000) for the second violation, and five thousand dollars ($5,000) for the third and each subsequent violation within the past two years.

(i1) No action may be brought pursuant to subsection (i) of this section when a telephone solicitor has established and implemented in-house systems and procedures designed to prevent further calls in compliance with G.S. 75-30.1(c) or G.S. 75-30.2, has trained its employees and independent contractors in those in-house systems and procedures, has maintained and recorded lists of persons who may not be contacted, and the violations are a result of mistake.

(i2) In an action brought pursuant to this ~~section,~~section, G.S. 75-30, or G.S. 75-30.2, a prevailing plaintiff shall be entitled to recover reasonable attorneys' fees and the

court may award reasonable attorneys' fees to a prevailing defendant if the court finds that the plaintiff knew, or should have known, that the action was frivolous and malicious.

(j) A citizen of this State is also entitled to bring an action in the General Court of Justice to enforce the private rights of action established by federal law under 47 U.S.C. § 227(b)(3) and 47 U.S.C. § 227(c)(5).

(k) Actions brought by residential telephone subscribers pursuant to ~~subsections (i) and (j) of~~ this ~~section~~ section, G.S. 75-30, or G.S. 75-30.2 shall be tried in the county where the plaintiff resides at the time of the commencement of the action."

SECTION 3. G.S. 75-30.1(f) reads as rewritten:

"(f) No telephone solicitor who makes a telephone solicitation to the telephone line of a residential telephone subscriber in this State shall knowingly use any method to block or otherwise circumvent that subscriber's use of a caller identification service. ~~A telephone solicitor who makes a telephone solicitation to the telephone line of a residential subscriber through the use of a private branch exchange (PBX) or other call-generating system that is not capable of transmitting caller identification information shall not be in violation of this subsection.~~ No provider of telephone caller identification services shall be held liable for violations of this subsection committed by other persons or entities."

SECTION 4. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-30.2. No-Call Registry.**

The Attorney General shall establish and maintain a No-Call Registry containing the telephone numbers of residential telephone subscribers who do not wish to receive telephone solicitations at those numbers. The No-Call Registry shall be operated as follows:

(1) The telephone number of a residential telephone subscriber shall be placed in the No-Call Registry immediately upon receipt of a request submitted by the residential telephone subscriber pursuant to registration procedures established by the Attorney General. The residential telephone subscriber's number shall remain in the No-Call Registry until the residential telephone subscriber notifies the Attorney General, in accordance with these registration procedures, that it should be removed. A local exchange company, as defined in G.S. 62-3, or a competing local provider, as defined in G.S. 62-3, shall provide the Attorney General a list of disconnected numbers on an annual basis.

(2) Not less than 10 days before commencing telephone solicitations in this State, a telephone solicitor shall register pursuant to G.S. 66-261 and obtain from the Attorney General a copy of the most up-to-date quarterly edition of the No-Call Registry. On the first business day following each January 1, April 1, July 1, and October 1 of each year, the Attorney General shall produce and make available to registered telephone solicitors a revised, quarterly edition of the No-Call

Registry. A telephone solicitor has 30 days to use the updated No-Call Registry to remove residential telephone subscribers from its telemarketing list. A telephone solicitor that relies upon any version of the No-Call Registry beyond the quarter for which it was produced and issued is in violation of this section.

(3) The Attorney General shall make the latest edition of the No-Call Registry available to the registered telephone solicitor in written form upon request, or in an appropriate electronic form.

(4) The Attorney General may contract with an agent to establish and operate the No-Call Registry under this section so long as all of the following are satisfied:

a. The agent has demonstrated the capacity to maintain and operate such a registry.

b. The Attorney General, upon entering into a contract under this section, has ultimate authority over the agent for the approval of procedures for the establishment, maintenance, and dissemination of the listings in the No-Call Registry.

(5) The Attorney General shall transfer into the No-Call Registry the numbers of all residential telephone subscribers who have enrolled in any national do-not-call registries that may be established and operated by agencies of the United States government. The Attorney General shall also arrange to transfer information from the No-Call Registry under this section to such federal agencies so that the wishes of the residential telephone subscribers are recorded in those national do-not-call registries.

(6) No telephone solicitor or other entity shall sell, assign, transfer, or convey any copy of the No-Call Registry to parties other than its employees or its wholly owned subsidiaries. If a telephone solicitor utilizes other telephone solicitors to make telephone solicitations for it in North Carolina on a subcontract, commission, partnership, or similar basis, that other telephone solicitor shall register under G.S. 66-261 and shall procure and utilize its own copy of the current No-Call Registry from the Attorney General in accordance with the provisions of this section. No telephone solicitor may use the information on the No-Call Registry for any purpose other than to remove residential telephone subscribers from its own telephone call lists and to prevent calls from being placed by it to telephone numbers listed in the No-Call Registry.

(7) No information compiled and maintained in the No-Call Registry is a public record under Chapter 132 of the General Statutes. Information contained in the No-Call Registry shall be used only for complying with or enforcing the requirements of this section.

(8) The Attorney General shall produce a bill insert that notifies consumers of the existence of the No-Call Registry and provides

information to consumers on how to use it to object to receiving telephone solicitations. Local exchange companies shall distribute the insert pursuant to G.S. 62-54."

SECTION 5. G.S. 62-54 reads as rewritten:

"**§ 62-54. Notification of opportunity to object to telephone solicitation.**

The Commission shall require each local exchange company and each competing local exchange company certified to do business in North Carolina to notify all persons who subscribe to residential service from that company of the provisions of ~~G.S. 75-30.1,~~G.S. 75-30.1 and G.S. 75-30.2 and of the federal laws and regulations allowing consumers to object to receiving telephone solicitations, ~~and of programs made available by private industry that allow consumers to have their names removed from telemarketing lists, by enclosing that information,~~ at least ~~annually,~~two times per calendar year. ~~in every telephone bill mailed to residential customers.~~ This information shall be disseminated once every two years by a carrier in the form of a bill insert drafted pursuant to G.S. 75-30.2(8) and reprinted at the local exchange company's or competing local exchange company's expense. This information shall also be disseminated three times every two years by the carrier via bill messages or inserts in a manner chosen by the carrier with the approval of the Attorney General and not expressly prohibited by the Commission. The Commission shall also ensure that this information is printed in a clear, conspicuous manner in the consumer information pages of each telephone directory distributed to residential customers."

SECTION 6. G.S. 75-30 reads as rewritten:

"**§ 75-30. Automatic dialing and recorded message players; restriction on use of.**

(a) No person may make an unsolicited telephone call by the use of an automatic dialing and recorded message player ~~unless:~~unless all of the following conditions are satisfied:

(1) Such calling person is a ~~charitable, civic, political or~~ tax-exempt charitable or civic organization; a political party or political candidate; a governmental official; or an opinion polling ~~organization~~ organization, ~~or a~~ radio station, television ~~station~~ station, or broadcast rating service conducting a public opinion ~~poll required by law; and~~ poll.

(1a) No part of the call is used to solicit or encourage the purchase or rental of, or investment in, property, goods, or services; to obtain information that will or may be used to solicit or encourage the purchase or rental of, or investment in, property, goods, or services; or to solicit or encourage the making of a charitable donation.

(2) Such calling person clearly identifies the nature of the call and the name and address of the calling organization.

(b) As an exception to subsection ~~(a)~~ (a) of this section, an unsolicited telephone call may be made by the use of an automatic dialing and recorded message player if the recorded message is preceded by an announcement made by a ~~human~~ live operator ~~who:~~who does all of the following:

(1) States the nature and length in minutes of the recorded ~~message; and~~message.

(2) Identifies the individual, business, group, or organization ~~calling; and~~calling.

(3) Asks ~~the called party whether he is willing to listen to the recorded message; and~~ for and receives the called party's prior approval to play the recorded message.

(4) ~~Disconnects~~ Promptly disconnects from the called party's line ~~if~~ once the called party ~~is unwilling to listen to the recorded message.~~hangs up or otherwise attempts to terminate the call.

(c) For the purpose of this ~~section~~ section, an automatic dialing and recorded message player shall be defined as any automatic equipment which incorporates a storage capability of telephone numbers to be called or a random or sequential number generator capable of producing numbers to be called and the capability, working alone or in conjunction with other equipment, of disseminating a prerecorded message to the telephone number called.

(d) For the purpose of this section, a telephone call shall be deemed to be unsolicited unless pursuant to a prior agreement between the parties the person called has agreed to accept such calls from the person ~~calling.~~ calling, and the person called has not subsequently expressed to the caller a desire not to receive further telephone solicitations in accordance with provisions of G.S. 75-30.1.

~~(e) Violation of this section shall be a Class 3 misdemeanor, punishable only by a fine of one hundred dollars ($100.00), for each occurrence.~~

(f) This section does not apply to calls made in connection with an existing debt or contract for which payment or performance has not been completed at the time of the call."

SECTION 7. Article 33 of Chapter 66 of the General Statutes reads as rewritten:

"Article 33.

"~~Telephonic Seller~~Telephone Solicitor Registration and Bond Requirement.

"**§ 66-260. Definitions.**

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

(1) 'Gift or prize' means any premium, bonus, award, or any other thing of value.

(1a) 'Inbound telephone solicitation' means a voice communication over a telephone line that is initiated by a prospective purchaser in response to any unsolicited letter, telegram, telephone call, television advertising, e-mail message, or other notice that does any one or more of the following:

a. States that the prospective purchaser has won, may have won, or may win any contest, sweepstakes, raffle, or lottery.

b. States that the prospective purchaser may obtain or qualify for credit by contacting the telephone solicitor unless the telephone solicitor is a federally chartered bank, savings institution, or

credit union or any bank, savings institution, or credit union properly licensed by the State or subject to federal regulating authorities.

c. States that the prospective purchaser has an opportunity to receive a free or discounted vacation or travel package.

d. Generates a call during which the telephone solicitor offers the prospective purchaser membership into a discount buying club, as defined in G.S. 66-131.

(2) 'Item' means any good or any service. 'Item' includes coupon books, vouchers, or certificates that are to be used with businesses other than the ~~seller's~~telephone solicitor's business.

~~(3) 'Owner' means a person who owns or controls ten percent (10%) or more of the equity of, or otherwise has a claim to ten percent (10%) or more of the net income of, a telephonic seller.~~

(4) 'Person' includes any individual, firm, association, corporation, partnership, joint venture, or any other business entity.

(5) 'Principal' means an owner, a part-owner holding or controlling ten percent (10%) or more of the equity of, or otherwise having a claim to ten percent (10%) or more of the net income of, a telephone solicitor, an executive officer of a corporation, a general partner of a partnership, a sole proprietor of a sole proprietorship, a trustee of a trust, or any other individual with similar supervisory functions with respect to any person.

(6) 'Purchaser' or 'prospective purchaser' means ~~a person who is solicited to become obligated to a telephonic seller or to make any donation or gift to any person represented by the telephonic seller.~~ the residential telephone subscriber, as defined in G.S. 75-30.1(a)(1), whose telephone number is called or used in a telephone solicitation, and includes any member of the residential telephone subscriber's household who is a party to any telephone solicitation transaction.

~~(7) 'Room operator' means any principal, employee, or agent responsible for the operational management and supervision of facilities from which telephonic sales calls are made or received.~~

~~(8) 'Salesperson' means any individual employed, appointed, or authorized by a telephonic seller, whether referred to by the telephonic seller as an agency, representative, or independent contractor, who attempts to solicit or solicits a sale on behalf of the telephonic seller.~~

~~(9) 'Secretary' means the Office of the Secretary of State.~~

(10) 'Telephone solicitation' or 'attempted telephone solicitation' ~~means any telephonic communication designed to persuade any person to purchase goods or services, to enter a contest, or to contribute to a charity or a person represented to be a charity, regardless of whether the telephone call initiating the solicitation is placed by the (i) telephonic seller or (ii) a person responding to any unsolicited notice~~

~~or notices sent or provided by or on behalf of the seller, which notice or notices represent to the recipient that he or she has won a gift or prize, that the recipient may obtain or qualify for credit by contacting the seller, or that the seller has buyers interested in purchasing the recipient's property.~~ has the same meaning as telephone solicitation in G.S. 75-30.1.

(11) ~~'Telephonic seller' or 'seller' means a person who, directly or through salespersons, causes a telephone solicitation or attempted telephone solicitation to occur. 'Telephonic seller' and 'seller' do not include any of the following:~~

~~a. A securities 'dealer' within the meaning of G.S. 78A-2(2) or a person excluded from the definition of 'dealer' by that provision; a 'salesman' within the meaning of G.S. 78A-2(9); an 'investment adviser' within the meaning of G.S. 78C-2(1) or a person excluded from the definition of 'investment adviser' by that provision; or an 'investment adviser representative' within the meaning of G.S. 78C-2(3); provided that such persons shall be excluded from the terms 'telephonic seller' and 'seller' only with respect to activities regulated by Chapters 78A and 78C.~~

~~b. Any person conducting sales or solicitations on behalf of a licensee of the Federal Communications Commission or holder of a franchise or certificate of public convenience and necessity from the North Carolina Utilities Commission.~~

~~c. Any insurance agent or broker who is properly licensed by the Department of Insurance and who is soliciting within the scope of the agent's or broker's license or any employee or independent contractor of an insurance company licensed by the Department of Insurance conducting sales or solicitations on behalf of that company.~~

~~d. Any federally chartered bank, savings institution, or credit union or any bank, savings institution, or credit union properly licensed by the State or subject to federal regulating authorities.~~

~~e. Any organization that is exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section, or that is organized exclusively for one or more of the purposes specified in section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section and that upon dissolution shall distribute its assets to an entity that is exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section, the United States, or a state; any "charitable solicitor" properly licensed under Article 2 of Chapter 131F of the General Statutes, or any person exempt from Chapter 131F of the General Statutes under G.S. 131F-3.~~

~~f. A person who periodically issues and delivers catalogs to potential purchasers and the catalog:~~
~~1. Includes a written description or illustration and the sales price of each item offered for sale;~~
~~2. Includes at least 24 full pages of written material or illustrations;~~
~~3. Is distributed in more than one state; and~~
~~4. Has an annual circulation of not less than 250,000 customers.~~

~~g. A person engaging in a commercial telephone solicitation where the solicitation is an isolated transaction and not done in the course of a pattern of repeated transactions of a like nature.~~

~~h. A person primarily soliciting the sale of a newspaper of general circulation, a publisher of a magazine or other periodical of general circulation, or an agent of such a publisher acting pursuant to a written agency agreement.~~

~~i. A person soliciting the sale of services provided by a cable television system operating under the authority of a local franchise.~~

~~j. Any passenger airline licensed by the Federal Aviation Administration.~~

~~k. Any person holding a real estate broker's or sales agent's license under Chapter 93A of the General Statutes and who is soliciting within the scope of the broker's or agent's license.~~

~~l. Any person soliciting a transaction regulated by the Commodities Futures Trading Commission, provided the person is registered or temporarily licensed by the Commodities Futures Trading Commission under the Commodity Exchange Act, 7 U.S.C. § 1, et seq.~~

~~m. Any person soliciting a purchase from a business, provided the person soliciting makes reasonable efforts to ensure that the person solicited has actual authority to bind the business to a purchase agreement.~~

~~n. A foreign corporation, limited liability company, or limited partnership that has obtained and maintained a certificate of authority to transact business or conduct affairs in this State pursuant to Chapter 55, 55A, or 57C or Article 5 of Chapter 59 of the General Statutes and that only transacts business or conducts affairs in this State using the name set forth in the certificate of authority.~~

~~o. An issuer or a subsidiary of an issuer that has a class of securities which is subject to section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 781) and which is either registered or exempt from registration under paragraph (A),~~

~~paragraph (B), paragraph (C), paragraph (E), paragraph (F), paragraph (G), or paragraph (H) of subsection (g)(2) of that section.~~

~~p. A person soliciting the sale of food, seeds, or plants when a sale does not involve an amount in excess of one hundred dollars ($100.00) directed to a single address.~~

~~q. A person soliciting:~~

~~1. Without intent to complete or obtain provisional acceptance of a sale during the telephone solicitation;~~

~~2. Who does not make the major sales presentation during the telephone solicitation but arranges for the major sales presentation to be made at a later face-to-face meeting between the salesperson and the purchaser;~~

~~3. Who does not cause an individual to go to the prospective purchaser to collect payment for the purchase or to deliver any item purchased directly following the telephone solicitation; or~~

~~4. Who offers to send the purchaser descriptive literature and does not require payment prior to the purchaser's review of the descriptive literature.~~

~~r. A person soliciting the purchase of contracts for the maintenance or repair of items previously purchased from the person making the solicitation or on whose behalf the solicitation is made.~~

~~s. A book, video, recording, or multimedia club or contractual plan or arrangement:~~

~~1. Under which the seller provides the consumer with a form with which the consumer can instruct the seller not to ship the offered merchandise.~~

~~2. Which is regulated by the Federal Trade Commission trade regulation concerning "use of negative option plans by sellers in commerce".~~

~~3. Which provides for the sale of books, recordings, multimedia products or goods, or videos which are not covered under paragraphs 1. or 2. of this sub-subdivision, including continuity plans, subscription arrangements, standing order arrangements, supplements, and series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive such merchandise on a periodic basis.~~

~~t. A person who for at least two years has been operating under the same name as that used in connection with its telemarketing operations and retail establishment in North Carolina where~~

~~consumer goods are displayed and offered for sale on a continuing basis if a majority of the person's business involves the buyers obtaining services or products at the person's retail establishment.~~

~~u. A person:~~

~~1. Who provides telephone solicitation services under contract to sellers;~~

~~2. Who has been operating continuously for at least three years under the same business name; and~~

~~3. For whom at least seventy-five percent (75%) of the person's contracts are performed on behalf of other persons exempt under this section.~~

~~v. A person soliciting political contributions in accordance with Article 22A of Chapter 163 of the General Statutes.~~

~~w. The seller of a "business opportunity" as defined in G.S. 66-94, while engaged in activities subject to regulation under Article 19 of Chapter 66 of the General Statutes, provided that such seller has complied with the provisions of G.S. 66-97.~~

~~x. A "loan broker" as defined in G.S. 66-106, while engaged in activities subject to regulation under Article 20 of Chapter 66 of the General Statutes, provided that such loan broker has complied with the provisions of G.S. 66-109.~~

~~y. A "membership camping operator" as defined in G.S. 66-232(10) or a "salesperson" as defined in G.S. 66-232(16), while engaged in activities subject to regulation under Article 31 of Chapter 66 of the General Statutes, provided that such persons have complied with the provisions of G.S. 66-234 and 66-237, as applicable.~~

'Telephone solicitor' or 'solicitor' has the same meaning as 'telephone solicitor' in G.S. 75-30.1 and includes any person, business, or other legal entity that receives inbound telephone solicitations.

"**§ 66-261. Registration of ~~telephonic sellers.~~telephone solicitors.**

(a) Not less than 10 days before commencing telephone solicitations in this State, a ~~telephonic seller~~ telephone solicitor shall register with the ~~Secretary~~ Attorney General by filing the information required in G.S. 66-262 and paying a filing fee of ~~one hundred dollars ($100.00).~~one thousand dollars ($1,000) if the telephone solicitor has 500 or more direct employees; seven hundred fifty dollars ($750.00) if the telephone solicitor has between 50 and 500 direct employees; five hundred dollars ($500.00) if the telephone solicitor has between five and 51 direct employees; and two hundred fifty dollars ($250.00) if the telephone solicitor has five or fewer direct employees. A ~~telephonic seller~~ telephone solicitor is doing business in this State if it ~~solicits or attempts to solicit prospective purchasers from locations in this State or solicits or attempts to solicit prospective purchasers who are located in this State.~~makes or causes

to be made any telephone solicitation to prospective purchasers, whether the telephone solicitations are made from a location inside North Carolina or outside North Carolina.

(b) The information required in G.S. 66-262 shall be submitted on a form provided by the ~~Secretary~~ Attorney General and shall contain the notarized signatures of ~~each~~ an authorized principal of the ~~telephonic seller~~.telephone solicitor.

(c) Registration of a ~~telephonic seller~~ telephone solicitor shall be valid for one year from the effective date thereof and may be annually renewed by making the filing required in G.S. 66-262 and paying the filing fee required by subsection (a) of this section.~~of one hundred dollars ($100.00).~~ Registration shall not be deemed effective unless all required information is provided and any deficiencies or errors noted by the ~~Secretary~~ Attorney General have been corrected to the satisfaction of the ~~Secretary.~~Attorney General.

(d) Whenever, prior to expiration of a ~~seller's~~ telephone solicitor's annual registration, there is a change in the information required by G.S. 66-262, the ~~seller~~ telephone solicitor shall, within ~~10~~ 30 days after the change, file an addendum with the ~~Secretary~~ Attorney General updating the information.

"**§ 66-262. Filing information.**

(a) Each filing submitted to the ~~Secretary~~ Attorney General shall contain all of the following information:

(1) The name or names, including any assumed names, under which the ~~telephonic seller~~ telephone solicitor is doing or intends to do business in this State.

(2) The ~~telephonic seller's~~ telephone solicitor's business form and place of ~~organization and, if the seller is a corporation, copies of its articles of incorporation and bylaws and amendments thereto, or if a partnership, a copy of the partnership agreement.~~organization.

(3) Complete street address of the ~~telephonic seller's~~ telephone solicitor's principal place of business.

~~(4) The complete street address of each location from which telephone solicitations are placed by the telephonic seller.~~

~~(5) A listing of all telephone numbers to be used by the telephonic seller, including area codes, and the complete street address of the business premises served by each number.~~

(6) The name and title of each principal.

~~(7) The complete street address of the residence, the date of birth, and the social security number of each principal.~~

~~(8) The true name, street address, date of birth, and the social security number of each room operator, together with the room operator's full employment history during the preceding two years.~~

~~(9) The name and address of all banks or savings institutions where the telephonic seller maintains deposit accounts.~~

~~(10) The name and address of each long-distance telephone carrier used by the telephonic seller.~~

(10a) The name, title, telephone number, fax number (if any), electronic mail address (if any), and mailing address of the party to whom all notices, information regarding changes in North Carolina telemarketing regulations, and current copies of the No-Call Registry established under G.S. 75-30.2 shall be delivered.

(11) A summary of each ~~civil or criminal proceeding~~ civil, criminal, or administrative proceeding, including a consent judgment or consent decree without litigation and including an assurance of discontinuance or an assurance of voluntary compliance in order to resolve any allegation that has been brought by any federal, state, or local government agency or local official within the United States or any federal, provincial, or local government agency or official in Canada, ~~brought against the telephonic seller,~~ in which the telephone solicitor, any of its principals, ~~or any of its room operators~~ subsidiaries, or corporate predecessors has been a party during the ~~preceding five years~~10-year period preceding registration or renewal of registration, ~~by federal, State, or local officials relating to telephonic sales practices of each.~~ and which proceeding involves allegations that regulations, agency rules, ordinances, or statutes pertaining to telephone solicitations have been violated by the telephone solicitor or that the telephone solicitor or any of its principals, subsidiaries, or corporate predecessors have violated any criminal statute prohibiting mail fraud, wire fraud, money laundering, obtaining property by false pretenses, or other forms of fraud. The summary shall include the date each ~~action~~ proceeding was commenced, the ~~criminal or civil charges~~criminal, civil, or administrative violations alleged, the case caption, the court or agency proceeding file number, the ~~court venue,~~ venue of the proceeding, and the disposition or current status of the ~~action.~~ proceeding. ~~For purposes of this section, a 'civil proceeding includes' means assurances of voluntary compliance, assurances of discontinuance, consent judgments, and similar agreements executed with federal, State, or local officials.~~ The summary of settlement agreements, assurances of discontinuance, and assurances of voluntary compliance shall include the date each was executed, the violations alleged or resolved, and the name and address of the agency or official that executed the document with the telephone solicitor.

(b) For purposes of this section, 'street address' does not include a private mail service ~~address.~~address, 'Commercial Mail Receiving Agency' ('CMRA') or 'private mailbox' ('PMB'), as those terms are defined by the United States Postal Service.

(c) The requirements of G.S. 62-262(a)(11) do not apply to any federally or state chartered bank, savings institution, credit union, any licensee of the Federal Communications Commission, or any holder of a franchise or certificate of public convenience and necessity from the North Carolina Utilities Commission; provided that if the Attorney General receives complaints against any such telephone solicitor and

requests the summary of information pursuant to G.S. 66-262(a)(11), then the telephone solicitor shall provide it within 30 days.

"§ 66-263. Bond requirement; prizes and gifts.

(a) At least 10 days before the commencement of any promotion offering any gift or prize with an actual or represented market value of five hundred dollars ($500.00) or more, the ~~telephonic seller~~ telephone solicitor shall notify the ~~Secretary~~ Attorney General in writing of the details of the promotion, fully describing the nature and number of all gifts or prizes and their current market value, the ~~seller's~~ telephone solicitor's rules and regulations governing the promotion, and the date the gifts or prizes are to be awarded. All gifts or prizes offered shall be awarded. Concurrent with notifying the ~~Secretary~~ Attorney General under this subsection, the ~~telephonic seller~~ telephone solicitor shall post a bond with the ~~Secretary~~ Attorney General for the market value or the represented value, whichever is greater, of all gifts or prizes represented as available under the promotion. The bond must be issued by a surety company authorized to do business in this State. The bond shall be in favor of the State of North Carolina for the benefit of any person entitled to receive a gift or prize under the promotion who did not receive it within 30 days of the specified date of award. The amount recoverable by any person under the bond shall not exceed the market value, the represented value of the gift or prize, or the amount of any consideration or contribution paid by that person in response to the telephone solicitation, whichever is greatest.

(b) Within 45 days after the specified date of the award of the gift or prize, the ~~seller~~ telephone solicitor shall provide, in writing, to the ~~Secretary,~~Attorney General, proof that the gifts or prizes were awarded. The writing shall include the name, address, and telephone number of all persons receiving awards or prizes. The bond shall be maintained until the ~~Secretary~~ Attorney General receives reliable proof that the gifts or prizes have been delivered to the intended recipients.

(c) The Attorney General, on behalf of any injured purchaser, or any purchaser who is injured by the bankruptcy of the ~~telephonic seller~~ telephone solicitor or its breach of any agreement entered into in its capacity as a ~~telephonic seller,~~telephone solicitor, may initiate a civil action to recover against the bond.

"§ 66-264. Calls made to minors.

A ~~telephonic seller~~ telephone solicitor must inquire as to whether the prospective purchaser it is contacting is under 18 years of age. If the prospective purchaser purports to be under 18 years of age, the ~~telephonic seller~~ telephone solicitor must discontinue the call immediately.

"§ 66-265. Offers of gifts or prizes.

(a) It shall be unlawful for any ~~telephonic seller~~ telephone solicitor to make a telephone solicitation or attempted telephone solicitation involving any gift or prize when the solicitation or attempted solicitation:

(1) Requests or directs the consumer to further the transaction by calling a 900 number or a pay-per-call number.

(2) Requests or directs the consumer to send any payment or make a donation in order to collect the gift or prize.

(3) Does not comply fully with G.S. 75-30, 75-32, 75-33, or 75-34.

(b) Notwithstanding subsection (a) of this section, a ~~telephonic seller~~ telephone solicitor may offer a gift or prize in connection with the bona fide sale of a product or service.

"**§ 66-265.1. Regulation of contracts secured during telephone solicitations.**

(a) In all transactions involving prospective purchasers, no contract or purchase agreement secured during a telephone solicitation is valid, and no money from the prospective purchaser is due thereunder, unless all of the following conditions are satisfied:

(1) The contract is reduced to writing and signed by the consumer.

(2) The contract complies with all other applicable laws.

(3) The contract contains the name, address, and business telephone number of the seller, the total price of the contract, and a detailed description of the goods or services being sold.

(4) The goods or services subject to the contract comply with the description principally used in the telephone solicitation.

(5) The contract contains, in bold, conspicuous type, immediately preceding the signature, the words: 'You are not obligated to pay any money unless you sign this contract and return it to the seller.'

(6) The contract does not exclude from its terms any oral or written representations made by the telephone solicitor to the consumer in connection with the transaction.

(b) A telephone solicitor or a merchant who engages a telephone solicitor to make or cause to be made a telephone solicitation to a prospective purchaser shall not do any of the following until the merchant receives from the prospective purchaser a copy of the written contract, signed by the consumer, that complies with this section:

(1) Make or submit a charge to a consumer's credit card account, debit card account, checking account, savings account, or other account.

(2) Make or cause to be made any electronic transfer of funds.

(c) The provisions of this section do not apply to any transaction in which the prospective purchase has a right to cancel a contract or offer to purchase made during a telephone solicitation and receive a full refund, provided that all of the following conditions are satisfied:

(1) In telephone solicitation sales involving goods, the prospective purchaser shall have a right to cancel a contract or offer to purchase within seven days of receiving the goods and receive a full refund.

(2) In telephone solicitation sales involving goods, an invoice and cancellation notice must accompany the goods. The cancellation notice shall be written in twelve-point bold face type and state that the purchaser has a right to cancel the transaction within seven days of receipt and not be billed for the goods if no prior payment is made or receive a full refund if prior payment is made.

(3) In telephone solicitation sales involving services or free trial periods, the prospective purchaser shall have a right to cancel a contract or

offer to purchase within 30 days of receiving the bill or monthly statement of the account charged and receive a full refund.

(4) Notice of cancellation by the buyer may occur either by use of the cancellation notice or any other form of written expression of the intent of the prospective purchaser not to be bound by the telephone solicitation sale.

(5) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the cancellation notice, contract, or offer to purchase.

(6) Notice of cancellation by the prospective purchaser to the telephone solicitor or merchant, if given by mail, is given when it is deposited in the United States mail properly addressed and postage prepaid.

(7) The telephone solicitor shall process a full refund within 30 days of receipt of the returned goods or a cancellation notice of services.

(d) Nothing in subsection (c) of this section shall be construed to relieve the purchaser of any obligation of payment for any consumption of goods or use of services prior to return or notice of cancellation.

(e) The provisions of subsection (c) of this section do not apply to any transaction that by its nature cannot be canceled or reversed.

"**§ 66-265.2. Previously obtained account numbers.**

(a) This section does not apply to a telephone solicitor who has an established business relationship, as defined in G.S. 75-30.1, with a prospective purchaser and who is charging an account maintained by that prospective purchaser.

(b) A telephone solicitor shall not charge or debit a prospective purchaser's previously obtained account number in a telephone solicitation unless the telephone solicitor has first obtained authorization, either in writing or verbally, from the prospective purchaser for the specific charge or debit discussed during the telephone solicitation. For purposes of this section, 'account' shall mean the credit or debit cared, checking, savings, loan, telephone service, utility, or other similar account.

(c) Verbal authorizations must comply with all of the following requirements:

(1) The telephone solicitor shall advise the prospective purchaser in a normal tone and at a normal pace during the call of the following information:

a. That the telephone solicitor has the prospective purchaser's account number or the ability to charge the account if the telephone solicitor does not have an account number.

b. That the telephone solicitor is going to charge the prospective purchaser's account.

c. The digits of the account number, unless the telephone solicitor does not know the account number because federal law precludes a financial institution from sharing the account number with the telephone solicitor or the telephone solicitor otherwise does not have the account number. In such cases, the telephone solicitor shall disclose again that it has the ability to

charge the account number, although it does not have the account number of the prospective purchaser.

d. The specific amount that will be charged to the prospective purchaser's account.

e. A clear, accurate, and concise description of the product or service being purchased.

f. All material terms and conditions of the sale, including cancellation rights.

g. The name, address, and telephone number of the person who will be charging the account number.

(2) The telephone solicitor shall audio tape the authorization and shall advise the prospective purchaser that the authorization is being recorded.

(3) The authorization shall be kept and maintained for a period of two years and shall be made available to the purchaser upon written request.

"**§ 66-266. Penalties.**

(a) Any violation of this Article shall constitute an unfair and deceptive trade practice in violation of ~~G.S. 75-1.1.~~G.S. 75-1.1, except for inadvertent errors in the application process.

(b) In an action by the Attorney General against a ~~telephonic seller~~ telephone solicitor for violation of ~~this Article,~~ G.S. 66-262(a)(11), 66-263, 66-265, 66-265.1, or 66-265.2 or for any other act or practice by a ~~telephonic seller~~ telephone solicitor constituting a violation of G.S. 75-1.1, the court may impose civil penalties of up to twenty-five thousand dollars ($25,000) for each violation involving North Carolina purchasers or prospective purchasers who are 65 years of age or older.

(c) The remedies and penalties available under this section shall be supplemental to others available under the law, both civil and criminal.

(d) Compliance with this Article does not satisfy or substitute for any other requirements for license, registration, or conduct imposed by law.

(e) In any civil proceeding alleging a violation of this Article, the burden of proving an exemption or an exception from a definition is upon the person claiming it, and in any criminal proceeding alleging a violation of this Article, the burden of producing evidence to support a defense based upon an exemption or an exception from a definition is upon the person claiming it."

SECTION 8. Should one or more of the terms or provisions of this act or any application thereof be held or declared unenforceable or invalid to any extent, the remainder of this act, and the applications thereof that have not been held or declared unenforceable or invalid, shall remain in effect.

SECTION 9. Consistent with protected speech rights of businesses that engage in telephone solicitations, the provisions of this act shall be given broad construction so as to protect residential telephone subscribers from unwanted telephone solicitations and from problematic sales techniques and payment procedures often associated with these solicitations.

SECTION 10. Section 3 of this act becomes effective January 1, 2006. G.S. 62-54, as amended by Section 5 of this act, applies to all telephone directories printed on or after April 1, 2003. All other sections of this act become effective January 1, 2003, and apply to telephone solicitations made on or after that date.

SECTION 11. Notwithstanding Section 10 of this act, Sections 1 through 10 of this act become effective only if a bill to modify the current operations appropriations for the 2002-2003 fiscal year becomes law and that bill contains a provision that is equivalent to Section 15.2(a) of the Senate Bill 1115, Third Edition Engrossed 6/19/02.

HOUSE BILL 1612:
Stop Unwanted Telephone Solicitations

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representatives Baddour and Redwine
Date:	August 15, 2002		
Version:	Proposed Committee Substitute H1612-CSSBf-SB-73 [v.5]	**Summary by:**	Jeff Hudson, Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 1612, would direct the Attorney General to establish a No-Call Registry and would prohibit telephone solicitors from calling the telephone number of a residential telephone subscriber if the subscriber's telephone number appears in the No-Call Registry. The Proposed Committee Substitute would also increase the filing fees for telephone solicitors and regulate the formation of contracts via telephone solicitations.***

BILL ANALYSIS:

Section 1. Findings

Section 2. Restrictions on Telephone Solicitations

Under current law, a telephone solicitor may not call a residential telephone subscriber who has communicated to that telephone solicitor a desire to be taken off the telephone solicitor's contact list. Section 2 prohibits a telephone solicitor from calling the telephone number of a residential telephone subscriber if the subscriber's telephone number appears in the No-Call Registry..

Section 2 also:

- Amends the definitions related to the regulation of telephone solicitations as follows:
  - Expands the definition of "telephone solicitation" to include telephone calls for the purpose of soliciting or encouraging participation in a contest, sweepstakes, raffle, or lottery and for the purpose of obtaining a charitable donation.
  - Amends the list of exemptions from the definition of "telephone solicitation" as follows:
    - The established business relationship exemption applies to existing business relationships as well as business relationships that have existed within the prior 18 months. An established business relationship is an ongoing, voluntary relationship formed prior to the telephone solicitation between a telephone solicitor or one or more of its affiliates and a residential telephone subscriber.
    - An exemption is added for calls that are in connection with an existing debt or contract.
    - An exemption is added for reference checks.
    - An exemption is added for persons, businesses, or other legal entities that employ fewer than 10 direct employees and those direct employees collectively make or attempt to make no more than 10 unsolicited calls per week.
    - An exemption is added for arranging face-to-face meetings.

- Defines "doing business in this State" as making or causing to be made any telephone solicitation to residential telephone subscribers, whether the telephone solicitations are made from a location inside or outside North Carolina. **Note:** This definition is designed to address the issue of whether North Carolina has jurisdiction to enforce telephone solicitation laws against out-of-state telephone solicitors.

- Provides that if a telephone solicitor makes a call to a residential telephone subscriber whose number is in the No-Call Registry based on an existing or past business relationship and the subscriber communicates a desire to receive no further telephone solicitations from that telephone solicitor or one of its affiliates, the telephone solicitor will remove that person's number from its contact records and the contact records of all of its affiliates within 30 days.
- Provides that a telephone solicitor may contact a residential telephone subscriber whose telephone number appears in the No-Call Registry via non-telephonic means in order to obtain the subscriber's express written permission allowing the telephone solicitor to make telephone solicitations to the subscriber.
- Provides that a telephone solicitor may advertise in a general medium or contact a residential telephone subscriber whose telephone number appears in the No-Call Registry via non-telephonic means in order to encourage the subscriber to initiate telephonic communications to the telephone solicitor.
- Authorizes the Attorney General to bring an action to impose the following civil penalties for violations of telephone solicitation laws:
  - $500 for the first violation, $1,000 for the second violation, and $5,000 for the third and each subsequent violation within the past two years.
  - $100 for each violation within the past two years if the telephone solicitor has established in-house procedures to comply with telephone solicitation requirements, has maintained a list of persons that may not be contacted, and the violations are the result of a mistake.
- Authorizes the Attorney General to initiate an action on behalf of residential telephone subscribers. The Attorney General may not, however, seek treble damages under this provision.
- Authorizes a residential telephone subscriber who has received telephone solicitations in violation of the telephone solicitation laws to bring an action to recover $500 for the first violation, $1,000 for the second violation, and $5,000 for the third and each subsequent violation within the past two years.
- Provides that no action may be brought by or on behalf of residential telephone subscribers under this provision if the telephone solicitor has established in-house procedures to comply with telephone solicitation requirements, has maintained a list of persons that may not be contacted, and the violations are the result of a mistake

Section 3. Caller Identification Block

Under current law, a telephone solicitor may not knowingly block a residential telephone subscriber's caller identification service. Use of a call generating system that does not transmit caller identification information, however, is not a violation of this prohibition. Section 3 repeals the exemption for call generating systems effective January 1, 2006.

Section 4. No-Call Registry

Section 4 directs the Attorney General to establish and maintain a No-Call Registry containing the telephone numbers of residential telephone subscribers who do not wish to receive telephone solicitations at those numbers. The No-Call Registry will be operated in the following manner:

- The telephone number of a residential telephone subscriber will be placed in the No-Call Registry upon the request of the subscriber and will remain in the No-Call Registry until the subscriber requests its removal or the Attorney General is notified that the number has been disconnected.
- Not less than 10 days before commencing telephone solicitations, a telephone solicitor must register with the Attorney General, pay a filing fee, and obtain the latest edition of the No-Call Registry.
- A telephone solicitor may not sell, assign, transfer, or convey a copy of the No-Call Registry to parties other than its employees or its wholly owned subsidiaries.
- Information contained in the No-Call Registry may only be used to remove residential telephone subscribers from telephone call lists and to prevent calls from being placed to telephone numbers listed in the No-Call Registry. Information contained in the No-Call Registry is not a public record.

Section 5. Notification of Opportunity to Object to Telephone Solicitations

Under current law, each local exchange company must notify each residential telephone subscriber, at least annually, of various provisions of State and federal law that allow consumers to object to receiving telephone solicitations and that allow consumers to have their names removed from telemarketing lists. This information must also be contained in the consumer information pages of each telephone directory.

Section 5 requires both local exchange companies and competing local exchange companies to disseminate a bill insert produced by the Attorney General once every two years and disseminate a bill insert produced by the local exchange companies or competing local exchange companies three times every two years. This section applies to telephone directories printed on or after April 1, 2003.

Section 6. Restriction on Use of Automatic Dialing and Recorded Message Players

Under current law, no person may use an automatic dialing and recorded message player to make unsolicited telephone calls unless the person is a charitable, civic, political, or opinion polling organization, or a radio station, television station, or broadcast rating service conducting a public opinion poll and the person clearly identifies the nature of the call and the name and address of the calling organization. Violation of this prohibition is a Class 3 misdemeanor punishable only by a fine of $100 per occurrence.

Section 6 adds the requirement that no part of an unsolicited telephone call from an automatic dialing and recorded message player may be used to solicit or encourage the purchase or rental of, or investment in, property, goods, or services; to obtain information that will or may be used to solicit or encourage the purchase or rental of, or investment in, property, goods, or services; or to solicit or encourage the making of a charitable donation.

Section 6 also:

- Provides that a call is unsolicited if the telephone number of the person called appears in the No-Call Registry.
- Deletes the penalty for violation of this section.
- Provides that this section does not apply to calls made in connection with an existing debt or contract.

Section 7. Telephone Solicitor Registration and Bond Requirement

Under current law, not less than 10 days before commencing telephone solicitations, a telephone solicitor must register with the Secretary of State and pay a $100 filing fee. Section 7 requires telephone solicitors to register with the Attorney General not less than 10 days before commencing telephone solicitations and pay the following fees:

- $1,000 if the telephone solicitor employs 500 or more direct employees.
- $750 if the telephone solicitor employs between 50 and 500 direct employees.
- $500 if the telephone solicitor employs between 5 and 51 direct employees.
- $250 if the telephone solicitor employs 5 or fewer direct employees.

Section 7 also:

- Amends the definitions related to the registration and bonding of telephone solicitors as follows:
  - Defines "telephone solicitor" to also include any person, business, or other legal entity that receives inbound telephone solicitations.
  - Defines "inbound telephone solicitation" as a telephone call initiated by a prospective purchaser in response to any notice that the prospective purchaser has won a contest, may qualify for credit, may receive a free or discounted vacation, or may receive a membership into a discount buying club.
  - Defines "prospective purchaser" as a residential telephone subscriber and any member of the residential telephone subscriber's household.
- Provides that for a contract or purchase agreement secured during a telephone solicitation to be valid:
  - The contract must be reduced to writing and signed by the consumer.
  - The contract complies with all other applicable laws.
  - The contract contains the name, address, and business telephone number of the seller; the total price of the contract; and a detailed description of the goods or services being sold.
  - The goods or services comply with the description used in the telephone solicitation.
  - The contract contains a statement that the prospective purchaser is not obligated to pay unless the prospective purchaser signs the contract and returns it to the seller.
  - The contract does not exclude any representations made by the telephone solicitor.

  This provision does not apply to any transaction in which the prospective purchaser has a right to cancel a contract or offer to purchase and receive a full refund.

- Provides that a telephone solicitor or a merchant who engages a telephone solicitor to make telephone solicitations to a prospective purchaser may not make or submit a charge to the prospective purchaser's accounts or make an electronic transfer of funds until the merchant receives a signed copy of the written contract from the prospective purchaser. This provision does not apply to any transaction in which the prospective purchaser has a right to cancel a contract or offer to purchase and receive a full refund.
- Provides that a telephone solicitor cannot charge or debit a prospective purchaser's previously obtained account number in a telephone solicitation unless the telephone solicitor has obtained a written or verbal authorization from the prospective purchaser for the specific charge or debit discussed during the telephone solicitation.

Section 8. Severability Clause

If any provision of the act is held to be unenforceable or invalid, the remainder of the act that has not been held to be unenforceable or invalid shall remain in effect.

Section 9. Construction of Act

Consistent with protected speech rights, this act shall be construed broadly to protect residential telephone subscribers from unwanted telephone solicitations and from problematic sales techniques and payment procedures often associated with these solicitations. **Note:** This provision is designed to address concerns that may arise due to the act's regulation of various forms of speech.

Section 10. Effective Dates

Except as otherwise noted, this act is effective January 1, 2003 and applies to telephone solicitations made on or after that date.

Section 11. Effectiveness Contingent on Appropriation

This act becomes effective only if a Budget Bill that contains a provision that is equivalent to Section 15.2(a) of the Senate Budget Bill becomes law. Section 15.2(a) of the Senate Budget Bill provides that the Department of Justice may use up to one million dollars ($1,000,000) of the funds available to the Department during the 2002-2003 fiscal year to establish and implement a no-call registry to stop unwanted telemarketing calls and to increase protections for consumers in transactions initiated by telemarketers. Section 15.2(a) of the House Budget Bill provides that the Department of Justice may use up to seven hundred thousand dollars ($700,000) of the funds available to the Department during the 2002-2003 fiscal year to establish and implement a no-call registry to stop unwanted telemarketing calls and to increase protections for consumers in transactions initiated by telemarketers.

Following are the substantive changes that have been made to House Bill 1612 (Stop Unwanted Telephone Solicitations) since it was presented in House Judiciary II on July 9, 2002.

Proposed Committee Substitute H1612-CSSBf-73 [v.5]:

- Provides that the established business relationship exception to the definition of telephone solicitation applies to exiting business relationships as well as business relationships that have existed within the prior 18 months. Also defines "established business relationship" and "affiliate". (page 2, lines 42 through 44; page 3, lines 38 through 40; page 4, lines 1 through 5)

- Returns the tax-exempt organization exception to current law so that calls do not have to be made by direct employees of the organization or unpaid volunteers (page 3, line 4)

- Provides an exception to the definition of telephone solicitation for arranging a face-to-face meeting between the person initiating the call and the person receiving the call. (page 3, lines 14 through 33)

- Provides that if a telephone solicitor makes a call to a residential telephone subscriber whose number is in the No-Call Registry based on an existing or past business relationship and the subscriber communicates a desire to receive no further telephone solicitations from that telephone solicitor or one of its affiliates, the telephone solicitor will remove that person's number from its contact records and the contact records of all of its affiliates within 30 days. (page 4, lines 33 through 42)

- Provides that the Attorney General may initiate an action on behalf of residential telephone subscribers pursuant to G.S. 75-30.1(i). The Attorney General may not, however, seek treble damages under this provision. (page 6, lines 4 through 9)

- Provides that the increased penalties for multiple violations of the no call prohibition must occur within a two-year period. (page 6, lines 16, 17, and 36)

- Deletes the provision that allowed telephone subscribers to bring an action to recover $100 per violation of the no-call prohibition when the telephone solicitor had otherwise generally complied with telephone solicitation laws and procedures. Now provides that no action may be brought by or on behalf of residential telephone subscribers if the telephone solicitor generally complied with telephone solicitation laws and procedures. (was at page 6, between lines 36 and 37)

- Changes the requirement that local exchange companies notify the Attorney General when telephone numbers are disconnected to a requirement that local exchange companies provide the Attorney General a list of disconnected numbers on an annual basis. (page 7, lines 34 through 37)

- Removes the "technically feasible and economically practicable" language from the requirement that the Attorney General transfer telephone numbers from any federal do-not-call registry to the State No-Call Registry. (was at page 8, line 18)

- Provides that a telephone solicitor or other entity may not transfer a copy of its No-Call Registry to any party other than its employees or wholly owned subsidiaries. This provision no longer allows a telephone solicitor to transfer a copy of its No-Call Registry to independent contractors with whom the telephone solicitor has a business relationship. (page 8, lines 26 through 38)

- Reduces the requirement on local exchange companies to notify residential telephone subscribers of their opportunities to object to telephone solicitations. The bill insert produced by the Attorney General must be disseminated once every two years rather than once each year. The bill insert produced by the local exchange company must be disseminated three times every two years rather than once each year. (page 9, lines 5 through 21)

- Provides that the prohibition on using automatic dialing and recorded message players to make telephone solicitations also applies to telephone solicitations for charitable donations. (page 9, lines 36 and 37)

- Expands the definition of "inbound telephone solicitations" to include calls that are initiated in response to telephone calls and television advertising. Also expands the definition to include calls about free or discounted vacation or travel packages and memberships in discount buying clubs. (page 10, lines 37 and 38; page 11, lines 4 through 8)

- Bases the amount of the filing fee on the number of direct employees of the telephone solicitor rather than the employees and independent contractors. (page 15, line 32 through page 16, line 2)

- Excepts certain financial institutions that are acting as telephone solicitors from the requirement that they submit to the Attorney General information related to civil, criminal, or administrative proceedings involving certain forms of financial fraud. (page 17, line 40 through page 18, line 2)

- Provides that the regulation of contracts secured during telephone solicitations provisions do not apply to any transaction in which the prospective purchaser has a right to cancel a contract or offer to purchase and receive a full refund. (page 19, line 29 through page 10, line 19)

- Provides that a telephone solicitor cannot charge or debit a prospective purchaser's previously obtained account number in a telephone solicitation unless the telephone solicitor has obtained a written or verbal authorization from the prospective purchaser for the specific charge or debit discussed during the telephone solicitation. (page 20, line 20 though page 21, line 16)

- Expands violations that constitute unfair and deceptive trade practices to include violations of any provision of Article 33 (G.S. 66-260 through 266 --Telephonic Seller Registration) of Chapter 66 of the General Statutes, rather than just G.S. 66-262(a)(11) (filing information on proceedings related to financial fraud); G.S. 66-263 (Bond requirements; prizes and gifts); G.S. 66-264 (Calls made to minors); G.S. 66-265 (Offers of gifts or prizes); and G.S. 66-265.1 (Regulation of contracts secured during telephone solicitations). (page 21, lines 18 through 20)

COMPANIES AND TRADE ASSOCIATIONS NO LONGER OPPOSED

8/15

North Carolina Bankers Association

Bank of America

Wachovia

BellSouth

North Carolina Association of Realtors

North Carolina Auto Dealers

CP&L

Duke Power

Jefferson Pilot Financial

AFL-CIO

Professional Firefighters

Volunteer Firefighters

Mortgage Bankers

North Carolina League of Credit Unions

8/19

North Carolina Financial Services Association

CitiFinancial

Household Financial

Washington Mutual

Wells Fargo Financial

GE Capital

General Electric

Association of Fundraising Professionals

[redacted]

[redacted]

VISITOR REGISTRATION SHEET

J.II — Name of Committee

8-20-02 — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jeli Saylor	NC Press Association
JOHN BUSSIAN	"
Stephen Bryant	AG's OFFICE
Mark Isaacson	Capitol Press
Bob Wells	N.C. Rural Telephone Alliance
Erin Culbreth	LBA
John McMillan	MFHSPA.
[illegible]	Interstate Bank
Amy Fulbright	Hunton & Williams
[illegible]	NCFPC
Bill Wilson	NCATL
Richard C Hatch	AARP
Helen Savage	AARP
Larry Bentley	LBA
Julia White	DOJ
Jack Stein	"
[illegible]	Bar Assoc.
[illegible]	[illegible]
Gretchen Kelly	WorldCom
Becky Mercer	Mercer & Assoc.
Jeff VANDYKE	BST
[illegible]	Moore & Van Allen
Andy Ellen	NCRMA
Jon Carr	Jordan Price
Ron Wescott	Sprint

VISITOR REGISTRATION SHEET

J. H.
Name of Committee

8/20/02
Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Kirkman	AGO
KEN MELTON	ALLEY ASSOCIATES INC.
Larry Heckner	Household Financial Group
Sandy Sandy	WCSR
Dick Carlton	Carlton + Associates
Ken Kenion	A.I.G.
[illegible]	[illegible]
Leslie Swaegin	NCOBI
STAN PACE	VERIZON
FRAN PRESTON	NCRMA
Bob Gillam	Public Staff - NCUC
William E. SCHONG	AARP
Dexter Doyney	AARP Legislative Team
James Willy Jones	AARP
STEVE ROBERTS	AARP
BOBBY RIDDLE	PFFPNC
Richard O'Brien	PFFPNC
Arlene Johns	[illegible]
Ted Vaden	Chapel Hill Neuse
Cam Cru	BPMHL
Ed TURLINGTON	BPMHL
John Poliziotto	AT&T
Steve Woodson	NC Farm Bureau
ROBERT PASchal	Young, Moore & Henderson
Natalee Eudy	Charlotte Chamber
Paul Stock	NC Bankers Assn
BILL SCOGGIN	KENNEDY COVINGTON
RON OTTAVIO	WACHOVIA BANK
[illegible]	Hall's Assoc.

AGENDA
Judiciary II

Tuesday, August 27, 2002
10:00 a.m.
Room 421 LOB

Rep. Phil Baddour, Chair

CALL TO ORDER

BILLS TO BE HEARD

HB 1638 **Private Protect. Services Crim. Hist. Check**
Rep. Haire

SB 887 **Expand Magistrates' Authority**
Sen. Clodfelter

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

August 27, 2002

The House Committee on Judiciary II met on Tuesday, August 27, 2002 in room 421 LOB at 10:00 a.m. The following members were present: Rep. Baddour, Chair and Reps. Culpepper, Gulley, Haire, Hall, Jeffus, Justus, Miller, Pope, Sherrill, Weiss and Willingham. Staff including Tracy Dixon, Jeff Hudson and Robin Johnson were in attendance. A Visitor Registration sheet is attached and made part of these minutes.

Chairman Baddour called the meeting to order. Josh Freeman of Granville County (Rep. J. Crawford) served as a page.

Upon the motion of Rep. Culpepper, the PCS for HB 1638, A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE DEPARTMENT OF JUSTICE TO PROVIDE CRIMINAL RECORD CHECKS TO THE PRIVATE PROTECTIVE SERVICES BOARD AND TO CHARGE A FEE FOR CONDUCTING THE CHECK was adopted for discussion. Bill sponsor, Rep. Haire, was recognized to explain the bill. He stated that the bill fixes criteria that the FBI requires for agencies that use background criminal checks.

In response to Rep. Weiss, Rep. Haire stated that the results of the check would go back to the requesting agency. Rep. Haire additionally answered Rep. Justus' question of what the cost of these checks would be.

Rep. Pope questioned who would pay the fee and asked if the agencies would have the authority to increase the fees. Jeff Hudson, Committee Counsel, stated the fee would be paid by the individual applicant to the licensing board and the fee is basically passed through to the Department of Justice. Rep. Pope suggested this would be good discussion for the Finance Committee and asked if there was any concern raised by the Bar Association, the ACLU, etc. Rep. Baddour responded that the Bar asked for this and he though they all had. Steve Keen of the Medical Society Board confirmed that they had asked for the provisions. Rep. Haire explained that initially the private protective services had asked for the language and then as the word got out, staff took a while to review all the statutes to ensure that all requisite agencies involved were included.

Rep. Culpepper motioned to give a favorable report to the PCS, unfavorable to the original bill and recommended that the bill be re–referred to Finance.

Rep. Hall questioned whether it was possible to amend the section on page 2, line 20 to include yearly. Rep. Haire said he was thinking along the same lines. Rep. Baddour commented that he did not think it was germane to the bill.

Rep. Culpepper's motion carried. A copy of the PCS, the original bill and the bill summary are attached and made part of these minutes.

Rep. Culpepper explained SB 887, A BILL TO BE ENTITLED AND ACT TO PROVIDE ADDITIONAL AUTHORITY FOR MAGISTRATES WHO ARE LICENSED TO PRACTICE LAW, on behalf of bill sponsor, Sen. Clodfelter. Upon the motion of Rep. Hall the PCS was adopted for discussion.

Mr. Powell, Administrative Office of the Courts, commented on the work of the jurisdiction committee and spoke to the language that allowed both assistant and deputy clerks to hear cases and commented the committee recommended allowing only assistant clerks this power. Rep. Culpepper stated it was not the intent to put anything in this bill that was not expressly recommended by the committee. Mr. Powell affirmed that they recommended the section but not the provision about giving power to deputy clerks. Rep. Baddour restated that it was the intent to apply only to assistant clerks and asked if there was consensus among committee members for an amendment. Rep. Pope stated he supported the amendment as a step forward but commented he had questions past that.

Rep. Sherrill asked what the qualifications of an assistant clerk were. Mr. Powell responded that the goal was to allow flexibility and that there were no written qualifications. Rep. Baddour followed up by noting he had introduced the companion bill in the House and stated that in order for an assistant clerk to be allowed these powers, the magistrate and the clerk must be designated by an agreement between the chief district judge and the clerk of court. He continued noting that the original intent was to use only lawyers. Reps. Baddour, Culpepper and Pope continued to discuss this issue. Rep. Baddour highlighted the history of his companion bill that was reported out of committee and then pulled from the House floor due to opposition about the clerks. He stated he is comfortable now with the provisions because often times judges are tied up in administrative duties and it would make a lot of sense to allow the lower–paid people to do this work and allow the higher–paid judges to conduct business.

Jim Carr, Clerk of Superior Court in Durham, spoke to the difference in small versus large counties with regards to where magistrate versus a clerk could handle the duties. Rep. Culpepper commented that it was certainly not a one size fits all situation, and stated they would examine what would work best. Mr. Carr explained to Rep. Pope why the scenario using magistrates versus clerks in small counties was true. Rep. Baddour noted that this power would just be an extension of what a clerk was allowed to do.

Rep. Haire stated he comes from a small county and agreed with expansion of the authority of magistrates but he does not see the need to put the clerk of court in this position since this is what magistrates are for. He additionally noted that these are judicial authorities and the job of the clerk is to accept money and issue receipts.

Rep. Culpepper referred to Rep. Baddour's companion bill that was pulled from the House floor due to clerk opposition. He stated that this bill was a compromise

position to move the jurisdiction away from the high–paid judges and to allow for the lower–paid to take on these duties.

Rep. Justus questioned how many clerks of court had 12 years of experience in making his point that under this bill a clerk with one year of experience could supervise a clerk with 12 years of experience. Mr. Powell said he could find out the number of clerks with 12 years of experience. Rep. Baddour responded that the bill excused a clerk with 12 years of experience from the educational requirement. Rep. Baddour commented that there would be no vote taken on the bill at this time so that staff could make changes to the bill consistent with everyone's intentions.

Mr. Powell and Rep. Sherrill discussed the tobacco provision and Rep. Culpepper stated it came from Crime Control and Public Safety.

Rep. Sherrill wanted to clarify to make sure nothing was hidden in the bill about domestic violence cases or the 48–hour rule. Rep. Culpepper responded that this dealt strictly with criminal or infraction type infractions.

Rep. Pope made suggestions on who else should be invited to the next meeting. Rep. Baddour said the invitation to those mentioned had been extended and will be extended again for the next meeting.

Mr. Powell explained how the jurisdiction differed in the statues and the PCS, upon the request of Rep. Haire.

Copies of the PCS, original bill and bill summary are made part of these minutes.

The meeting adjourned at 10:50 a.m.

Representative Philip A. Baddour, Jr.
Chairman

Tracy Dixon
Committee Assistant

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1638 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE DEPARTMENT OF JUSTICE TO PROVIDE CRIMINAL RECORD CHECKS TO THE PRIVATE PROTECTIVE SERVICES BOARD AND TO CHARGE A FEE FOR CONDUCTING THE CHECK.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to the committee substitute bill ☒ which changes the title, unfavorable as to the original bill and recommendation that the committee substitute bill be re-referred to the Committee on Finance.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

5/13/02

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1638
PROPOSED COMMITTEE SUBSTITUTE H1638-PCS1281-SA-47

Short Title: Private Protect. Services Crim. Hist. Check. (Public)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DEPARTMENT OF JUSTICE TO PROVIDE CRIMINAL RECORD CHECKS TO THE ALE DIVISION WHEN INVESTIGATING ABC PERMIT APPLICANTS, LOCAL LAW-ENFORCEMENT AGENCIES ISSUING PRECIOUS METAL DEALER PERMITS, THE PRIVATE PROTECTIVE SERVICES BOARD, THE ALARM SYSTEMS LICENSING BOARD, THE BOARD OF LAW EXAMINERS, THE MEDICAL BOARD, THE STATE BOARD OF DENTAL EXAMINERS, THE BOARD OF PHARMACY, THE BOARD OF MORTUARY SCIENCE, THE REAL ESTATE COMMISSION, THE COMMISSIONER OF LABOR WHEN INVESTIGATING PRIVATE PERSONNEL SERVICE LICENSE APPLICANTS, THE STRUCTURAL PEST CONTROL COMMITTEE, AND CITIES WHEN INVESTIGATING TAXI LICENSE APPLICANTS AND TO CHARGE A FEE FOR CONDUCTING THE CHECKS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-902 reads as rewritten:

"**§ 18B-902. Application for permit; fees.**

(a) Form. – An application for an ABC permit shall be on a form prescribed by the Commission and shall be notarized. ~~The application shall be signed and sworn to by each~~Each person required to qualify under ~~G.S. 18B-900(c).~~G.S. 18B-900(c) shall sign and swear to the application and shall submit a full set of fingerprints with the application.

(b) Investigation. – Before issuing a new permit, the Commission, with the assistance of the ALE Division, shall investigate the applicant and the premises for which the permit is requested. The Commission may request the assistance of local ABC officers in investigating applications. An applicant shall cooperate fully with the investigation.

The Department of Justice may provide a criminal record check to the ALE Division for a person who has applied for a permit through the Commission. The ALE Division shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints 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 the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The ALE Division and the Commission shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection.

(c) False Information. – Knowingly making a false statement in an application for an ABC permit shall be grounds for denying, suspending, revoking or taking other action against the permit as provided in G.S. 18B-104 and shall also be unlawful.

(d) Fees. – An application for an ABC permit shall be accompanied by payment of the following application fee:

(1) On-premises malt beverage permit – $400.00.
(2) Off-premises malt beverage permit – $400.00.
(3) On-premises unfortified wine permit – $400.00.
(4) Off-premises unfortified wine permit – $400.00.
(5) On-premises fortified wine permit – $400.00.
(6) Off-premises fortified wine permit – $400.00.
(7) Brown-bagging permit – $400.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be $200.00.
(8) Special occasion permit – $400.00.
(9) Limited special occasion permit – $50.00.
(10) Mixed beverages permit – $1,000.
(11) Culinary permit – $200.00.
(12) Unfortified winery permit – $300.00.
(13) Fortified winery permit – $300.00.
(14) Limited winery permit – $300.00.
(15) Brewery permit – $300.00.
(16) Distillery permit – $300.00.
(17) Fuel alcohol permit – $100.00.
(18) Wine importer permit – $300.00.
(19) Wine wholesaler permit – $300.00.
(20) Malt beverage importer permit – $300.00.
(21) Malt beverage wholesaler permit – $300.00.
(22) Bottler permit – $300.00.

(23) Salesman permit – $100.00.
(24) Vendor representative permit – $50.00.
(25) Nonresident malt beverage vendor permit – $100.00.
(26) Nonresident wine vendor permit – $100.00.
(27) Any special one-time permit under G.S. 18B-1002 – $50.00.
(28) Winery special event permit – $200.00.
(29) Mixed beverages catering permit – $200.00.
(30) Guest room cabinet permit – $1,000.
(31) Liquor importer/bottler permit – $500.00.
(32) Cider and vinegar manufacturer permit – $200.00.
(33) Brew on premises permit – $400.00.
(34) Wine producer permit – $300.00.
(35) Wine tasting permit – $100.00.

(e) Repealed by Session Laws 1998-95, s. 29, effective May 1, 1999.

(f) Fee Not Refundable. – The fee required by subsection (d) shall not be refunded.

(g) Fees to Treasurer. – All fees collected by the Commission under this or any other section of this Chapter shall be remitted to the State Treasurer for the General Fund."

SECTION 2. G.S. 66-165 reads as rewritten:

"**§ 66-165. Permits required.**

(a) Except as provided in subsection (c), it shall be unlawful for any person to engage as a dealer in the business of purchasing precious metals either as a separate business or in connection with other business operations without first obtaining a permit for the business from the local law-enforcement agency. The form of the permit and application therefor shall be as approved by the Department of Crime Control and Public Safety. The application shall be given under oath and shall be notarized. A 30-day waiting period from the date of filing of the application is required prior to initial issuance of a permit. A separate permit shall be issued for each location, place, or premises within the jurisdiction of the local law-enforcement agency which is used for the conduction of a precious metals business, and each permit shall designate the location, place or premises to which it applies. Such business shall not be conducted in any other place than that designated in the permit, and no business shall be conducted in a mobile home, trailer, camper, or other vehicle, or structure not permanently affixed to the ground or in any room customarily used for lodging in any hotel, motel, tourist court, or tourist home as defined in G.S. 105-61. The permit shall be posted in a prominent place on the designated premises. Permits shall be valid for a period of 12 months from the date issued and may be renewed without a waiting period upon filing of an application and payment of the annual fee. The annual fee for each dealer's permits within each jurisdiction shall be ten dollars ($10.00) to provide for the administrative costs of the local law-enforcement agency, including purchase of required forms. The fee shall not be refundable even if the permits are denied or later suspended or revoked. Such permits shall be in addition to and not in lieu of other business licenses and are not transferable.

Any dealer applying to the local law-enforcement agency for a permit shall furnish the local law-enforcement agency with the following information:

(1) His full name, and any other names used by the applicant during the preceding five years. In the case of a partnership, association, or corporation, the applicant shall list any partnership, association, or corporate names used during the preceding five years;
(2) Current address, and all addresses used by the applicant during the preceding five years;
(3) Physical description;
(4) Age;
(5) Driver's license number, if any, and state of issuance;
(6) Recent photograph;
(7) Record of felony ~~convictions; and~~convictions;
(8) Record of other convictions during the preceding five ~~years.~~years; and
(9) A full set of fingerprints of the applicant.

If the applicant for a dealer's permit is a partnership or association, all persons owning a ten percent (10%) or more interest in the partnership or association shall comply with the provisions of this subsection. Any such permits shall be issued in the name of the partnership or association.

If the applicant for a dealer's permit is a corporation, each officer, director and stockholder owning ten percent (10%) or more of the corporation's stock, of any class, shall comply with the provisions of this subsection. Any such permits shall be issued in the name of the corporation.

No permit shall be issued to an applicant who, within five years prior to the date of application, has been convicted of a felony involving a crime of moral turpitude, or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this or any other state. In the case of a partnership, association, or corporation, no permit shall be issued to any applicant with an officer, partner, or director who has, within five years prior to the date of application, been convicted of a felony involving a crime of moral turpitude, or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this or any other state.

The Department of Justice may provide a criminal record check to the local law-enforcement agency for a person who has applied for a permit through the agency. The agency shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints 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 the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The agency shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection.

(b) Every employee engaged in the precious metal business shall, within two days of being so engaged, register his name and address with the local law-enforcement agency and have his photograph taken by the agency. The agency shall issue to him a certificate of compliance with this section upon the applicant's payment of the sum of three dollars ($3.00) to the agency. The permit shall be posted in the work area of the permit holder.

(c) A special occasion permit authorizes the permittee to purchase precious metals as a dealer participating in any trade shows, antique shows, and crafts shows conducted within the State. A special occasion permit shall be issued by any local law-enforcement agency; provided, however, that a permittee under subsection (a) shall apply for a special occasion permit with the local law-enforcement agency which issued such dealer's permit. An application for a permit shall be on a form as approved by the Department of Crime Control and Public Safety and shall be given under oath and notarized. A 30-day waiting period from the date of filing of the application is required prior to initial issuance of a permit.

Any dealer applying to a local law-enforcement agency for a special occasion permit shall furnish the local law-enforcement agency with the information required in an application for a dealer's permit as set forth in (a).

If the applicant for a special occasion permit is a partnership or association, all persons owning a ten percent (10%) or more interest in the partnership or association shall comply with the provisions of this subsection. Any such permits shall be issued in the name of the partnership or association.

If the applicant for a special occasion permit is a corporation, each officer, director and stockholder owning ten percent (10%) or more of the corporation's stock, of any class, shall comply with the provisions of this subsection. Any such permits shall be issued in the name of the corporation.

No permit shall be issued to an applicant who, within five years prior to the date of application, has been convicted of a felony involving a crime of moral turpitude, or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this or any other state. In the case of a partnership, association, or corporation, no permit shall be issued to any applicant with an officer, partner, or director who has, within five years prior to the date of application, been convicted of a felony involving a crime of moral turpitude, or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this or any other state.

The Department of Justice may provide a criminal record check to the local law-enforcement agency for a person who has applied for a permit through the agency. The agency shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints 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 the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The agency shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection.

The fee for an application for a special occasion permit shall be ten dollars ($10.00) to provide for the administrative cost of the local law-enforcement agency including purchase of required forms. The fee shall not be refundable even if the permit is denied or is later suspended or revoked. Such permits shall be in addition to and not in lieu of other business licenses and are not transferable.

A special occasion permit shall be valid for 12 months from the date issued, unless earlier surrendered, suspended, or revoked. Application for renewal of a permit for an additional 12 months shall be on a form as approved by the Department of Crime Control and Public Safety and shall be accompanied by an application fee of ten dollars ($10.00). A renewal fee shall not be refundable.

Each special occasion permit shall be posted in a prominent place on the premises of any show at which the permittee purchases precious metals."

SECTION 3. G.S. 74C-8(c) is amended by adding a new subdivision to read:

"(5) The Department of Justice may provide a criminal record check to the Private Protective Services Board for a person who has applied for a new or renewal license, registration, certification, or permit through the Private Protective Services Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints 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 the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subdivision privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subdivision."

SECTION 4. G.S. 74D-2(c) is amended by adding a new subdivision to read:

"(5) The Department of Justice may provide a criminal record check to the Alarm Systems Licensing Board for a person who has applied for a new or renewal license, registration, certification, or permit through the Alarm Systems Licensing Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints 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 the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subdivision privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subdivision."

SECTION 5. G.S. 84-24 reads as rewritten:

"**§ 84-24. Admission to practice.**

For the purpose of examining applicants and providing rules and regulations for admission to the Bar including the issuance of license therefor, there is hereby created the Board of Law Examiners, which shall consist of 11 members of the Bar, elected by the Council, who need not be members of the Council. No teacher in any law school, however, shall be eligible. The members of the Board of Law Examiners elected from the Bar shall each hold office for a term of three years.

The Board of Law Examiners shall elect a member of the Board as chair thereof, and the Board may employ an executive secretary and provide such assistance as may be required to enable the Board to perform its duties promptly and properly. The chair and any employees shall serve for a period of time determined by the Board.

The examination shall be held in the manner and at the times as the Board of Law Examiners may determine.

The Board of Law Examiners shall have full power and authority to make or cause to be made such examinations and investigations as may be deemed by it necessary to satisfy it that the applicants for admission to the Bar possess the qualifications of character and general fitness requisite for an attorney and counselor-at-law and to this end the Board of Law Examiners shall have the power of subpoena and to summons and examine witnesses under oath and to compel their attendance and the production of books, papers and other documents and writings deemed by it to be necessary or material to the inquiry and shall also have authority to employ and provide assistance as may be required to enable it to perform its duties promptly and properly. Records, papers, and other documents containing information collected and compiled by the

Board or its members or employees as a result of investigations, inquiries, or interviews conducted in connection with examinations or licensing matters, are not public records within the meaning of Chapter 132 of the General Statutes.

All applicants for admission to the Bar shall be fingerprinted to determine whether the applicant has a record of criminal conviction in this State or in any other state or jurisdiction. The information obtained as a result of the fingerprinting of an applicant shall be limited to the official use of the Board of Law Examiners in determining the character and general fitness of the applicant. ~~The Board of Law Examiners, subject to the approval of the Council shall by majority vote, from time to time, make, alter and amend such rules and regulations for admission to the Bar as in their judgment shall promote the welfare of the State and the profession: Provided, that any change in the educational requirements for admission to the Bar shall not become effective within two years from the date of the adoption of the change.~~

The Department of Justice may provide a criminal record check to the Board of Law Examiners for a person who has applied for a license through the Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints 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 the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this section.

The Board of Law Examiners, subject to the approval of the Council, shall by majority vote, from time to time, make, alter, and amend such rules and regulations for admission to the Bar as in their judgment shall promote the welfare of the State and the profession: Provided, that any change in the educational requirements for admission to the Bar shall not become effective within two years from the date of the adoption of the change.

All rules and regulations, and modifications, alterations and amendments thereof, shall be recorded and promulgated as provided in G.S. 84-21 in relation to the certificate of organization and the rules and regulations of the Council.

Whenever the Council shall order the restoration of license to any person as authorized by G.S. 84-32, it shall be the duty of the Board of Law Examiners to issue a written license to the person, noting thereon that the license is issued in compliance with an order of the Council, whether the license to practice law was issued by the Board of Law Examiners or the Supreme Court in the first instance.

Appeals from the Board shall be had in accordance with rules or procedures as may be approved by the Supreme Court as may be submitted under G.S. 84-21 or as may be promulgated by the Supreme Court."

SECTION 6. G.S. 90-11 reads as rewritten:

"**§ 90-11. Qualifications of applicant for license.**

(a) Every applicant for a license to practice medicine or to perform medical acts, tasks, and functions as a physician assistant in the State shall satisfy the North Carolina Medical Board that the applicant is of good moral character and meets the other qualifications for the issuance of a license before any such license is granted by the Board to the applicant.

(b) The Department of Justice may provide a criminal record check to the Board for a person who has applied for a license through the Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints 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 the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection."

SECTION 7. G.S. 90-30 reads as rewritten:

"**§ 90-30. Examination and licensing of applicants; qualifications; causes for refusal to grant license; void licenses.**

(a) The North Carolina State Board of Dental Examiners shall grant licenses to practice dentistry to such applicants who are graduates of a reputable dental institution, who, in the opinion of a majority of the Board, shall undergo a satisfactory examination of proficiency in the knowledge and practice of dentistry, subject, however, to the further provisions of this section and of the provisions of this Article.

The applicant shall be of good moral character, at least 18 years of age at the time the application for examination is filed. The application shall be made to the said Board in writing and shall be accompanied by evidence satisfactory to said Board that the applicant is a person of good moral character, has an academic education, the standard of which shall be determined by the said Board; that he is a graduate of and has a diploma from a reputable dental college or the dental department of a reputable university or college recognized, accredited and approved as such by the said Board.

The North Carolina State Board of Dental Examiners is authorized to conduct both written or oral and clinical examinations of such character as to thoroughly test the qualifications of the applicant, and may refuse to grant license to any person who, in its discretion, is found deficient in said examination, or to any person guilty of cheating,

deception or fraud during such examination, or whose examination discloses to the satisfaction of the Board, a deficiency in academic education. The Board may employ such dentists found qualified therefor by the Board, in examining applicants for licenses as it deems appropriate.

The North Carolina State Board of Dental Examiners may refuse to grant a license to any person guilty of a crime involving moral turpitude, or gross immorality, or to any person addicted to the use of alcoholic liquors or narcotic drugs to such an extent as, in the opinion of the Board, renders the applicant unfit to practice dentistry.

Any license obtained through fraud or by any false representation shall be void ab initio and of no effect.

(b) The Department of Justice may provide a criminal record check to the North Carolina State Board of Dental Examiners for a person who has applied for a license through the Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints 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 the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection."

SECTION 8. G.S. 90-85.15 is amended by adding a new subsection to read:

"(c) The Department of Justice may provide a criminal record check to the Board for a person who has applied for a license through the Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints 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 the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection."

SECTION 9. G.S. 90-210.25(a) reads as rewritten:

"**§ 90-210.25. Licensing.**

(a) Qualifications, Examinations, Resident Traineeship and Licensure. –

(1) To be licensed for the practice of funeral directing under this Article, a person must:

a. Be at least 18 years of age.

b. Be of good moral character.

c. Have completed a minimum of 32 semester hours or 48 quarter hours of instruction, including the subjects set out in sub-part e.1. of this subdivision, as prescribed by a mortuary science college approved by the Board or a school of mortuary science accredited by the American Board of Funeral Service Education.

d. Have completed 12 months of resident traineeship as a funeral director, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under sub-subdivision c. of this subdivision.

e. Have passed an oral or written funeral director examination on the following subjects:

1. Psychology, sociology, funeral directing, business law, funeral law, funeral management, and accounting.

2. Repealed by 1997-399, s. 5.

3. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies.

(2) To be licensed for the practice of embalming under this Article, a person must:

a. Be at least 18 years of age.

b. Be of good moral character.

c. Be a graduate of a mortuary science college approved by the Board.

d. Have completed 12 months of resident traineeship as an embalmer pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under sub-subdivision c. of this subdivision.

e. Have passed an oral or written embalmer examination on the following subjects:

1. Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.

2. Repealed by 1997-399, s. 6.

3. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the

care, transportation and disposition of dead human bodies.

(3) To be licensed for the practice of funeral service under this Article, a person must:

a. Be at least 18 years of age.

b. Be of good moral character.

c. Be a graduate of a mortuary science college approved by the Board or a school of mortuary science accredited by the American Board of Funeral Service Education. Have completed a minimum of 32 semester hours or 48 quarter hours of instruction, including the subjects set out in sub-part e.1. of this subdivision, as prescribed by a mortuary science college approved by the Board or a school of mortuary science accredited by the American Board of Funeral Service Education.

d. Have completed 12 months of resident traineeship as a funeral service licensee, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under sub-subdivison c. of this subdivision.

e. Have passed an oral or written funeral service examination on the following subjects:

1. Psychology, sociology, funeral directing, business law, funeral law, funeral management, and accounting.
2. Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.
3. Repealed by 1997-399, s. 7.
4. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies.

(4) a. A person desiring to become a resident trainee shall apply to the Board on a form provided by the Board. The application shall state that the applicant is not less than 18 years of age, of good moral character, and is the graduate of a high school or the equivalent thereof, and shall indicate the licensee under whom the applicant expects to train. A person training to become an embalmer may serve under either a licensed embalmer or a funeral service licensee. A person training to become a funeral director may serve under either a licensed funeral director or a funeral service licensee. A person training to become a funeral service licensee shall serve under a funeral service licensee. The application must be sustained by oath of the applicant and be accompanied by the appropriate fee. When the Board is

satisfied as to the qualifications of an applicant it shall instruct the secretary to issue a certificate of resident traineeship.

b. When a resident trainee leaves the proctorship of the licensee under whom the trainee has worked, the licensee shall file with the Board an affidavit showing the length of time served with the licensee by the trainee, and the affidavit shall be made a matter of record in the Board's office. The licensee shall deliver a copy of the affidavit to the trainee.

c. A person who has not completed the traineeship and wishes to do so under a licensee other than the one whose name appears on the original certificate may reapply to the Board for approval, without payment of an additional fee.

d. A certificate of resident traineeship shall be signed by the resident trainee and upon payment of the renewal fee shall be renewable one year after the date of original registration; but the certificate may not be renewed more than one time. The Board shall mail to each registered trainee at his last known address a notice that the renewal fee is due and that, if not paid within 30 days of the notice, the certificate will be canceled. A penalty, in addition to the renewal fee, shall be charged for a late renewal, but the renewal of the registration of any resident trainee who is engaged in the active military service of the United States at the time renewal is due may, at the discretion of the Board, be held in abeyance for the duration of that service without penalties. No credit shall be allowed for the 12-month period of resident traineeship that shall have been completed more than three years preceding the examination for a license.

e. All registered resident trainees shall report to the Board at least once every month during traineeship upon forms provided by the Board listing the work which has been completed during the preceding month of resident traineeship. The data contained in the reports shall be certified as correct by the licensee under whom the trainee has served during the period and by the licensed person who is managing the funeral service establishment. Each report shall list the following:

1. For funeral director trainees, the conduct of any funerals during the relevant time period,
2. For embalming trainees, the embalming of any bodies during the relevant time period,
3. For funeral service trainees, both of the activities named in 1 and 2 of this subsection, engaged in during the relevant time period.

f. To meet the resident traineeship requirements of G.S. 90-210.25(a)(1), G.S. 90-210.25(a)(2) and G.S. 90-210.25(a)(3) the following must be shown by the affidavit(s) of the licensee(s) under whom the trainee worked:
   1. That the funeral director trainee has, under supervision, assisted in directing at least 25 funerals during the resident traineeship,
   2. That the embalmer trainee has, under supervision, assisted in embalming at least 25 bodies during the resident traineeship,
   3. That the funeral service trainee has, under supervision assisted in directing at least 25 funerals and, under supervision, assisted in embalming at least 25 bodies during the resident traineeship.

g. The Board may suspend or revoke a certificate of resident traineeship for violation of any provision of this Article.

h. Each sponsor for a registered resident trainee must during the period of sponsorship be actively employed with a funeral establishment. The traineeship shall be a primary vocation of the trainee.

i. Only one resident trainee may register and serve at any one time under any one person licensed under this Article.

j., k. Repealed by Session Laws 1991, c. 528, s. 4.

l. The Board shall register no more than one resident trainee at a funeral establishment that served 100 or fewer families during the 12 months immediately preceding the date of the application, and shall register no more than one resident trainee for each additional 100 families served at the funeral establishment during the 12 months immediately preceding the date of the application.

(5) The Board by regulation may recognize other examinations that the Board deems equivalent to its own.

a. All licenses shall be signed by the president and secretary of the Board and the seal of the Board affixed thereto. All licenses shall be issued, renewed or duplicated for a period not exceeding one year upon payment of the renewal fee, and all licenses, renewals or duplicates thereof shall expire and terminate the thirty-first day of December following the date of their issue unless sooner revoked and canceled; provided, that the date of expiration may be changed by unanimous consent of the Board and upon 90 days' written notice of such change to all persons licensed for the practice of funeral directing, embalming and funeral service in this State.

b. The holder of any license issued by the Board who shall fail to renew the same on or before January 31 of the calendar year for which the license is to be renewed shall have forfeited and surrendered the license as of that date. No license forfeited or surrendered pursuant to the preceding sentence shall be reinstated by the Board unless it is shown to the Board that the applicant has, throughout the period of forfeiture, engaged full time in another state of the United States or the District of Columbia in the practice to which his North Carolina license applies and has completed for each such year continuing education substantially equivalent in the opinion of the Board to that required of North Carolina licensees; or has completed in North Carolina a total number of hours of accredited continuing education computed by multiplying five times the number of years of forfeiture; or has passed the North Carolina examination for the forfeited license. No additional resident traineeship shall be required. The applicant shall be required to pay all delinquent annual renewal fees and a reinstatement fee. The Board may waive the provisions of this section for an applicant for a forfeiture which occurred during his service in the armed forces of the United States provided he applies within six months following severance therefrom.

c. All licensees now or hereafter licensed in North Carolina shall take courses of study in subjects relating to the practice of the profession for which they are licensed, to the end that new techniques, scientific and clinical advances, the achievements of research and the benefits of learning and reviewing skills will be utilized and applied to assure proper service to the public.

d. As a prerequisite to the annual renewal of a license, the licensee must complete, during the year immediately preceding renewal, at least five hours of continuing education courses, approved by the Board prior to enrollment. A licensee who completes more than five hours in a year may carry over a maximum of five hours as a credit to the following year's requirement. A licensee who is issued an initial license on or after July 1 does not have to satisfy the continuing education requirement for that year.

e. The Board shall not renew a license unless fulfillment of the continuing education requirement has been certified to it on a form provided by the Board, but the Board may waive this requirement for renewal in cases of certified illness or undue hardship or where the licensee lives outside of North Carolina and does not practice in North Carolina, and the Board shall waive the requirement for all licensees who have been licensed in North Carolina for a continuous period of 25 years or more,

and for all licensees who are, at the time of renewal, members of the General Assembly.

f. The Board shall cause to be established and offered to the licensees, each calendar year, at least five hours of continuing education courses in subjects encompassing the license categories of embalming, funeral directing and funeral service. The Board may charge licensees attending these courses a reasonable registration fee in order to meet the expenses thereof and may also meet those expenses from other funds received under the provisions of this Article.

g. Any person who having been previously licensed by the Board as a funeral director or embalmer prior to July 1, 1975, shall not be required to satisfy the requirements herein for licensure as a funeral service licensee, but shall be entitled to have such license renewed upon making proper application therefor and upon payment of the renewal fee provided by the provisions of this Article. Persons previously licensed by the Board as a funeral director may engage in funeral directing, and persons previously licensed by the Board as an embalmer may engage in embalming. Any person having been previously licensed by the Board as both a funeral director and an embalmer may upon application therefor receive a license as a funeral service licensee.

h. The Department of Justice may provide a criminal record check to the Board for a person who has applied for a new or renewal license, or certification through the Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints 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 the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subdivision privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subdivision."

SECTION 10. G.S. 90-224 is amended by adding a new subsection to read:

"(c) The Department of Justice may provide a criminal record check to the Board for a person who has applied for a new or renewal license through the Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints 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 the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection."

SECTION 11. G.S. 93A-4 is amended by adding a new subsection to read:

"(b1) The Department of Justice may provide a criminal record check to the Commission for a person who has applied for a license through the Commission. The Commission shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints 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 the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Commission shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection."

SECTION 12. G.S. 95-47.2(d) reads as rewritten:

"(d) Upon the receipt of an application for a license the Commissioner:

(1) Shall publish a notice of the pending application in a newspaper of general circulation in the area of the proposed location of the employment agency and may publish the notice in a newspaper of general circulation in each area in which the applicant (or if a corporation, the president and majority shareholder) has resided during the five years preceding the time of the application. The notice shall include a statement informing individuals of their right to protest the issuance of a license by filing within 10 days written comments with the Commissioner. The protest shall be in writing and signed by the person filing the protest or by his authorized agent or attorney, and

shall state reasons why the license should not be granted. Upon the filing of a protest, the Commissioner, if he determines the protest to be of such a nature that a hearing should be conducted and that the protest is for a cause on which denial of a license may properly be based, shall appoint a time and place for a hearing on the application and shall give at least seven days' notice of that time and place to the license applicant and to the person filing the protest. The hearing shall be conducted in accordance with the provisions of the rules of the Administrative Procedure Act;

(2) Shall investigate the character, criminal record and business integrity of each applicant for agency license and shall investigate the criminal records of all persons listed as agency owners, officers, directors or managers. The applicant and all agency owners, officers, directors and managers shall assist the department in obtaining necessary information by authorizing the release of all relevant information;

(2a) The Department of Justice may provide a criminal record check to the Commissioner for a person or agency who has applied for a license through the Commissioner. The Commissioner shall provide to the Department of Justice, along with the request, the fingerprints of all applicants, any additional information required by the Department of Justice, and a form signed by the applicants consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicants' fingerprints 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 the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Commissioner shall keep all information pursuant to this subdivision privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subdivision.

(3) Upon completion of the investigation, or 30 days after the application was received, whichever is later, but in no case more than 45 days after the application was received, shall determine whether or not a license should be issued. The license shall be denied for any of the following reasons:

a. If the applicant for agency license, or the president or majority shareholder of a corporate applicant, omits or falsifies any material information asked for in the application and required by the Commissioner;

b. If any owner, officer, director or manager of the employment agency:
   1. Has been convicted in any state of the criminal offense of embezzlement, obtaining money under false pretenses, forgery, conspiracy to defraud or any similar offense involving fraud or moral turpitude;
   2. Was an owner, officer, director or manager of an employment agency or other business whose license was revoked or that was otherwise caused to cease operation by action of any State or federal agency or court because of violations of law or regulation relating to deceptive or unfair practices in the conduct of business;
   3. As an owner or manager of an employment agency or other business or as an employment counselor was found by any State or federal agency or court to have violated any law or regulation relating to deceptive or unfair practices in the conduct of business; or
   4. In any other demonstrable way engaged in deceptive or unfair practices in the conduct of business;

c. If the employment agency will be operated on the same premises as a loan agency (as defined in G.S. 105-88) or collection agency (as defined in G.S. 58-70-15)."

SECTION 13. G.S. 106-65.26 is amended by adding a new subsection to read:

"(e) The Department of Justice may provide a criminal record check to the Committee for a person who has applied for a new or renewal license through the Committee. The Committee shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints 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 the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Committee shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection."

SECTION 14. G.S. 160A-304(a) reads as rewritten:

"(a) A city may by ordinance license and regulate all vehicles operated for hire in the city. The ordinance may require that the drivers and operators of taxicabs engaged in the business of transporting passengers for hire over the public streets shall obtain a

license or permit from the city; provided, however, that the license or permit fee for taxicab drivers shall not exceed fifteen dollars ($15.00). The ordinances may also specify the types of taxicab services which are legal in the municipality; provided, that in all cases shared-ride services as well as exclusive-ride services shall be legal. Shared-ride service is defined as a taxi service in which two or more persons with either different origins or with different destinations, or both, occupy a taxicab at one time. Exclusive-ride service is defined as a taxi service in which the first passenger or party requests exclusive use of the taxicab. In the event the applicant is to be subjected to a national criminal history background check, the ordinance shall specifically authorize the use of FBI records. The ordinance shall require any applicant who is subjected to a national criminal history background check to be fingerprinted.

The Department of Justice may provide a criminal record check to the city for a person who has applied for a license or permit through the city. The city shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints 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 the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The city shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection.

The following factors shall be deemed sufficient grounds for refusing to issue a permit or for revoking a permit already issued:

(1) Conviction of a felony against this State, or conviction of any offense against another state which would have been a felony if committed in this State;
(2) Violation of any federal or State law relating to the use, possession, or sale of alcoholic beverages or narcotic or barbiturate drugs;
(3) Addiction to or habitual use of alcoholic beverages or narcotic or barbiturate drugs;
(4) Violation of any federal or State law relating to prostitution;
(5) Noncitizenship in the United States;
(6) Habitual violation of traffic laws or ordinances.

The ordinance may also require operators and drivers of taxicabs to display prominently in each taxicab, so as to be visible to the passengers, the city taxi permit, the schedule of fares, a photograph of the driver, and any other identifying matter that the council may deem proper and advisable. The ordinance may also establish rates that may be charged by taxicab operators, may limit the number of taxis that may operate in the city, and

may grant franchises to taxicab operators on any terms that the council may deem advisable."

SECTION 15. If the Private Security Officer Employment Standards Act of 2002 is ratified by the United States Congress, the State of North Carolina declines to participate in the background check system authorized by that act as a result of the enactment of this act.

SECTION 16. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 1638

Short Title:	Private Protect. Services Crim. Hist. Check.	(Public)
Sponsors:	Representative Haire.	
Referred to:	Judiciary II.	

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DEPARTMENT OF JUSTICE TO PROVIDE CRIMINAL RECORD CHECKS TO THE PRIVATE PROTECTIVE SERVICES BOARD AND TO CHARGE A FEE FOR CONDUCTING THE CHECK.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 74C-8(c) is amended to add a new subdivision to read:

"(5) The Department of Justice may provide a criminal record check to the Private Protective Services Board for a person who has applied for a new or renewal license, registration, certification, or permit through the Private Protective Services Board, if the applicant consents to the record check. The Board shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints 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 the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this section privileged, in accordance with applicable State and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of national criminal history records authorized by this subdivision."

SECTION 2. If the Private Security Officer Employment Standards Act of 2002 is ratified by the United States Congress, the State of North Carolina declines to

participate in the background check system authorized by that act as a result of the enactment of this act.

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

HOUSE BILL 1638:
Private Protect. Services Crim. Hist. Check

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Rep. Haire
Date:	August 27, 2002	**Summary by:**	Susan L. Sitze
Version:	H1638-PCS1281-47		Staff Attorney

SUMMARY: ***The proposed committee substitute for House Bill 1638 amends various statutes regarding criminal history checks to ensure that national criminal history checks will be allowed pursuant to those statutes after December 31, 2002. The bill also allows the SBI to charge a fee to the applicant for conducting the checks.***

BILL ANALYSIS: The proposed committee substitute for House Bill 1638 amends various statutes to ensure that after December 31, 2002, certain agencies and boards will be able to conduct national criminal history checks.

The agencies and boards covered by these statutes include:

- The Alcohol Law Enforcement Division when investigating ABC permit applicants
- Local Law Enforcement agencies when issuing precious metal dealer permits
- The Private Protective Services Board
- The Alarm Systems Licensing Board
- The Board of Law Examiners
- The Medical Board
- The State Board of Dental Examiners
- The Board of Pharmacy
- The Board of Mortuary Science
- The Real Estate Commission
- The Commissioner of Labor, when investigating Private Personnel Service license applicants
- The Structural Pest Control Committee
- Cities, when investigating Taxi license applicants

Any national criminal history checks conducted pursuant to these sections will be conducted through the State Bureau of Investigation (SBI) who is authorized to charge a fee to the applicant for conducting the check. The fingerprints and information will be submitted to the SBI by the licensing board or agency.

BACKGROUND: In April 2001, the FBI notified the SBI, after a review of the North Carolina statutes that authorize criminal history checks, that many of the State statutes did not meet the federal guidelines for access to FBI records. The original notice informed the SBI that as of May 1, 2002, background requests submitted to the FBI pursuant to those statutes would not be honored unless the

statutes were amended to conform to the guidelines. The SBI obtained an extension of that date to December 31, 2002. This bill will conform those statutes to meet the guidelines.

The criteria established by the FBI, pursuant to P.L. 92-544, are as follows:

1. The statute must exist as a result of a legislative enactment;
2. It must require the fingerprinting of applicants who are to be subjected to a national criminal history background check;
3. It must, expressly ("submit to the FBI") or by implication ("submit for a national check"), authorize the use of FBI records for the screening of applicants;
4. It must identify the specific category(ies) of licensees/employees falling within its purview, thereby avoiding over breadth;
5. It must not be against public policy; and
6. It may not authorize receipt of the CHRI by a private entity.

Additionally, FBI policy requires that fingerprints be initially submitted to the state identification bureau (for a check of state records) and thereafter forwarded to the FBI for a "national" criminal history check.

The statutes addressed by the proposed committee substitute to HB1638 fail to meet criteria #2 and/or #3.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 887
Second Edition Engrossed 4/25/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S887-CSSW-86 [v.13]

8/13/2002 7:13:59 PM

Short Title: Magistrates' and Clerks' Auth/Expunge Records (Public)

Sponsors:

Referred to:

April 4, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE QUALIFICATIONS FOR INDIVIDUALS NOMINATED AS MAGISTRATES, TO PROVIDE ADDITIONAL AUTHORITY FOR MAGISTRATES AND CLERKS OF COURT, TO PERMIT THE CONFERENCE OF CHIEF DISTRICT COURT JUDGES TO MAKE THE DISTRIBUTION OF TOBACCO PRODUCTS TO MINORS A WAIVABLE OFFENSE, AND TO PROVIDE FOR THE EXPUNCTION OF RECORDS WHEN CHARGES ARE VOLUNTARILY DISMISSED AS A RESULT OF MISIDENTIFICATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-171.2(b) reads as rewritten:

"(b) To be eligible for nomination as a magistrate, an individual shall have at least twelve years' experience as a Clerk of Superior Court in this State, or shall have a four-year degree from an accredited senior institution of higher education or shall have a two-year associate degree and four years of work experience in a related field, including teaching, social services, law enforcement, arbitration or mediation, the court system, or counseling. The Administrative Officer of the Courts may determine whether the work experience is sufficiently related to the duties of the office of magistrate for the purposes of this subsection. In determining whether an individual's work experience is in a related field, the Administrative Officer of the Courts shall consider the requisite knowledge, skills, and abilities for the office of magistrate.

The eligibility requirements prescribed by this subsection do not apply to individuals holding the office of magistrate on June 30, 1994, and do not apply to individuals who have been nominated by June 30, 1994, but who have not been appointed or taken the oath of office by that date."

SECTION 2.(a) G.S. 7A-273 reads as rewritten:

"**§ 7A-273. Powers of magistrates in infractions or criminal actions.**

(a) In criminal actions or infractions, any magistrate has power:

(1) In infraction cases in which the maximum penalty that can be imposed is not more than fifty dollars ($50.00), exclusive of costs, or in Class 3 misdemeanors, other than the types of infractions and misdemeanors specified in subdivision (2) of this ~~section,~~subsection, to accept guilty pleas or admissions of responsibility and enter judgment;

(2) In misdemeanor or infraction cases involving alcohol offenses under Chapter 18B of the General Statutes, traffic offenses, hunting, fishing, State park and recreation area rule offenses under Chapter 113 of the General Statutes, boating offenses under Chapter 75A of the General Statutes, ~~and~~ littering offenses under G.S. 14-399(c), and offenses involving the distribution of tobacco products to underage persons under G.S. 14-313, to accept written appearances, waivers of trial or hearing and pleas of guilty or admissions of responsibility, in accordance with the schedule of offenses and fines or penalties promulgated by the Conference of Chief District Judges pursuant to G.S. 7A-148, and in ~~such~~ these cases, to enter judgment and collect the fines or penalties and costs;

(2a) In misdemeanor cases involving the violation of a county ordinance authorized by law regulating the use of dune or beach buggies or other power-driven vehicles specified by the governing body of the county on the foreshore, beach strand, or the barrier dune system, to accept written appearances, waivers of trial or hearing, and pleas of guilty or admissions of responsibility, in accordance with the schedule of offenses and fines or penalties promulgated by the Conference of Chief District Court Judges pursuant to G.S. 7A-148, and in such cases, to enter judgment and collect the fines or penalties and costs;

(3) To issue arrest warrants valid throughout the State;

(4) To issue search warrants valid throughout the county;

(5) To grant bail before trial for any noncapital offense;

(6) Notwithstanding the provisions of subdivision (1) of this section, to hear and enter judgment as the chief district judge shall direct in all worthless check cases brought under G.S. 14-107, when the amount of the check is two thousand dollars ($2,000) or less. Provided, however, that under this section magistrates may not impose a prison sentence longer than 30 days;

(7) To conduct an initial appearance as provided in G.S. 15A-511; and

(8) To accept written appearances, waivers of trial and pleas of guilty in violations of G.S. 14-107 when the amount of the check is two thousand dollars ($2,000) or less, restitution, including service charges and processing fees allowed by G.S. 14-107, is made, and the warrant does not charge a fourth or subsequent violation of this statute, and in these cases to enter judgments as the chief district judge directs.

(9) Repealed by Session Laws 1991 (Regular Session, 1992), c. 900, s. 118(d).

(b) A magistrate has the additional authority, if so assigned by the chief district court judge and subject to any limitations imposed by the chief district court judge, to hear, decide, and enter judgment in all infractions and Class 3 misdemeanor cases, regardless of penalty or offense. The additional authority granted in this subsection may be assigned to a magistrate only with the consent of the clerk of superior court of the county in which the magistrate is assigned and after consultation with the district attorney."

SECTION 2.(b) G.S. 15A-1115(a) reads as rewritten:

"(a) Appeal of District Court Decision. – A person who denies responsibility and is found responsible for an infraction in the district ~~court,~~court, before a magistrate pursuant to G.S. 7A-273(b), or before the clerk of superior court pursuant to G.S. 7A-180(10) within 10 days of the hearing, may appeal the decision to the criminal division of the superior court for a hearing de novo. Upon appeal, the defendant is entitled to a jury trial unless he consents to have the hearing conducted by the judge. The State must prove beyond a reasonable doubt that the person charged is responsible for the infraction unless the person admits responsibility. Unless otherwise provided by law, the procedures applicable to misdemeanors disposed of in the superior court apply to those infraction hearings. In the superior court, a prosecutor must represent the State. Appeal from the judgment in the superior court is as provided for other criminal actions in superior court, and the Attorney General must represent the State in an appeal of such actions."

SECTION 3.(a) G.S. 7A-180 is amended by adding a new subsection to read:

"(10) Has the power, upon the mutual consent of the chief district court judge and clerk of superior court and after consultation with the district attorney of the county in which the clerk of superior court serves, to hear, decide, and enter judgment in all infraction and Class 3 misdemeanor cases, regardless of penalty or offense."

SECTION 3.(b) G.S. 7A-181 is amended by adding a new subsection to read:

"(4) Have the same power as the clerk of superior court in G.S. 7A-180(10)."

SECTION 3.(c) G.S. 15A-1431 reads as rewritten:

"**§ 15A-1431. Appeals by defendants from ~~magistrate~~magistrate, clerk of superior court, and district court judge; trial de novo.**

(a) A defendant convicted before a magistrate or before a clerk of superior court pursuant to G.S. 7A-180(10) may appeal for trial de novo before a district court judge without a jury.

(b) A defendant convicted in the district court before the judge may appeal to the superior court for trial de novo with a jury as provided by law. Upon the docketing in the superior court of an appeal from a judgment imposed pursuant to a plea arrangement between the State and the defendant, the jurisdiction of the superior court over any misdemeanor dismissed, reduced, or modified pursuant to that plea arrangement shall be the same as was had by the district court prior to the plea arrangement.

(c) Within 10 days of entry of judgment, notice of appeal may be given orally in open court or in writing to the clerk. Within 10 days of entry of judgment, the defendant may withdraw his appeal and comply with the judgment. Upon expiration of the 10-day period, if an appeal has been entered and not withdrawn, the clerk ~~must~~ shall transfer the case to the appropriate court.

(d) A defendant convicted by a ~~magistrate~~ magistrate, clerk of superior court pursuant to G.S. 7A-180(10), or district court judge is not barred from appeal because of compliance with the judgment, but notice of appeal after compliance ~~must~~ shall be given by the defendant in person to the magistrate or judge who heard the case or, if ~~he~~ that person is not available, notice ~~must~~ shall be given in one of the following ways:

(1) Before a magistrate in the county, in the case of appeals from the ~~magistrate; or~~ magistrate.

(1a) Before a clerk of superior court in the county in case of appeals from the clerk of superior court.

(2) During an open session of district court in the district court district as defined in G.S. 7A-133, in the case of appeals from district court.

The ~~magistrate~~ magistrate, clerk or district court judge ~~must~~ shall review the case and fix conditions of pretrial release as appropriate. If a defendant has paid a fine or costs and then appeals, the amount paid ~~must~~ shall be remitted to the defendant, but the judge, clerk or magistrate to whom notice of appeal is given may order the remission delayed pending the determination of the appeal.

(e) Any order of pretrial release remains in effect pending appeal by the defendant unless the judge modifies the order.

(f) Appeal pursuant to this section stays the execution of portions of the judgment relating to fine and costs. Appeal stays portions of the judgment relating to confinement when the defendant has complied with conditions of pretrial release. If the defendant cannot comply with conditions of pretrial release, the judge may order confinement in a local confinement facility pending the trial de novo in superior court.

(g) The defendant may withdraw his appeal at any time prior to calendaring of the case for trial de novo. The case is then automatically remanded to the court from which the appeal was taken, for execution of the judgment.

(h) The defendant may withdraw his appeal after the calendaring of the case for trial de novo only by consent of the court, and with the attachment of costs of that court, unless the costs or any part of the costs are remitted by the court. The case may then be remanded by order of the court to the court from which the appeal was taken for execution of the judgment with any additional court costs that attached and that have not been remitted."

SECTION 3.(d) Article 5 of Chapter 45 of the General Statutes is amended to add a new section to read:

"**§ 45-45.3. Clerk of superior court as trustee in a mortgage or deed of trust.**

(a) When the clerk of superior court is named trustee in any mortgage or deed of trust, it shall be sufficient to identify the office and county only. The name of the clerk may be omitted.

(b) Whenever a clerk of superior court is named, whether by name or office, as trustee in any deed of trust or mortgage in which the State is named as beneficiary and that is given to secure the appearance of the grantor or mortgagor in a case pending in the General Court of Justice, the authority of the trustee shall be vested in the office of the clerk of superior court of the county in which the subject property is located. This authority shall include the authority to discharge and release the deed of trust or mortgage of record."

SECTION 4. G.S. 15A-147 reads as rewritten:

"**§ 15A-147. Expunction of records when charges are dismissed or there are findings of not guilty as a result of identity ~~fraud.~~fraud or misidentification.**

(a) If any person is named in a charge for an infraction or a crime, either a misdemeanor or a felony, as a result of another person using the identifying information of the named person to commit an infraction or crime and the charge against the named person is dismissed, a finding of not guilty is entered, or the conviction is set aside, the named person may apply by petition or written motion to the court where the charge was last pending on a form approved by the Administrative Office of the Courts supplied by the clerk of court for an order to expunge from all official records any entries relating to the person's apprehension, charge, or trial. The court, after notice to the district attorney, shall hold a hearing on the motion or petition and, upon finding that the person's identity was used without permission and the charges were dismissed or the person was found not guilty, the court shall order the expunction.

(a1) If any person is named in a charge for an infraction or a crime, either a misdemeanor or a felony, as a result of misidentification and the charge against the named person is voluntarily dismissed, the named person may apply by petition or written motion to the court where the charge was last pending on a form approved by the Administrative Office of the Courts supplied by the clerk of court for an order to expunge from all official records any entries relating to the person's apprehension, or charge. The court, after notice to the district attorney, shall hold a hearing on the motion or petition and, upon finding that the person was mistakenly identified and the charges were voluntarily dismissed, the court shall order the expunction.

(b) No person as to whom such an order has been entered under this section shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of the person's failure to recite or acknowledge any expunged entries concerning apprehension, charge, or trial.

(c) The court shall also order that the said entries shall be expunged from the records of the court and direct all law enforcement agencies, the Division of Motor Vehicles, or any other State or local government agencies bearing record of the same to expunge their records of the entries. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other charging agency; and, when applicable, to the Division of Motor Vehicles and any other State or local agency. The sheriff, chief, or head of such other charging agency shall then transmit the copy of the order with the form supplied by the State Bureau of Investigation to the State Bureau of Investigation,

and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. Upon receipt of a certified copy of the order, the agency must purge its records as required by this section. The costs of expunging these records shall not be taxed against the petitioner.

(d) The Division of Motor Vehicles shall expunge from its records entries made as a result of the charge or conviction ordered expunged under this section. The Division of Motor Vehicles shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged, including the assessment of drivers license points and drivers license suspension or revocation. Notwithstanding any other provision of this Chapter, the Division of Motor Vehicles shall provide to the person whose motor vehicle record is expunged under this section a certified corrected driver history at no cost and shall reinstate at no cost any drivers license suspended or revoked as a result of a charge or conviction expunged under this section.

(e) Any other applicable State or local government agency shall expunge from its records entries made as a result of the charge or conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. Notwithstanding any other provision of law, the normal fee for any reinstatement of a license or privilege resulting under this section shall be waived.

(f) Any insurance company that charged any additional premium based on insurance points assessed against a policyholder as a result of a charge or conviction that was expunged under this section shall refund those additional premiums to the policyholder upon notification of the expungement."

SECTION 5. Sections 1, 2, 3.(a), 3.(b), and 3.(c) of this act become effective October 1, 2002 and apply to cases pending or filed on or after that date. Section 3.(d) is effective when it becomes law and applies to all mortgages or deeds of trust of record on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 2

SENATE BILL 887
Second Edition Engrossed 4/25/01

Short Title:	Expand Magistrates' Authority.	(Public)
Sponsors:	Senators Clodfelter; Dalton, Hagan, Hartsell, Odom, and Rand.	
Referred to:	Judiciary I.	

April 4, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE ADDITIONAL AUTHORITY FOR MAGISTRATES WHO ARE LICENSED TO PRACTICE LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-273 reads as rewritten:

"**§ 7A-273. Powers of magistrates in infractions or criminal actions.**

(a) In criminal actions or infractions, any magistrate has power:

(1) In infraction cases in which the maximum penalty that can be imposed is not more than fifty dollars ($50.00), exclusive of costs, or in Class 3 misdemeanors, other than the types of infractions and misdemeanors specified in subdivision (2) of this ~~section,~~subsection, to accept guilty pleas or admissions of responsibility and enter judgment;

(2) In misdemeanor or infraction cases involving alcohol offenses under Chapter 18B of the General Statutes, traffic offenses, hunting, fishing, State park and recreation area rule offenses under Chapter 113 of the General Statutes, boating offenses under Chapter 75A of the General Statutes, and littering offenses under G.S. 14-399(c), to accept written appearances, waivers of trial or hearing and pleas of guilty or admissions of responsibility, in accordance with the schedule of offenses and fines or penalties promulgated by the Conference of Chief District Judges pursuant to G.S. 7A-148, and in such cases, to enter judgment and collect the fines or penalties and costs;

(2a) In misdemeanor cases involving the violation of a county ordinance authorized by law regulating the use of dune or beach buggies or other power-driven vehicles specified by the governing body of the county on the foreshore, beach strand, or the barrier dune system, to accept written appearances, waivers of trial or hearing, and pleas of guilty or admissions of responsibility, in accordance with the schedule of

offenses and fines or penalties promulgated by the Conference of Chief District Court Judges pursuant to G.S. 7A-148, and in such cases, to enter judgment and collect the fines or penalties and costs;

(3) To issue arrest warrants valid throughout the State;

(4) To issue search warrants valid throughout the county;

(5) To grant bail before trial for any noncapital offense;

(6) Notwithstanding the provisions of subdivision (1) of this section, to hear and enter judgment as the chief district judge shall direct in all worthless check cases brought under G.S. 14-107, when the amount of the check is two thousand dollars ($2,000) or less. Provided, however, that under this section magistrates may not impose a prison sentence longer than 30 days;

(7) To conduct an initial appearance as provided in G.S. 15A-511; and

(8) To accept written appearances, waivers of trial and pleas of guilty in violations of G.S. 14-107 when the amount of the check is two thousand dollars ($2,000) or less, restitution, including service charges and processing fees allowed by G.S. 14-107, is made, and the warrant does not charge a fourth or subsequent violation of this statute, and in these cases to enter judgments as the chief district judge directs.

(9) Repealed by Session Laws 1991 (Regular Session, 1992), c. 900, s. 118(d).

(b) In criminal actions or infractions, a magistrate who is licensed to practice law in this State has the additional authority, if so assigned by the chief district court judge and subject to any limitations imposed by the chief district court judge:

(1) To hear, decide, and enter judgment in all infractions cases, regardless of penalty or offense;

(2) To accept binding waivers of counsel in criminal contempt cases."

SECTION 2. G.S. 7A-292 reads as rewritten:

"**§ 7A-292. Additional powers of magistrates.**

(a) In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the following additional powers:

(1) To administer oaths;

(2) To punish for direct criminal contempt subject to the limitations contained in Chapter 5A of the General Statutes of North Carolina;

(3) When authorized by the chief district judge, to take depositions and examinations before trial;

(4) To issue subpoenas and capiases valid throughout the county;

(5) To take affidavits for the verification of pleadings;

(6) To issue writs of habeas corpus ad testificandum, as provided in G.S. 17-41;

(7) To assign a year's allowance to the surviving spouse and a child's allowance to the children as provided in Chapter 30, Article 4, of the General Statutes;

(8) To take acknowledgments of instruments, as provided in G.S. 47-1;
(9) To perform the marriage ceremony, as provided in G.S. 51-1;
(10) To take acknowledgment of a written contract or separation agreement between husband and wife; and
(11) Repealed by Session Laws 1973, c. 503, s. 9.
(12) To assess contribution for damages or for work done on a dam, canal, or ditch, as provided in G.S. 156-15.
(13) Repealed by Session Laws 1973, c. 503, s. 9.
(14) To accept the filing of complaints and to issue summons pursuant to Article 4 of Chapter 42A of the General Statutes in expedited eviction proceedings when the office of the clerk of superior court is closed.

(b) In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, a magistrate who is licensed to practice law in this State has the additional authority, if so assigned by the chief district court judge and subject to any limitations imposed by the chief district court judge:

(1) To issue temporary restraining orders and preliminary injunctions in civil cases within the magistrate's jurisdiction;
(2) To grant uncontested divorces;
(3) To accept and approve voluntary acknowledgments of child support liability and stipulated agreements setting the amount of support obligations;
(4) To order blood tests in paternity cases and take acknowledgments of paternity;
(5) To determine and issue orders for the emancipation of minors;
(6) To authorize in forma pauperis divorce actions by prisoners under G.S. 1-110;
(7) To accept binding waivers of counsel in civil contempt cases;
(8) To provide for appointment of counsel pursuant to Article 36 of Chapter 7A of the General Statutes; and
(9) To hear, decide, and enter judgment in any civil action with the consent of the parties."

SECTION 3. G.S. 15A-1115(a) reads as rewritten:

"(a) Appeal of District Court Decision. – A person who denies responsibility and is found responsible for an infraction in the district ~~court,~~court or before a magistrate pursuant to G.S. 7A-273(b)(1), within 10 days of the hearing, may appeal the decision to the criminal division of the superior court for a hearing de novo. Upon appeal, the defendant is entitled to a jury trial unless he consents to have the hearing conducted by the judge. The State must prove beyond a reasonable doubt that the person charged is responsible for the infraction unless the person admits responsibility. Unless otherwise provided by law, the procedures applicable to misdemeanors disposed of in the superior court apply to those infraction hearings. In the superior court, a prosecutor must represent the State. Appeal from the judgment in the superior court is as provided for other criminal actions in superior court, and the Attorney General must represent the State in an appeal of such actions."

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

SENATE BILL 887:
Magistrates and Clerks' Auth/Expunge Records

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Sen. Clodfelter
Date:	August 14, 2002	**Summary by:**	Robin Johnson
Version:	Proposed Committee Substitute S887-CSSW-86		Committee Counsel

SUMMARY: ***The PCS for Senate Bill 887 would amend the qualifications and authority of magistrates, amend the authority of clerks of superior court, and amend the law to permit a simpler procedure to expunge a criminal record in the case of a voluntary dismissal resulting because of misidentification.***

QUALIFICATIONS OF MAGISTRATES

Current Law: Magistrates are appointed officers of the district court. Every even-numbered year, the clerk of superior court submits the names of persons qualified for the position of magistrate to the senior regular resident superior court judge. In order to be eligible to be nominated as a magistrate, a person must either have a four-year degree from an accredited college or university, or have a two-year associate's degree and four years of work experience in a related field, including teaching, social service, law enforcement, arbitration or mediation, the court system, or counseling. From these nominations, the senior resident superior court judge appoints the requisite number of magistrates. Magistrates are appointed for two-year terms.

Bill Analysis: Effective October 1, 2002, the bill would amend current law to permit a person to be nominated to serve as a magistrate if that person has at least twelve years' experience as a Clerk of Superior Court in this State. *Section 1.*

AUTHORITY OF MAGISTRATES

Current Law: Magistrates preside over and decide civil small claims actions. In criminal actions and infractions, magistrates can issue arrest warrants and search warrants, grant bail for any noncapital offense, and conduct initial appearances. Also, in certain traffic, alcohol and other minor offenses that are waivable[1], magistrates can accept guilty pleas, enter judgment, and collect the fines or penalties and costs in accordance with the schedule of offenses and fines or penalties promulgated by the Conference of Chief District Judges. A person can appeal a decision of a magistrate to the district court, and the case on appeal is tried anew (*de novo*).

Bill Analysis: Under the bill, in infractions or criminal actions, magistrates will be granted additional authority, if so assigned by the chief district judge and subject to any limitations imposed by the chief district court judge, to hear, decide and enter judgment in all infractions and Class 3 misdemeanor cases, regardless of the penalty or offense. This additional authority may be assigned only with the consent of the clerk of superior court and after consultation with the district attorney. Magistrates would be able to accept written appearances, waivers of trial, and guilty pleas in the case of misdemeanor or infraction charges for offenses involving the distribution of tobacco products[2] to underage persons in accordance with the schedule of offenses and fines or penalties set by the Conference of Chief District Judges. *Section 2.(a)*

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[1] *A waivable offense is one where the person charged with the offense may waive his or her appearance and enter a plea of guilty or responsible.*

[2] *G.S. 14-313 prohibits the sale or distribution of tobacco produces or cigarette wrapping papers to any person under age 18 or the purchase of these products on a minor's behalf. Violation of this provision is a Class 2 misdemeanor. This statute also proscribes the display of a point of sale sign that notifies persons of the tobacco sales restriction, prohibits the sale of tobacco products in vending machines except in establishments which are open only to persons aged 18 or over.*

The bill also makes a necessary conforming change to G.S. 15A-1115(a). *Section 2.(b).*

These changes would become effective October 1, 2002, and apply to cases pending or filed on or after that date.

QUALIFICATIONS AND AUTHORITY OF CLERKS OF SUPERIOR COURT

Current Law: Clerks of superior court are elected officials who serve terms of four years. Persons who are qualified voters aged 21 and over and who are not convicted felons are eligible to be elected as clerks of superior court.

Clerks of superior court are authorized to perform a number of legal tasks, including issuing summonses and subpoenas, administering oaths, certifying records, entering default judgments, granting and revoking letters testamentary, letters of administration, and letters of trusteeship in estate matters, appointing and removing guardians and trustees (G.S. 7A-103), issuing arrest and search warrants (G.S. 7A-180), and entering orders of possession in sales of property under power of sale (G.S. 45-21.29).

When real property is pledged for a bond, the then current clerk of superior court is the named trustee.

Assistant clerks are authorized to perform all the duties and functions of the office of clerk of superior court. Deputy clerks are authorized to perform certain ministerial tasks like certifying records.

Bill Analysis: The bill would give a clerk of superior court, if agreed upon by the chief district court judge and clerk after consultation with the district attorney, the same authority as a magistrate to hear, decide and enter judgment in all infraction and Class 3 misdemeanor cases, regardless of penalty or offense. This authority would extend to the assistant clerks of that clerk. Appeals of these cases decided by the clerk would be *de novo* to the district court. These sections of the bill would become effective October 1, 2002, and apply to cases pending or filed on or after that date. *Sections 3.(a)-(c).*

The bill also would amend Chapter 45 (Mortgages and Deeds of Trust) to provide that when the clerk of superior court is named as a trustee in a mortgage or deed of trust (such as in the case of when real property is pledged for a bond), it will be sufficient to identify the office of the clerk (and not the clerk's name) on the mortgage or deed of trust. In that case, the office of the clerk would be authorized to discharge or release the mortgage or deed of trust. This section would take effect when the bill becomes law and would apply to mortgages and deeds of trust that are recorded on or after that date. *Section 3.(d)*

EXPUNCTION OF RECORDS

Current Law: Current law provides the circumstances in which a person may have his or her record expunged of infractions or criminal charges or convictions. Current law also sets out various procedures for having a person's record expunged. Those procedures, while similar, vary slightly depending on the circumstances of the infraction, criminal charge or conviction. Under current law, if a person is wrongly charged with an infraction or crime as a result of misidentification and the charges against that person are voluntarily dismissed, the person may apply to the court to expunge his or her record, and a hearing is held. A similar procedure exists for expunging criminal charges or convictions that occur as a result of identity fraud, but this expunction procedure is simpler to use than the procedure currently provided for in the case of misidentification. The procedure for expunction of a record for identity fraud is, for the most part, automatic: a person fills out a form provided by the court, the court notifies the district attorney of the petition, a hearing is held on the motion or petition, and, upon a finding that person's identity was used without permission and that the charges were dismissed or the person found not guilty, the court orders the expunction.

Bill Analysis: Effective when it becomes law, the bill would amend current law to provide that when a person is charged with an infraction or criminal offense and that charge is voluntarily dismissed as a result of misidentification, the person may petition the court to expunge that person's criminal record using the simpler procedure that is currently available to those charged or convicted as a result of identity fraud. *Section 4.*

S887-SMRH-001: Dianna Jessup, Counsel to House Rules, substantially prepared this summary.

VISITOR REGISTRATION SHEET

DATE 8-27-02

Judiciary II

VISITOR: Please sign below and return to clerk.

NAME	FIRM OR STATE AGENCY	TELEPHONE
[signature]	ADC	
[signature]	NCMS	
Kate Hanley	NC State Health	
Jeff Covey	FOP	
[signature]	SP	
Will Ruth	AG	

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

September 24, 2002

The House Committee on Judiciary II met on Tuesday, September 24, 2002 in room 421 LOB at 1:40 p.m. The following members were present: Rep. Baddour, Chair and Reps. Bowie, Culpepper, Decker, Gulley, Haire, Hall, Jeffus, Pope, Sherrill, Weiss and Willingham. Reps. Goodwin and Coates and Sens. Ballance and Cunningham were additionally present. Staff including Tracy Dixon, Jeff Hudson and Hal Pell were in attendance. A Visitor Registration sheet is attached and made part of these minutes.

Chairman Baddour called the meeting to order. Rep. Hall motioned to adopt the PCS for discussion. Rep. Decker objected to the motion but the objection failed and the PCS was adopted for discussion.

Bill sponsor, Sen. Ballance was on his way to the committee meeting and the chair asked that in his absence, Hal Pell, Committee Counsel explain SB 752, A BILL TO BE ENTITLED AN ACT TO ADJUST AND UPDATE THE AWARD SCHEDULE FOR INJURED EMPLOYEES SEEKING COMPENSATION UNDER THE WORKERS' COMPENSATION ACT. Rep. Baddour specifically asked Mr. Pell to discuss section 22.

Upon the conclusion of Mr. Pell's explanation, Rep. Baddour asked to hear from members in the audience before committee members asked questions.

Janet Ward Black, President of the Academy of Trial Lawyers was recognized and stated the change in the award schedule had not occurred in 15 years yet the increase in average weekly wage had increased by 115 percent. In response to Rep. Decker's question of how this would affect lawyer's fees, Ms. Ward Black stated the Industrial Commission determined the fees that are usually based on a percentage of recovery.

James Andrews, Academy of Trial Lawyers, noted to the committee that Dick Taylor, Victor Farah and other speakers in support of the bill would be at the meeting by 3:00, as that was the original time given. Rep. Baddour apologized about the confusion over the time of the meeting.

Bob Kaylor, N.C. Association of Defense Attorneys, read a list of those opposed to the bill. He commented that they were not opposed to reviewing the schedule of benefits but did not believe this bill was the right forum and suggested perhaps sending this issue to study. Mr. Kaylor responded to Rep. Sherrill's question of if the self–insured payouts would go up. Upon the request of Rep. Sherrill, Rep. Baddour asked that copies of the fiscal note be distributed to members.

Rep. Willingham commented that he thought other things should be included in the bill but stated that if the bill passed it would help those suffering now without undue harm. Mr. Kaylor and Rep. Willingham discussed whether or not this bill would help those suffering now.

Rep. Goodwin who has been very involved in the bill explained to the committee the history of the bill and stated this had been part of ongoing meetings for months and was not a new idea. He stated that if this bill is not passed now, it could be two years before the issue was resolved.

Sen. Ballance stated that he had seen the injured parties and knows their anguish and frustration and respectfully disagreed with Mr. Kaylor that these parties were being compensated. Sen. Ballance commented that this bill was the right thing to do.

Ms. Ward Black and Mr. Taylor explained the interplay between the disabled and disfigurement sections and what role asbestosis plays. Mr. Kaylor and Mr. Taylor discussed their conflicting opinions of the gap in time when people do not qualify for benefits. Mr. Kaylor spoke to the difficulty of determining if a person actually had asbestosis and the role this difficulty plays in the level of treatment received.

No party was able to answer Rep. Hall's question of whether the level of benefits received had been compared by age or race.

Rep. Baddour clarified with Rep. Pope that the bill addressed the section of workers compensation dealing with disability compensation not the medical treatment cost. Rep. Pope then asked the number of pending claims under the three categories. Mr. Taylor referred to the fiscal note. Rep. Pope stated he would like an answer from staff or the Industrial Commission. Rep. Baddour asked staff to get that information. In response to Rep. Pope's follow up question of retroactivity, Mr. Pell referred to a bill in 1987 that the increase in amount was effective with the effective date of the bill and was not claim specific. Rep. Baddour commented that he did believe this applied to pending cases and Rep. Pope questioned if this was equitable. Ms. Ward Black spoke to the timing and risk of settling claims.

Reps. Pope and Decker requested that all members receive a copy of the case referred to by Mr. Pell in additional to the fiscal note.

Rep. Coates questioned whether pending cases were receiving medical treatment and Ms. Ward Black responded that they were not unless the employer agreed to provide medical benefits. Rep. Baddour suggested asking the Industrial Commission to provide members with the number pending claims that were denied and how many are paying medical benefits. Tom Sinclair, who represents a number of employers in workers compensation cases, noted that the cases in the audience were not representative of the average case. He stated that out of the over 2200 pending cases, the average person is not receiving treatment because there is no medical treatment for having the disease. He continued noting that the Industrial Commission does require a yearly medical exam. The

medical exam is primarily looking for cancer and if someone diagnosed with asbestosis, usually an inhaler is all that is involved but in most cases this is not involved. Mr. Clair stated he normally makes the proposal to the employer that most of the exams are conducted at the employers expense and concluded that because of the above reasons, medical compensation is not a big issue. Ms. Ward Black noted that some people are facing medical bills in excess of $2000 per year just for maintenance separate from treatment and spoke to their increase susceptibility of these patients to flu, etc. Mr. Kaylor responded that much of this expense is covered in the yearly exam.

Rep. Hall asked if the examinations sufficed for treatment. Mr. Clair stated there was no treatment for asbestosis. Mr. Kaylor commented that in a number of cases there are arguments about whether the disease is actually present but if all agree the disease is present, treatment is not a problem.

Rep. Baddour responded to Rep. Bowie's questions about contested cases. Rep. Decker questioned what caused asbestosis and how it was proven that asbestosis was formed from somewhere other then the person's current work environment. Ms. Ward Black responded to what caused asbestosis and spoke on contested cases. Rep. Decker spoke on the role of the legislature in pending cases. Mr. Clair noted that for those with asbestosis, the statute tags the last employer (last 30 days of employment) in response to Rep. Decker's question about getting asbestosis from other work environments.

Rep. Willingham asked to hear from the victims of asbestosis in the audience. Raymond Philps, who was an employee with Weyerhaeuser for 33 ½ years explained his condition to the committee.

Copies of the PCS, bill summary and fiscal note are attached as part of these minutes.

The meeting adjourned at 2:35 p.m.

Representative Philip A. Baddour, Jr.
Chairman

Tracy Dixon
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 752

Second Edition Engrossed 4/19/01

PROPOSED HOUSE COMMITTEE SUBSTITUTE S752-CSRK-14 [v.3]

9/16/2002 12:57:01 PM

Short Title: Adjust Workers' Comp. Award Schedule (Public)

Sponsors:

Referred to:

April 2, 2001

A BILL TO BE ENTITLED

AN ACT TO ADJUST AND UPDATE THE AWARD SCHEDULE FOR INJURED EMPLOYEES SEEKING COMPENSATION UNDER THE WORKERS' COMPENSATION ACT.

SECTION 1. G.S. 97-31 reads as rewritten:

"**§ 97-31. Schedule of injuries; rate and period of compensation.**

In cases included by the following schedule the compensation in each case shall be paid for disability during the healing period and in addition the disability shall be deemed to continue for the period specified, and shall be in lieu of all other compensation, including disfigurement, to wit:

(1) For the loss of a thumb, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 75 weeks.

(2) For the loss of a first finger, commonly called the index finger, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 45 weeks.

(3) For the loss of a second finger, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 40 weeks.

(4) For the loss of a third finger, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 25 weeks.

(5) For the loss of a fourth finger, commonly called the little finger, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 20 weeks.

(6) The loss of the first phalange of the thumb or any finger shall be considered to be equal to the loss of one half of such thumb or finger, and the compensation shall be for one half of the periods of time above specified.

(7) The loss of more than one phalange shall be considered the loss of the entire finger or thumb: Provided, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

(8) For the loss of a great toe, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 35 weeks.

(9) For the loss of one of the toes other than a great toe, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 10 weeks.

(10) The loss of the first phalange of any toe shall be considered to be equal to the loss of one half of such toe, and the compensation shall be for one half of the periods of time above specified.

(11) The loss of more than one phalange shall be considered as the loss of the entire toe.

(12) For the loss of a hand, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 200 weeks.

(13) For the loss of an arm, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 240 weeks.

(14) For the loss of a foot, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 144 weeks.

(15) For the loss of a leg, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 200 weeks.

(16) For the loss of an eye, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 120 weeks.

(17) The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two thereof, shall constitute total and permanent disability, to be compensated according to the provisions of G.S. 97-29. The employee shall have a vested right in a minimum amount of compensation for the total number of weeks of benefits provided under this section for each member involved. When an employee dies from any cause other than the injury for which he is entitled to compensation, payment of the minimum amount of compensation shall be payable as provided in G.S. 97-37.

(18) For the complete loss of hearing in one ear, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 70 weeks; for the complete loss of hearing in both ears, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 150 weeks.

(19) Total loss of use of a member or loss of vision of an eye shall be considered as equivalent to the loss of such member or eye. The compensation for partial loss of or for partial loss of use of a member or for partial loss of vision of an eye or for partial loss of hearing shall be such proportion of the periods of payment above provided for total loss as such partial loss bears to total loss, except that in cases where there is eighty-five per centum (85%), or more, loss of vision in any

eye, this shall be deemed "industrial blindness" and compensated as for total loss of vision of such eye.

(20) The weekly compensation payments referred to in this section shall all be subject to the same limitations as to maximum and minimum as set out in G.S. 97-29.

(21) In case of serious facial or head disfigurement, the Industrial Commission shall award proper and equitable compensation not to exceed ~~twenty thousand dollars ($20,000).~~ fifty thousand dollars ($50,000). In case of enucleation where an artificial eye cannot be fitted and used, the Industrial Commission may award compensation as for serious facial disfigurement.

(22) In case of serious bodily disfigurement for which no compensation is payable under any other subdivision of this section, but excluding the disfigurement resulting from permanent loss or permanent partial loss of use of any member of the body for which compensation is fixed in the schedule contained in this section, the Industrial Commission may award proper and equitable compensation not to exceed ~~ten thousand dollars ($10,000).~~twenty-five thousand dollars ($25,000).

(23) For the total loss of use of the back, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 300 weeks. The compensation for partial loss of use of the back shall be such proportion of the periods of payment herein provided for total loss as such partial loss bears to total loss, except that in cases where there is seventy-five per centum (75%) or more loss of use of the back, in which event the injured employee shall be deemed to have suffered "total industrial disability" and compensated as for total loss of use of the back.

(24) In case of the loss of or permanent injury to any important external or internal organ or part of the body for which no compensation is payable under any other subdivision of this section, the Industrial Commission may award proper and equitable compensation not to exceed ~~twenty thousand dollars ($20,000).~~ fifty thousand dollars ($50,000). "

SECTION 2. This act is effective when it becomes law, and applies to all claims for workers' compensation that are pending or are in litigation on or after that date.

SENATE BILL 752:
Adjust Workers' Comp. Award Schedule.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Sen. Ballance
Date:	September 17, 2002	**Summary by:**	Robin Johnson
Version:	S752-CSRK-14[v.3]		Committee Counsel

SUMMARY: ***This proposed committee substitute would adjust the Workers' Compensation Award Schedule by increasing the maximum benefits that could be received for specified injuries. The act would be effective when it becomes law, and would apply to all claims that are pending on or are in litigation after that date***

BILL ANALYSIS:

The PCS would increase the scheduled maximum amounts under the Workers' Compensation Act for the following:

- In case of serious facial or head disfigurement, increase the maximum from $20,000 to $50,000.
- In case of serious bodily disfigurement, where no compensation is otherwise available under the schedule section, increase the maximum from $10,000 to $25,000.
- In case of loss of, or permanent injury to, any important external or internal organ, where no compensation is otherwise available under the schedule section, increase the maximum from $20,000 to $50,000.

The PCS would be effective when it becomes law, and would apply to all claims that are pending on or are in litigation after that date. It is possible that including pending claims may be challenged on the grounds that this constitutes an unconstitutional retroactive application of law. Generally, the courts have held that a person's rights to compensation under the Workers' Compensation Act vest at the time that person becomes totally disabled.

BACKGROUND: In 1987, the legislature increased the maximum amounts for serious facial or head disfigurement, and for loss or permanent injury to important external or internal organs, from $10,000 to $20,000.

S752-SMRH-001: Hal Pell, Staff Attorney, substantially contributed to this summary.

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: August 1, 2002

TO: Representatives Baddour, Goodwin
Senator Cunningham

FROM: Adam Levinson
Fiscal Research Division

RE: PCS S752: Adjust Workers' Comp. Award Schedule

FISCAL IMPACT

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

	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06
REVENUES:	0	0	0	0	0
EXPENDITURES:					
Industrial Commission		*See Assumptions and Methodology*			
Other General Fund Agencies	$9,345 - 41,085	$9,345 - 41,085	$9,345 - $41,085	$9,345 - 41,085	$9,345 - 41,085
Highway Fund	$0 - 13,125	$0 - 13,125	$0 - 13,125	$0 - 13,125	$0 - 13,125
POSITIONS:		*See Assumptions and Methodology*			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Industrial Commission (Department of Commerce), All other State government departments

EFFECTIVE DATE: When the act becomes law

BILL SUMMARY:

The draft bill proposes to raise by 150% each of the statutorily defined maximum levels (hereafter, "caps") of compensation that may be awarded by the Industrial Commission for certain categories of injury. The categories ("target injuries") and proposed raises are as follows:

1. As per G.S. 97-31(21): "serious facial or head disfigurement" or "enucleation where an artificial eye cannot be fitted and used" (raise cap from $20,000 to $50,000)

2. As per G.S. 97-31(22): "serious bodily disfigurement for which no compensation is payable under any other subdivision...but excluding the disfigurement resulting from permanent loss or permanent partial loss of use of any member of the body for which compensation is fixed in the schedule" (raise cap from $10,000 to $25,000)

3. As per G.S. 97-31(24): "loss or permanent injury to any important external or internal organ or part of the body for which no compensation is payable under any other subdivision" (raise cap from $20,000 to $50,000).

ASSUMPTIONS AND METHODOLOGY:

Claims Filed Pursuant to G.S. 97-31(21) and -31(22)

Number of Injuries/Claims

The most readily available historical data from the administrators of the state of North Carolina's ("NC") workers' compensation plans indicate a range of seven to twelve target injuries per year for which claims could be filed pursuant to G.S. 97-31(21) & -31(22).[1] This analysis assumes that the number of compensable target injuries of this type will not differ significantly from the numbers occurring during this period of recent history. The analysis further assumes that increased caps for these injuries will not lead to more claims being filed. Given the serious and tangible nature of these injuries, it seems reasonable to assume that (a) they have not been under-filed in the past, and (b) potentially higher compensation will not lead to purposeful development or fraudulent presentation of the injuries.

Expenditures: Amounts Awarded and Administrative Costs

The analysis assumes that an increase in the cap for a given injury would not affect the logic through which an Industrial Commission adjudicator determines the extent to which a claimant has been injured. Increased caps might, however, affect the amount of compensation that an adjudicator determines is "proper and equitable" compensation. One possibility is that an adjudicator's award for a given injury might increase proportionately under increased caps. For example, in instances where an adjudicator would award roughly 20% of the maximum $10,000 allowable for bodily disfigurement, or $2,000, he might instead award $5,000, or 20% of $25,000. If adjudicators were to apply this approach consistently, one could assume a uniform 150% increase in awards. In practice, however, no mathematical formulas are uniformly applied and discretionary award amounts for like injuries can vary considerably. While it therefore

[1] Sources: NC Department of Transportation (DOT), Key Risk Management Services, Inc., which administers the workers' compensation plan for all of NC state government except DOT and the NC Public Schools ("Schools"), and the NC School Board Association, which until recently administered the workers' compensation plan for the Schools. Data is from fiscal years 1997-1998, 1998-1999, and 1999-2000.

seems reasonable to **assume that each case of a target injury would receive some increased award under the proposed caps, a reliable estimate of the amount of the increase is not available.**

The NC state government self-insures against workers' compensation for state employees. An increase in awards for claims would therefore not lead to increased premiums, as it would were the state contracting with a private insurer. Instead, increased payouts would simply raise expenditures for direct workers' compensation. **The proposed caps would thus increase General Fund and Highway Fund expenditures** (NC DOT funds and operates its own plan separately from the rest of State government).

Determining the amount by which General Fund expenditures would increase under new caps involves projecting the increased compensation likely to be awarded to each type of target injury. According to DOT, Key Risk Management Services, Inc., and the NC School Board Association, only one claimant received maximum compensation for a target injury between 1997-2000. During the same time period, 24 claimants received sub-maximum compensation for facial disfigurement, and five claimants received sub-maximum compensation for bodily disfigurement. Assuming a similar distribution of injuries in future fiscal years and application of the same "proper and equitable" standard to like injuries over time, **the proposed bill would increase General Fund expenditure between $9,345 and $41,085, and Highway Fund expenditure between zero and $13,125 in each future fiscal year** (see table below for calculations).

		Existing Caps:			Proposed Caps:			Differenc
Fiscal Year	Type of Injury	Maximum Possible	Amount Paid	% of Possible	Proposed Maximum	Projected Amt Paid	% of Possible	Difference
1997-98	Facial/Head	$20,000	$3,000	15%	$50,000	$7,500	15%	$4,500
	Facial/Head	20,000	900	5%	50,000	2,250	5%	1,350
	Facial/Head	20,000	1,680	8%	50,000	4,200	8%	2,520
	Facial/Head	20,000	2,000	10%	50,000	5,000	10%	3,000
	Facial/Head	20,000	9,600	48%	50,000	24,000	48%	14,400
	Facial/Head	20,000	2,400	12%	50,000	6,000	12%	3,600
	Facial/Head	20,000	1,260	6%	50,000	3,150	6%	1,890
97-98 Subtotals			210	1%	50,000	525	1%	315
			$21,050			$52,625		**$31,575**
1998-99	Facial/Head	20,000	540	3%	50,000	1,350	3%	810
	Facial/Head	20,000	210	1%	50,000	525	1%	315
	Facial/Head	20,000	240	1%	50,000	600	1%	360
	Facial/Head	20,000	210	1%	50,000	525	1%	315
	Facial/Head	20,000	630	3%	50,000	1,575	3%	945
	Facial/Head	20,000	540	3%	50,000	1,350	3%	810
	Facial/Head	20,000	230	1%	50,000	575	1%	345
	Facial/Head	20,000	420	2%	50,000	1,050	2%	630

	Facial/Head	20,000	1,470	7%	50,000	3,675	7%	2,205
	Bodily	10,000	700	7%	25,000	1,750	7%	1,050
	Bodily	10,000	500	5%	25,000	1,250	5%	750
98-99 Subtotals			$6,230			$15,575		**$9,345**
1999-00	Facial/Head	20,000	20,000	100%	50,000	50,000	100%	30,000
*	Facial/Head	20,000	750	4%	50,000	1,875	4%	1,125
	Facial/Head	20,000	210	1%	50,000	525	1%	315
	Facial/Head	20,000	210	1%	50,000	525	1%	315
	Facial/Head	20,000	210	1%	50,000	525	1%	315
	Facial/Head	20,000	1,350	7%	50,000	3,375	7%	2,025
	Facial/Head	20,000	210	1%	50,000	525	1%	315
	Bodily	10,000	200	2%	25,000	500	2%	300
	Bodily	10,000	5,000	50%	25,000	12,500	50%	7,500
*	Bodily	10,000	8,000	80%	25,000	20,000	80%	12,000
99-00 Subtotals			$36,140			$90,350		**$54,210**

* Denotes claim administered by DOT, thus affecting Highway Fund expenditures.

Claims Filed Pursuant to G.S. 97-31(24)

Number of Injuries/Claims

The historical data for State government cited above includes no claims pursuant to G.S. 97-31(24). According to the Industrial Commission, while the State's exposure is not known at this time, it is reasonable to assume that few if any claims of this type will be filed against the State in the future. In the general population statewide, however, there has been a significant increase in such claims, particularly for asbestosis occupational disease. According to the Commission, the majority of these cases have involved or will involve damage awards pursuant to G.S. 97-31(24). As a result, this analysis assumes **a future increase in claims related to these compensable target injuries.**

The analysis further assumes that due to the somewhat intangible, complex nature of these injuries, increased caps might provide the necessary incentive for still more claims to be filed. As the potential award increases, there may be increases in (a) public awareness of the injuries, (b) efforts to identify and substantiate increases, and (c) efforts to encourage potentially injured parties to seek compensation. As a result of the many influences at play in this scenario, **a reliable estimate of the increase in number of claims filed is not available.**

Expenditures: Amounts Awarded and Administrative Costs

As described above, the analysis assumes that an increase in the cap for a given injury will have an indeterminate affect on the award that an Industrial Commission adjudicator determines is "proper and equitable compensation" for that injury. While it seems reasonable, therefore, that **each case of a target injury would receive some increased award under the proposed caps, a reliable estimate of the amount of increase is not available.**

Given that the State is not likely to face many, if any, claims of this nature, it seems reasonable to estimate that **workers' compensation costs to the State's General and Highway Funds will be negligible.** Since the State's exposure is not known, however, it should be recognized that no reliable estimate of future workers' compensation cost is available.

The area of State government that is most likely to incur additional costs is the Industrial Commission. Recent increases in the filing of asbestosis claims has already substantially increased the Commission's workload. Currently, the Deputy Commissioner Section of the Industrial Commission is committing between 20% to 30% of available adjudicators to asbestosis claims each month. The effect of this increase is that the average time it takes to process a claim of any type increases. This decreased efficiency is a source of frustration for all parties involved. According to the Commission, the only way to decrease processing time per claim is to increase the number of personnel who administer or adjudicate claims. Assuming then that raised caps will increase the number of claims filed, one can deduce that **raising caps will also necessitate an increase in number of staff positions at the Industrial Commission.** As the number of positions needed is dependent on the number of increased claims, for which a reliable estimate is not available, a reliable estimate of the number of new positions is not available either.

9/24/02

VISITOR REGISTRATION SHEET

J. H
Name of Committee

9/24/02
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ken Kirion	AIG.
Janet Ward Black	Donaldson + Black, Greensboro
Bill Wilson	NCATL
John Phelps	NCLM
Jane Royall	NC Family Policy Council
Melissa Kemmer	McGuire Woods
Angie Harris	MTC
Kate Hyatt	NC State Watch
Tom Clare	Teague Campbell
Robert Kaylor	Kaylor Law Firm
Jane Upchurch	Progress Energy
John McAlister	Duke Energy
Roxane Coates	R-J
Leslie Bevacqua	WCCBT
FRAN [illegible]	NCRMA
John McMillan	MFDs
Bill Scogin	KCLH
Michelle Cook	Weyerhaeuser
Preston Howard	MCIC
Teresa Pell	—
Robert L. Hollow	N.C. Sen. Candidate P.O. Box 42 Athosville
Ted L. Muse	Plymouth, N.C.
Shirley Rice	Roper, NC
Hubert Rawls	Washington NC, 1645 Godard Town Rd
Thelma Rawls	1645 Godard Town Rd, Washington NC

VISITOR REGISTRATION SHEET

J. H
Name of Committee

9/24/02
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Raymond Phelps	8589 Mackeys Rd. Roper, N.C.
Alyce Phelps	8589 Mackeys Rd. Roper, N.C.
Kyrd Hammonds	NCCIA
Annie V. Lee	1591 Godard Town Rd. Washington, N.C.
Willie A Bowman	22 Mackeys Rd Plymouth NC.
Darlin L Nixon	306 Downing RD. Roper NC 27970
Ashley E Clark	Wallace Graham Law Firm
Monnie Downing Jr	722 Forlcy Rd Plymouth NC 27962
Lawanza Price	10120 us 64E Roper NC 27970
Ruth Mann	518 Swamp Rd., Pantego NC 27860

AGENDA
Judiciary II

Wednesday, September 25, 2002
12:00, noon
Room 421 LOB

Rep. Phil Baddour, Chair

CALL TO ORDER

BILLS TO BE HEARD

HB 1641 **Interstate Compact/Supervision of Offenders**
Rep. Culpepper

SB 887 **Expand Magistrates' Authority**
Sen. Clodfelter

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

September 25, 2002

The House Committee on Judiciary II met on Wednesday, September 25, 2002 in room 421 LOB at 12:00 noon. The following members were present: Rep. Baddour, Chair and Reps. Culpepper, Decker, Gulley, Hall, Jeffus, Justus, Miller, Pope, Sherrill, Weiss and Willingham. A Visitor Registration sheet is attached and made part of these minutes.

Chairman Baddour called the meeting to order. Upon the motion of Rep. Miller, the PCS for HB 1641, A BILL TO BE ENTITLED AN ACT TO ADOPT THE PROVISIONS OF THE REVISED INTERSTATE COMPACT FOR THE SUPERVISION OF ADULT OFFENDERS AND TO APPROPRIATE FUNDS FOR THE NORTH CAROLINA'S ASSESSMENT AS A MEMBER OF THAT COMPACT, was adopted for discussion. Jeff Hudson, Committee Counsel, explained the bill.

Rep. Baddour recognized Sherry Pilkington, Assistant Director for the Division of Community Corrections and Compact Administrator, who discussed the changes made by the bill and why they were needed.

Rep. Sherrill questioned how the bill was eligible and how the commission was selected. Rep. Culpepper responded to her first question by stating it affected the state budget and Mr. Hudson addressed the question of commission selection.

Rep. Culpepper stated the bill did not have to go to the Appropriations Committee and Mr. Hudson explained the changes in the original bill versus the PCS in response to Rep. Pope's questions.

Ms. Pilkington answered Rep. Willingham's question by stating there were no administrative or transfer fees for parolees residing in another state.

Reps. Decker and Baddour, Mr. Hudson and Tracy Little with the Department of Corrections discussed issues of parole. Rep. Decker noted that he was not sure this addressed parole and was not sure he wanted to move forward. Ms. Little pointed out that 47 other states have adopted this language. Rep. Baddour reminded the committee that the Secretary of the Department of Corrections does not have to allow a transfer and that this could be done on a case–by–case basis.

Rep. Culpepper questioned whether the DOC rules were subject to the rules review legislation. Ms. Little stated she did not know.

Rep. Sherrill expressed she thought the definition of victim was vague. Mr. Hudson noted that there was no definition for victim in the compact.

Ms. Pilkington spoke to the specific problems this bill would correct in response to Rep. Decker. A verbal amendment to delete section four from the bill and change the title accordingly was sent forward by Rep. Decker. Rep. Pope stated he was sympathetic but questioned if the amendment would hurt the chances of a North Carolina resident returning to North Carolina. Ms. Little responded that the federal government has broad prisoner changes and North Carolina piggybacks on the federal language. Rep. Culpepper reminded the committee that 47 out of 50 states agreed to this model language. Rep. Decker suggested this issue go to study. Reps. Baddour, Decker and Pope and Ms. Little continued to discuss the amendment. The motion to adopt the amendment failed.

Rep. Culpepper motioned that the PCS be given a favorable report, unfavorable to the original bill. The motion carried. Ms. Pilkington listed to Rep. Justus those states not in the compact.

Copies of the PCS, original PCS and bill summary are attached as part of these minutes.

SB 887, A BILL TO BE ENTITLED AN ACT TO PROVIDE ADDITIONAL AUTHORITY FOR MAGISTRATES WHO ARE LICENSED TO PRACTICE LAW, was not heard during this meeting.

The meeting adjourned at 12:50 p.m. to reconvene after session.

Representative Philip A. Baddour, Jr.
Chairman

Tracy Dixon
Committee Assistant

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1641 A BILL TO BE ENTITLED AN ACT TO ADOPT THE PROVISIONS OF THE REVISED INTERSTATE COMPACT FOR THE SUPERVISION OF ADULT OFFENDERS AND TO APPROPRIATE FUNDS FOR NORTH CAROLINA'S ASSESSMENT AS A MEMBER OF THAT COMPACT.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

5/13/02

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1641
PROPOSED COMMITTEE SUBSTITUTE H1641-PCS4329-SB-76

Short Title: Offender Supervision Compact/Transfer. (Public)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO ADOPT THE PROVISIONS OF THE REVISED INTERSTATE COMPACT FOR THE SUPERVISION OF ADULT OFFENDERS AND TO PROVIDE FOR NORTH CAROLINA TO PARTICIPATE IN THE INTERNATIONAL PRISONER TRANSFER PROGRAM ADMINISTERED BY THE UNITED STATES DEPARTMENT OF JUSTICE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 148 of the General Statutes is amended by adding a new Article to read:

"Article 4B.

"Interstate Compact for the Supervision of Adult Offenders.

"**§ 148-65.4. Short title.**

This Article may be cited as "The Interstate Compact for the Supervision of Adult Offenders".

"**§ 148-65.5. Governor to execute compact; form of compact.**

The Governor of North Carolina is authorized and directed to execute a compact on behalf of the State of North Carolina with any state of the United States legally joining therein in the form substantially as follows:

Preamble.

Whereas: The Interstate Compact for the Supervision of Parolees and Probationers was established in 1937, it is the earliest corrections "compact" established among the states, and has not been amended since its adoption over 62 years ago;

Whereas: This compact is the only vehicle for the controlled movement of adult parolees and probationers across state lines, and it currently has jurisdiction over more than a quarter of a million offenders;

Whereas: The complexities of the compact have become more difficult to administer, and many jurisdictions have expanded supervision expectations to include currently unregulated practices such as victim input, victim notification requirements, and sex offender registration;

Whereas: After hearings, national surveys, and a detailed study by a task force appointed by the National Institute of Corrections, the overwhelming recommendation has been to amend the document to bring about an effective management capacity that addresses public safety concerns and offender accountability;

Whereas: The General Assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety. The Governor is hereby authorized and directed to enter into a compact on behalf of the State of North Carolina with any state of the United States and other territorial possessions of the United States legally joining therein in the form substantially as follows;

Whereas: Upon the adoption of this Interstate Compact for the Supervision of Adult Offenders, it is the intention of the General Assembly to repeal the previous Interstate Compact for the Supervision of Parolees and Probationers one year after the effective date of this compact.

Article I.
Purpose.

(a) The compacting states to this Interstate Compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the bylaws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner, and when necessary return offenders to the originating jurisdictions. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. § 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

(b) It is the purpose of this compact and the Interstate Commission created hereunder, through means of joint and cooperative action among the compacting states:

(1) To provide the framework for the promotion of public safety and to protect the rights of victims through the control and regulation of the interstate movement of offenders in the community;

(2) To provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and

(3) To equitably distribute the costs, benefits, and obligations of the compact among the compacting states.

(c) In addition, this compact will:

(1) Create an Interstate Commission which will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the

jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies, which will promulgate rules to achieve the purpose of this compact;

(2) Ensure an opportunity for input and timely notice to victims and to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;

(3) Establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of compact activities to heads of state councils, state executive, judicial, and legislative branches and criminal justice administrators;

(4) Monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct noncompliance; and

(5) Coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity.

(d) The compacting states recognize that there is no "right" of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision subject to the provision of this compact and bylaws and rules promulgated hereunder. It is the policy of the compacting states that the activities conducted by the Interstate Commission created herein are the formation of the public policies and are therefore public business.

Article II.
Definitions.

(a) As used in this compact, unless the context clearly requires a different construction:

(1) "Adult" means both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law.

(2) "Bylaws" means those bylaws established by the Interstate Commission for its governance, or for directing or controlling the Interstate Commission's actions or conduct.

(3) "Compact Administrator" means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the Interstate Commission, and policies adopted by the state council under this compact.

(4) "Compacting state" means any state that has enacted the enabling legislation for this compact.

(5) "Commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this compact.

(6) "Interstate Commission" means the Interstate Commission for Adult Offender Supervision established by this compact.

(7) "Member" means the commissioner of a compacting state or designee, who shall be a person officially connected with the commissioner.

(8) "Noncompacting state" means any state that has not enacted the enabling legislation for this compact.

(9) "Offender" means an adult placed under, or subject to, supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies.

(10) "Person" means any individual, corporation, business enterprise, or other legal entity, either public or private.

(11) "Rules" means acts of the Interstate Commission, duly promulgated pursuant to Article VIII of this compact, substantially affecting interested parties in addition to the Interstate Commission, which shall have the force and effect of law in the compacting states.

(12) "State" means a state of the United States, the District of Columbia, and any other territorial possessions of the United States.

(13) "State council" means the resident member of the State Council for Interstate Adult Offender Supervision created by each state under Article III of this compact.

Article III.
The Compact Commission.

(a) The compacting states hereby create the "Interstate Commission for Adult Offender Supervision". The Interstate Commission shall be a body corporate and joint agency of the compacting states. The Interstate Commission shall have all the responsibilities, powers, and duties set forth herein, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(b) The Interstate Commission shall consist of commissioners selected and appointed by resident members of a State Council for Interstate Adult Offender Supervision for each state. In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners but who are members of interested organizations; such noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, and crime victims. All noncommissioner members of the Interstate Commission shall be ex officio (nonvoting) members. The Interstate Commission may provide in its bylaws for such additional, ex officio, nonvoting members as it deems necessary.

(c) Each compacting state represented at any meeting of the Interstate Commission is entitled to one vote. A majority of the compacting states shall constitute

a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

(d) The Interstate Commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of 27 or more compacting states, shall call additional meetings. Public notice shall be given of all meetings, and meetings shall be open to the public.

(e) The Interstate Commission shall establish an executive committee that shall include commission officers, members, and others as shall be determined by the bylaws. The executive committee oversees the day-to-day activities managed by the executive director and Interstate Commission staff; administers enforcement and compliance with the provisions of the compact, its bylaws, and as directed by the Interstate Commission; and performs other duties as directed by the commission or set forth in the bylaws.

Article IV.
The State Council.

(a) Each member state shall create a State Council for Interstate Adult Offender Supervision that shall be responsible for the appointment of the commissioner who shall serve on the Interstate Commission from that state. Each state council shall appoint as its commissioner the Compact Administrator from that state to serve on the Interstate Commission in such capacity under or pursuant to applicable law of the member state. While each member state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and compact administrators.

(b) Each compacting state retains the right to determine the qualifications of the Compact Administrator, who shall be appointed by the state council or by the Governor in consultation with the legislature and the judiciary. In addition to appointment of its own commissioner to the National Interstate Commission, each state council shall exercise oversight and advocacy concerning its participation in Interstate Commission activities and other duties as may be determined by each member state including, but not limited to, development of policy operations and procedures of the compact within that state.

Article V.
Powers and Duties of the Interstate Commission.

The Interstate Commission shall have the following powers:

(1) To adopt a seal and suitable bylaws governing the management and operation of the Interstate Commission.

(2) To promulgate rules that shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

(3) To oversee, supervise, and coordinate the interstate movement of offenders subject to the terms of this compact and any bylaws adopted and rules promulgated by the compact commission.

(4) To enforce compliance with compact provisions, Interstate Commission rules, and bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process.

(5) To establish and maintain offices.

(6) To purchase and maintain insurance and bonds.

(7) To borrow, accept, or contract for services of personnel, including, but not limited to, members and their staffs.

(8) To establish and appoint committees and hire staff when it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

(9) To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel.

(10) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of same.

(11) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed.

(12) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

(13) To establish a budget and make expenditures and levy dues as provided in Article X of this compact.

(14) To sue or be sued.

(15) To provide for dispute resolution among compacting states.

(16) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

(17) To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

(18) To coordinate education, training, and public awareness regarding the interstate movement of offenders for officials involved in such activity.

(19) To establish uniform standards for the reporting, collecting, and exchanging of data.

Article VI.
Organization and Operation of the Interstate Commission.

(a) Bylaws. – The Interstate Commission shall, by a majority of the members, within 12 months of the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

(1) Establishing the fiscal year of the Interstate Commission;

(2) Establishing an executive committee and such other committees as may be necessary and providing reasonable standards and procedures:

a. For the establishment of committees, and

b. Governing any general or specific delegation of any authority or function of the Interstate Commission;

(3) Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;

(4) Establishing the titles and responsibilities of the officers of the Interstate Commission;

(5) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Interstate Commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the Interstate Commission;

(6) Providing a mechanism for winding up the operations of the Interstate Commission and the equitable return of any surplus funds that may exist upon the termination of the compact after the payment and/or reserving of all of its debts and obligations;

(7) Providing transition rules for "start-up" administration of the compact; and

(8) Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

(b) Officers and Staff. – The Interstate Commission shall, by a majority of the members, elect from among its members a chair and a vice-chair, each of whom shall have such authorities and duties as may be specified in the bylaws. The chair or, in the chair's absence or disability, the vice-chair shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The executive

director shall serve as secretary to the Interstate Commission, and hire and supervise such other staff as may be authorized by the Interstate Commission, but shall not be a member.

(c) Corporate Records of the Interstate Commission. – The Interstate Commission shall maintain its corporate books and records in accordance with the bylaws.

(d) Qualified Immunity, Defense, and Indemnification. – The members, officers, executive director, and employees of the Interstate Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities; provided, that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

The Interstate Commission shall defend the commissioner of a compacting state, or the commissioner's representatives or employees, or the Interstate Commission's representatives or employees, in any civil action seeking to impose liability, arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities; provided, that the actual or alleged act, error, or omission did not result from intentional wrongdoing on the part of such person.

The Interstate Commission shall indemnify and hold the commissioner of a compacting state, the appointed designee or employees, or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

Article VII.
Activities of the Interstate Commission.

(a) The Interstate Commission shall meet and take such actions as are consistent with the provisions of this compact.

(b) Except as otherwise provided in this compact and unless a greater percentage is required by the bylaws, in order to constitute an act of the Interstate Commission, such act shall have been taken at a meeting of the Interstate Commission and shall have received an affirmative vote of a majority of the members present.

(c) Each member of the Interstate Commission shall have the right and power to cast a vote to which the compacting state is entitled and to participate in the business

and affairs of the Interstate Commission. A member shall vote in person on behalf of the state and shall not delegate a vote to another member state. However, a state council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone or other means of telecommunication or electronic communication shall be subject to the same quorum requirements of meetings where members are present in person.

(d) The Interstate Commission shall meet at least once during each calendar year. The chairperson of the Interstate Commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

(e) The Interstate Commission's bylaws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating such rules, the Interstate Commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(f) Public notice shall be given of all meetings, and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission shall promulgate rules consistent with the principles contained in the "Government in Sunshine Act", U.S.C. § 552(b), as may be amended. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

(1) Relate solely to the Interstate Commission's internal personnel practices and procedures;

(2) Disclose matters specifically exempted from disclosure by statute;

(3) Disclose trade secrets or commercial or financial information which is privileged or confidential;

(4) Involve accusing any person of a crime or formally censuring any person;

(5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) Disclose investigatory records compiled for law enforcement purposes;

(7) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of, the Interstate Commission with respect to a regulated entity for the purpose of regulation or supervision of such entity;

(8) Disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity; and

(9) Specifically relate to the Interstate Commission's issuance of a subpoena, or its participation in a civil action or proceeding.

(g) For every meeting closed pursuant to this provision, the Interstate Commission's chief legal officer shall publicly certify that, in the officer's opinion, the meeting may be closed to the public and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken and the reasons therefor, including a description of each of the views expressed on any item and the record of any recall vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(h) The Interstate Commission shall collect standardized data concerning the interstate movement of offenders as directed through its bylaws and rules which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements.

Article VIII.
Rule-making Functions of the Interstate Commission.

(a) The Interstate Commission shall promulgate rules in order to effectively and efficiently achieve the purposes of the compact including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states.

(b) Rule making shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rule making shall substantially conform to the principles of the federal Administrative Procedure Act, 5 U.S.C.S. section 551, et seq., and the Federal Advisory Committee Act, 5 U.S.C. § 1, et seq., as may be amended (hereinafter "APA"). All rules and amendments shall become binding as of the date specified in each rule or amendment.

(c) If a majority of the legislatures of the compacting states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

(d) When promulgating a rule, the Interstate Commission shall:

(1) Publish the proposed rule stating with particularity the text of the rule that is proposed and the reason for the proposed rule;

(2) Allow persons to submit written data, facts, opinions, and arguments, which information shall be publicly available;

(3) Provide an opportunity for an informal hearing; and

(4) Promulgate a final rule and its effective date, if appropriate, based on the rule-making record. Not later than 60 days after a rule is promulgated, any interested person may file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principle office is located for judicial review of such rule. If the court finds that the

Interstate Commission's action is not supported by substantial evidence, (as defined in the APA), in the rule-making record, the court shall hold the rule unlawful and set it aside. Subjects to be addressed within 12 months after the first meeting must, at a minimum, include:

a. Notice to victims and opportunity to be heard;
b. Offender registration and compliance;
c. Violations/returns;
d. Transfer procedures and forms;
e. Eligibility for transfer;
f. Collection of restitution and fees from offenders;
g. Data collection and reporting;
h. The level of supervision to be provided by the receiving state;
i. Transition rules governing the operation of the compact and the Interstate Commission during all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact; and
j. Mediation, arbitration, and dispute resolution.

(e) The existing rules governing the operation of the previous compact superceded by this Act shall be null and void 12 months after the first meeting of the Interstate Commission created hereunder.

(f) Upon determination by the Interstate Commission that an emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rule-making procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule.

Article IX.
Oversight, Enforcement, and Dispute Resolution by the Interstate Commission.

(a) Oversight. – The Interstate Commission shall oversee the interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in noncompacting states that may significantly affect compacting states.

The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the Interstate Commission, the Interstate Commission shall be entitled to receive all service of process in any such proceeding and shall have standing to intervene in the proceeding for all purposes.

(b) Dispute Resolution. – The compacting states shall report to the Interstate Commission on issues or activities of concern to them and cooperate with and support the Interstate Commission in the discharge of its duties and responsibilities.

The Interstate Commission shall attempt to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and noncompacting states.

The Interstate Commission shall enact a bylaw or promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(c) Enforcement. – The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact using any and all means set forth in Article XII, subsection (b) of this compact.

Article X.
Finance.

(a) The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(b) The Interstate Commission shall levy on and collect an annual assessment for each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff that must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

(c) The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(d) The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

Article XI.
Compacting State, Effective Date, and Amendment.

(a) Any state, as defined in Article II of this compact, is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date shall be the later of July 1, 2002, or upon enactment into law by the 35th jurisdiction. Therefore, it shall become effective and binding as to any other compacting state, upon enactment of the compact into law by that state. The governors of nonmember states or their designees will be invited to participate in Interstate Commission activities on a

nonvoting basis prior to adoption of the compact by all states and territories of the United States.

(c) Amendments to the compact may be proposed by the Interstate Commission for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

Article XII.

Withdrawal, Default, Termination, and Judicial Enforcement.

(a) Withdrawal. – Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw from the compact ("withdrawing state") by enacting a statute specifically repealing the statute which enacted the compact into law.

The effective date of withdrawal is the effective date of the repeal.

The withdrawing state shall immediately notify the Chair of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within 60 days of its receipt thereof.

The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state's reenacting the compact or upon such later date as determined by the Interstate Commission.

(b) Default. – If the Interstate Commission determines that any compacting state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this compact, the bylaws, or any duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:

(1) Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission;

(2) Remedial training and technical assistance as directed by the Interstate Commission;

(3) Suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted. Immediate notice of suspension shall be given by the Interstate Commission to the Governor; the Chief Justice or Chief Judicial Officer of the state; the Majority and Minority Leaders of the defaulting state's legislature; and the state council.

The grounds of default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, Interstate Commission bylaws, or duly promulgated rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the

Interstate Commission on the defaulting state pending a cure of the default. The Interstate Commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the Interstate Commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the compacting states, and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of suspension. Within 60 days of the effective date of termination of a defaulting state, the Interstate Commission shall notify the Governor; the Chief Justice or Chief Judicial Officer of the state; the Majority and Minority Leaders of the defaulting state's legislature; and the state council of such termination.

The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including any obligations the performance of which extends beyond the effective date of termination.

The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the Interstate Commission and the defaulting state. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

(c) Judicial Enforcement. – The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the Federal District where the Interstate Commission has its offices to enforce compliance with the provisions of the compact, its duly promulgated rules and bylaws against any compacting state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

(d) Dissolution of Compact. – The compact dissolves effective upon the date of the withdrawal or default of the compacting state that reduces membership in the compact to one compacting state.

Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be wound up, and any surplus funds shall be distributed in accordance with the bylaws.

Article XIII.
Severability and Construction.

(a) The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provision of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally constructed to effectuate its purposes.

Article XIV.
Binding Effect of Compact and Other Laws.

(a) Other Laws. – Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

All compacting states' laws conflicting with this compact are superseded to the extent of the conflict.

(b) Binding Effect of the Compact. – All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the compacting states.

All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.

Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.

In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective, and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

"**§ 148-65.6. Implementation of the compact.**

(a) The North Carolina State Council for Interstate Adult Offender Supervision shall be established, consisting of 11 members. The Secretary of Correction, or the Secretary's designee, shall serve as the Compact Administrator for the State of North Carolina and as North Carolina's Commissioner to the Interstate Compact Commission. The Secretary of Correction, or the Secretary's designee, is a member of the State Council and serves as chairperson of the State Council. The remaining members of the State Council shall consist of the following:

(1) One member representing the executive branch, to be appointed by the Governor;

(2) One member from a victim's assistance group, to be appointed by the Governor;

(3) One at-large member, to be appointed by the Governor;

(4) One member of the Senate, to be appointed by the President Pro Tempore of the Senate;

(5) One member of the House of Representatives, to be appointed by the Speaker of the House of Representatives;

(6) A superior court judge, to be appointed by the Chief Justice of the Supreme Court; and

(7) Four members representing the Division of Community Corrections, to be appointed by the Director of the Division of Community Corrections.

(b) The State Council shall meet at least twice a year and may also hold special meetings at the call of the chairperson. All terms are for three years.

(c) The State Council may advise the Compact Administrator on participation in the Interstate Commission activities and administration of the compact.

(d) The members of the State Council shall serve without compensation but shall be reimbursed for necessary travel and subsistence expenses in accordance with the policies of the Office of State Budget and Management.

(e) The State Council shall act in an advisory capacity to the Secretary of Correction concerning this State's participation in Interstate Commission activities and other duties as may be determined by each member state, including recommendations for policy concerning the operations and procedures of the compact within this State.

(f) The Governor shall by executive order provide for any other matters necessary for implementation of the compact at the time that it becomes effective, and, except as otherwise provided for in this section, the State Council may promulgate rules or regulations necessary to implement and administer the compact.

"**§ 148-65.7. Supervision fee.**

Persons supervised in this State pursuant to this compact shall pay the supervision fee specified in G.S. 15A-1374(c). The fee shall be paid to the clerk of court in the county in which the person initially receives supervision services in this State.

"**§ 148-65.8. Interstate parole and probation hearing procedures.**

(a) Where supervision of an offender is being administered pursuant to the Interstate Compact for the Supervision of Adult Offenders, the appropriate judicial or administrative authorities in this State shall notify the Compact Administrator of the sending state whenever, in their view, consideration should be given to retaking or reincarceration for a parole, probation, or post-release supervision violation. Prior to the giving of any such notification, a hearing shall be held in accordance with this section within a reasonable time, unless such hearing is waived by the offender. The appropriate officer or officers of this State shall, as soon as practicable following termination of any such hearing, report to the sending state, furnish a copy of the hearing record, and make recommendations regarding the disposition to be made of the offender by the sending state. Pending any proceeding pursuant to this section, the appropriate officers of this State may take custody of and detain the offender involved for a period not to exceed 15 days prior to the hearing and, if it appears to the hearing officer or officers that retaking or reincarceration is likely to follow, for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or reincarceration.

(b) Any hearing pursuant to this section may be before the Administrator of the Interstate Compact for the Supervision of Adult Offenders, a deputy of the Administrator, any other person appointed by the Administrator, or any person authorized pursuant to the laws of this State to hear cases of alleged parole, probation, or post-release supervision violation, except that no hearing officer shall be the person making the allegation of violation.

(c) With respect to any hearing pursuant to this section, the offender:

(1) Shall have reasonable notice in writing of the nature and content of the allegations to be made, including notice that its purpose is to determine

whether there is probable cause to believe that the offender has committed a violation that may lead to a revocation of parole, probation, or post-release supervision.

(2) Shall be permitted to advise with any persons whose assistance the offender reasonably desires, prior to the hearing.

(3) Shall have the right to confront and examine any persons who have made allegations against the offender, unless the hearing officer determines that such confrontation would present a substantial present or subsequent danger of harm to such person or persons.

(4) May admit, deny, or explain the violation alleged and may present proof, including affidavits and other evidence, in support of the offender's contentions. A record of the proceedings shall be made and preserved.

(d) In any case of alleged parole or probation violation by a person being supervised in another state pursuant to the Interstate Compact for the Supervision of Adult Offenders, any appropriate judicial or administrative officer or agency in another state may hold a hearing on the alleged violation. Upon receipt of the record of a parole, probation, or post-release supervision violation hearing held in another state pursuant to a statute substantially similar to this section, that record shall have the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this State, and any recommendations contained in or accompanying the record shall be fully considered by the appropriate officer or officers of this State in making disposition of the matter.

"**§ 148-65.9. North Carolina sentence to be served in another jurisdiction.**

The Post-Release Supervision and Parole Commission, with the concurrence of the Secretary of Correction, may direct that the balance of any sentence imposed by the courts of this State shall be served concurrently with a sentence or sentences in another state or federal institution and may effect a transfer of custody of such individual to the other jurisdiction for such purpose. In the event the individual's sentence liability in the other jurisdiction terminates prior to the expiration of the individual's North Carolina sentence, the individual shall be either paroled (if eligible) or returned to the prison department of this State, in the discretion of the Post-Release Supervision and Parole Commission."

SECTION 2. Article 4A of Chapter 148 of the General Statutes is repealed.

SECTION 3. This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. The Department of Correction shall implement the provisions of this act with funds that are otherwise appropriated or available to the Department.

SECTION 4. Chapter 148 of the General Statutes is amended by adding a new Article to read:

"Article 13.

"Transfer of convicted foreign citizens under federal treaty.

"**§ 148-122. Transfer of convicted foreign citizens under treaty; consent by Governor.**

If a treaty in effect between the United States and a foreign country provides for the transfer or exchange of convicted offenders to the country of which the offenders are citizens or nationals, the Governor may, on behalf of the State and subject to the terms of the treaty, authorize the Secretary of Correction to consent to the transfer or exchange of offenders and take any other action necessary to initiate the participation of the State in the treaty."

SECTION 5. Section 2 of this act becomes effective one year after the effective date of Section 1 of this act. Section 4 of this act becomes effective January 1, 2003. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1641
PROPOSED COMMITTEE SUBSTITUTE H1641-CSSB-76 [v.4]

9/25/2002 10:59:37 AM

Short Title: Offender Supervision Compact/Transfer. (Public)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO ADOPT THE PROVISIONS OF THE REVISED INTERSTATE COMPACT FOR THE SUPERVISION OF ADULT OFFENDERS AND TO PROVIDE FOR NORTH CAROLINA TO PARTICIPATE IN THE INTERNATIONAL PRISONER TRANSFER PROGRAM ADMINISTERED BY THE UNITED STATES DEPARTMENT OF JUSTICE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 148 of the General Statutes is amended by adding a new Article to read:

"Article 4B.

"Interstate Compact for the Supervision of Adult Offenders.

"**§ 148-65.4. Short title.**

This Article may be cited as "The Interstate Compact for the Supervision of Adult Offenders".

"**§ 148-65.5. Governor to execute compact; form of compact.**

The Governor of North Carolina is authorized and directed to execute a compact on behalf of the State of North Carolina with any of the United States legally joining therein in the form substantially as follows:

Preamble.

Whereas: The Interstate Compact for the Supervision of Parolees and Probationers was established in 1937, it is the earliest corrections "compact" established among the states, and has not been amended since its adoption over 62 years ago;

Whereas: This compact is the only vehicle for the controlled movement of adult parolees and probationers across state lines, and it currently has jurisdiction over more than a quarter of a million offenders;

Whereas: The complexities of the compact have become more difficult to administer, and many jurisdictions have expanded supervision expectations to include currently unregulated practices such as victim input, victim notification requirements, and sex offender registration;

Whereas: After hearings, national surveys, and a detailed study by a task force appointed by the National Institute of Corrections, the overwhelming recommendation has been to amend the document to bring about an effective management capacity that addresses public safety concerns and offender accountability;

Whereas: The General Assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety. The Governor is hereby authorized and directed to enter into a compact on behalf of the State of North Carolina with any state of the United States and other territorial possessions of the United States legally joining therein in the form substantially as follows;

Whereas: Upon the adoption of this Interstate Compact for Adult Offender Supervision, it is the intention of the General Assembly to repeal the previous Interstate Compact for the Supervision of Parolees and Probationers one year after the effective date of this Compact.

Article I.
Purpose.

(a) The compacting states to this Interstate Compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the bylaws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner, and when necessary return offenders to the originating jurisdictions. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

(b) It is the purpose of this compact and the Interstate Commission created hereunder, through means of joint and cooperative action among the compacting states:

(1) To provide the framework for the promotion of public safety and to protect the rights of victims through the control and regulation of the interstate movement of offenders in the community;

(2) To provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and

(3) To equitably distribute the costs, benefits, and obligations of the compact among the compacting states.

(c) In addition, this compact will:

(1) Create an Interstate Commission which will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the

jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies, which will promulgate rules to achieve the purpose of this compact;

(2) Ensure an opportunity for input and timely notice to victims and to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;

(3) Establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of compact activities to heads of state councils, state executive, judicial, and legislative branches and criminal justice administrators;

(4) Monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct noncompliance; and

(5) Coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity.

(d) The compacting states recognize that there is no "right" of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision subject to the provision of this compact and bylaws and rules promulgated hereunder. It is the policy of the compacting states that the activities conducted by the Interstate Commission created herein are the formation of the public policies and are therefore public business.

Article II.
Definitions.

(a) As used in this compact, unless the context clearly requires a different construction:

(1) "Adult" means both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law.

(2) "Bylaws" means those bylaws established by the Interstate Commission for its governance, or for directing or controlling the Interstate Commission's actions or conduct.

(3) "Compact Administrator" means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the Interstate Commission, and policies adopted by the State Council under this compact.

(4) "Compacting State" means any state that has enacted the enabling legislation for this compact.

(5) "Commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this compact.

(6) "Interstate Commission" means the Interstate Commission for Adult Offender Supervision established by this compact.

(7) "Member" means the commissioner of a compacting state or designee, who shall be a person officially connected with the commissioner.

(8) "Noncompacting State" means any state that has not enacted the enabling legislation for this compact.

(9) "Offender" means an adult placed under, or subject to, supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies.

(10) "Person" means any individual, corporation, business enterprise, or other legal entity, either public or private.

(11) "Rules" means acts of the Interstate Commission, duly promulgated pursuant to Article VIII of this compact, substantially affecting interested parties in addition to the Interstate Commission, which shall have the force and effect of law in the compacting states.

(12) "State" means a state of the United States, the District of Columbia, and any other territorial possessions of the United States.

(13) "State Council" means the resident member of the State Council for Interstate Adult Offender Supervision created by each state under Article III of this compact.

Article III.
The Compact Commission.

(a) The compacting states hereby create the "Interstate Commission for Adult Offender Supervision." The Interstate Commission shall be a body corporate and joint agency of the compacting states. The Interstate Commission shall have all the responsibilities, powers, and duties set forth herein, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(b) The Interstate Commission shall consist of commissioners selected and appointed by resident members of a State Council for Interstate Adult Offender Supervision for each state. In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners but who are members of interested organizations; such noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general and crime victims. All noncommissioner members of the Interstate Commission shall be ex officio (nonvoting) members. The Interstate Commission may provide in its bylaws for such additional, ex officio, nonvoting members as it deems necessary.

(c) Each compacting state represented at any meeting of the Interstate Commission is entitled to one vote. A majority of the compacting states shall constitute

a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

(d) The Interstate Commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of 27 or more compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

(e) The Interstate Commission shall establish an executive committee that shall include commission officers, members, and others as shall be determined by the bylaws. The executive committee oversees the day-to-day activities managed by the executive director and Interstate Commission staff; administers enforcement and compliance with the provisions of the compact, its bylaws, and as directed by the Interstate Commission; and performs other duties as directed by the commission or set forth in the bylaws.

Article IV.
The State Council.

(a) Each member state shall create a State Council for Interstate Adult Offender Supervision that shall be responsible for the appointment of the commissioner who shall serve on the Interstate Commission from that state. Each state council shall appoint as its commissioner the Compact Administrator from that state to serve on the Interstate Commission in such capacity under or pursuant to applicable law of the member state. While each member state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and compact administrators.

(b) Each compacting state retains the right to determine the qualifications of the Compact Administrator, who shall be appointed by the state council or by the Governor in consultation with the legislature and the judiciary. In addition to appointment of its own commissioner to the National Interstate Commission, each state council shall exercise oversight and advocacy concerning its participation in Interstate Commission activities and other duties as may be determined by each member state including, but not limited to, development of policy operations and procedures of the compact within that state.

Article V.
Powers and Duties of the Interstate Commission.

The Interstate Commission shall have the following powers:

(1) To adopt a seal and suitable bylaws governing the management and operation of the Interstate Commission.

(2) To promulgate rules that shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

(3) To oversee, supervise, and coordinate the interstate movement of offenders subject to the terms of this compact and any bylaws adopted and rules promulgated by the compact commission.

(4) To enforce compliance with compact provisions, Interstate Commission rules, and bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process.

(5) To establish and maintain offices.

(6) To purchase and maintain insurance and bonds.

(7) To borrow, accept, or contract for services of personnel, including, but not limited to, members and their staffs.

(8) To establish and appoint committees and hire staff when it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

(9) To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel.

(10) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of same.

(11) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed.

(12) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

(13) To establish a budget and make expenditures and levy dues as provided in Article X of this compact.

(14) To sue or be sued.

(15) To provide for dispute resolution among compacting states.

(16) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

(17) To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

(18) To coordinate education, training, and public awareness regarding the interstate movement of offenders for officials involved in such activity.

(19) To establish uniform standards for the reporting, collecting, and exchanging of data.

Article VI.
Organization and Operation of the Interstate Commission.

(a) Bylaws. – The Interstate Commission shall, by a majority of the members, within 12 months of the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

(1) Establishing the fiscal year of the Interstate Commission;

(2) Establishing an executive committee and such other committees as may be necessary and providing reasonable standards and procedures:

a. For the establishment of committees, and

b. Governing any general or specific delegation of any authority or function of the Interstate Commission;

(3) Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;

(4) Establishing the titles and responsibilities of the officers of the Interstate Commission;

(5) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Interstate Commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the Interstate Commission;

(6) Providing a mechanism for winding up the operations of the Interstate Commission and the equitable return of any surplus funds that may exist upon the termination of the compact after the payment and/or reserving of all of its debts and obligations;

(7) Providing transition rules for "start-up" administration of the compact; and

(8) Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

(b) Officers and Staff. – The Interstate Commission shall, by a majority of the members, elect from among its members a chair and a vice-chair, each of whom shall have such authorities and duties as may be specified in the bylaws. The chair or, in the chair's absence or disability, the vice-chair, shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The executive

director shall serve as secretary to the Interstate Commission, and hire and supervise such other staff as may be authorized by the Interstate Commission, but shall not be a member.

(c) Corporate Records of the Interstate Commission. – The Interstate Commission shall maintain its corporate books and records in accordance with the bylaws.

(d) Qualified Immunity, Defense, and Indemnification. – The members, officers, executive director, and employees of the Interstate Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities; provided, that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

The Interstate Commission shall defend the commissioner of a compacting state, or the commissioner's representatives or employees, or the Interstate Commission's representatives or employees, in any civil action seeking to impose liability, arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties or responsibilities; provided, that the actual or alleged act, error, or omission did not result from intentional wrongdoing on the part of such person.

The Interstate Commission shall indemnify and hold the commissioner of a compacting state, the appointed designee or employees, or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

Article VII.
Activities of the Interstate Commission.

(a) The Interstate Commission shall meet and take such actions as are consistent with the provisions of this compact.

(b) Except as otherwise provided in this compact and unless a greater percentage is required by the bylaws, in order to constitute an act of the Interstate Commission, such act shall have been taken at a meeting of the Interstate Commission and shall have received an affirmative vote of a majority of the members present.

(c) Each member of the Interstate Commission shall have the right and power to cast a vote to which the compacting state is entitled and to participate in the business

and affairs of the Interstate Commission. A member shall vote in person on behalf of the state and shall not delegate a vote to another member state. However, a state council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone, or other means of telecommunication or electronic communication shall be subject to the same quorum requirements of meetings where members are present in person.

(d) The Interstate Commission shall meet at least once during each calendar year. The chairperson of the Interstate Commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

(e) The Interstate Commission's bylaws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating such rules, the Interstate Commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(f) Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission shall promulgate rules consistent with the principles contained in the "Government in Sunshine Act," U.S.C. Section 552(b), as may be amended. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

(1) Relate solely to the Interstate Commission's internal personnel practices and procedures;

(2) Disclose matters specifically exempted from disclosure by statute;

(3) Disclose trade secrets or commercial or financial information which is privileged or confidential;

(4) Involve accusing any person of a crime or formally censuring any person;

(5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) Disclose investigatory records compiled for law enforcement purposes;

(7) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of, the Interstate Commission with respect to a regulated entity for the purpose of regulation or supervision of such entity;

(8) Disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity; and

(9) Specifically relate to the Interstate Commission's issuance of a subpoena, or its participation in a civil action or proceeding.

(g) For every meeting closed pursuant to this provision, the Interstate Commission's chief legal officer shall publicly certify that, in the officer's opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any recall vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(h) The Interstate Commission shall collect standardized data concerning the interstate movement of offenders as directed through its bylaws and rules which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements.

Article VIII.
Rule-making Functions of the Interstate Commission.

(a) The Interstate Commission shall promulgate rules in order to effectively and efficiently achieve the purposes of the compact including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states.

(b) Rule making shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rule making shall substantially conform to the principles of the federal Administrative Procedure Act, 5 U.S.C.S. section 551 et seq., and the Federal Advisory Committee Act, 5 U.S.C.S. app. 2, section 1 et seq., as may be amended (hereinafter "APA"). All rules and amendments shall become binding as of the date specified in each rule or amendment.

(c) If a majority of the legislatures of the compacting states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

(d) When promulgating a rule, the Interstate Commission shall:

(1) Publish the proposed rule stating with particularity the text of the rule that is proposed and the reason for the proposed rule;

(2) Allow persons to submit written data, facts, opinions, and arguments, which information shall be publicly available;

(3) Provide an opportunity for an informal hearing; and

(4) Promulgate a final rule and its effective date, if appropriate, based on the rule-making record. Not later than 60 days after a rule is promulgated, any interested person may file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principle office is located for judicial review of such rule. If the court finds that the

Interstate Commission's action is not supported by substantial evidence, (as defined in the APA), in the rule-making record, the court shall hold the rule unlawful and set it aside. Subjects to be addressed within 12 months after the first meeting must at a minimum include:

a. Notice to victims and opportunity to be heard;
b. Offender registration and compliance;
c. Violations/returns;
d. Transfer procedures and forms;
e. Eligibility for transfer;
f. Collection of restitution and fees from offenders;
g. Data collection and reporting;
h. The level of supervision to be provided by the receiving state;
i. Transition rules governing the operation of the compact and the Interstate Commission during all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact; and
j. Mediation, arbitration, and dispute resolution.

(e) The existing rules governing the operation of the previous compact superceded by this Act shall be null and void 12 months after the first meeting of the Interstate Commission created hereunder.

(f) Upon determination by the Interstate Commission that an emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rule-making procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule.

Article IX.
Oversight, Enforcement, and Dispute Resolution by the Interstate Commission.

(a) Oversight. – The Interstate Commission shall oversee the interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in noncompacting states that may significantly affect compacting states.

The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the Interstate Commission, the Interstate Commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

(b) Dispute Resolution. – The compacting states shall report to the Interstate Commission on issues or activities of concern to them, and cooperate with and support the Interstate Commission in the discharge of its duties and responsibilities.

The Interstate Commission shall attempt to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and noncompacting states.

The Interstate Commission shall enact a bylaw or promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(c) Enforcement. – The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact using any and all means set forth in Article XII, subsection (b) of this compact.

Article X.
Finance.

(a) The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(b) The Interstate Commission shall levy on and collect an annual assessment for each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff that must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

(c) The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(d) The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

Article XI.
Compacting State, Effective Date, and Amendment.

(a) Any state, as defined in Article II of this compact, is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 of the States. The initial effective date shall be the later of July 1, 2002, or upon enactment into law by the 35th jurisdiction. Therefore, it shall become effective and binding as to any other compacting state, upon enactment of the compact into law by that state. The governors of nonmember states or their designees will be invited to participate in Interstate Commission activities on a

nonvoting basis prior to adoption of the compact by all states and territories of the United States.

(c) Amendments to the compact may be proposed by the Interstate Commission for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

Article XII.
Withdrawal, Default, Termination, and Judicial Enforcement.

(a) Withdrawal. – Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided, that a compacting state may withdraw from the compact ("withdrawing state") by enacting a statute specifically repealing the statute which enacted the compact into law.

The effective date of withdrawal is the effective date of the repeal.

The withdrawing state shall immediately notify the Chair of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within 60 days of its receipt thereof.

The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

(b) Default. – If the Interstate Commission determines that any compacting state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this Compact, the bylaws or any duly promulgated rules the Interstate Commission may impose any or all of the following penalties:

(1) Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission;

(2) Remedial training and technical assistance as directed by the Interstate Commission;

(3) Suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted. Immediate notice of suspension shall be given by the Interstate Commission to the Governor, the Chief Justice, or Chief Judicial Officer of the state; the majority and minority leaders of the defaulting state's legislature, and the State Council.

The grounds of default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, Interstate Commission bylaws, or duly promulgated rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the

Interstate Commission on the defaulting state pending a cure of the default. The Interstate Commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the Interstate Commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of suspension. Within 60 days of the effective date of termination of a defaulting state, the Interstate Commission shall notify the Governor, the Chief Justice, or Chief Judicial Officer and the Majority and Minority Leaders of the defaulting state's legislature and the state council of such termination.

The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the Interstate Commission and the defaulting state. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

(c) Judicial Enforcement. – The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the Federal District where the Interstate Commission has its offices to enforce compliance with the provisions of the compact, its duly promulgated rules and bylaws, against any compacting state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

(d) Dissolution of Compact. – The compact dissolves effective upon the date of the withdrawal or default of the compacting state that reduces membership in the compact to one Compacting State.

Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws.

Article XIII.
Severability and Construction.

(a) The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provision of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally constructed to effectuate its purposes.

Article XIV.
Binding Effect of Compact and Other Laws.

(a) Other Laws. – Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

All compacting states' laws conflicting with this compact are superseded to the extent of the conflict.

(b) Binding Effect of the Compact. – All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the compacting states.

All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.

Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.

In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

"**§ 148-65.6. Implementation of the compact.**

(a) The North Carolina State Council for Interstate Adult Offender Supervision shall be established, consisting of 11 members. The Secretary of Correction, or the Secretary's designee, shall serve as the Compact Administrator for the State of North Carolina and as North Carolina's Commissioner to the Interstate Compact Commission. The Secretary of Correction, or the Secretary's designee, is a member of the State Council and serves as chairperson of the State Council. The remaining members of the State Council shall consist of the following:

(1) One member representing the executive branch, to be appointed by the Governor;

(2) One member from a victim's assistance group, to be appointed by the Governor;

(3) One at-large member, to be appointed by the Governor;

(4) One member of the Senate, to be appointed by the President Pro Tempore of the Senate;

(5) One member of the House of Representatives, to be appointed by the Speaker of the House of Representatives;

(6) A superior court judge, to be appointed by the Chief Justice of the Supreme Court; and

(7) Four members representing the Division of Community Corrections, to be appointed by the Director of the Division of Community Corrections.

(b) The State Council shall meet at least twice a year and may also hold special meetings at the call of the chairperson. All terms are for three years.

(c) The State Council may advise the Compact Administrator on participation in the Interstate Commission activities and administration of the compact.

(d) The members of the State Council shall serve without compensation but shall be reimbursed for necessary travel and subsistence expenses in accordance with the policies of the Office of State Budget and Management.

(e) The State Council shall act in an advisory capacity to the Secretary of Correction concerning this State's participation in Interstate Commission activities and other duties as may be determined by each member state, including recommendations for policy concerning the operations and procedures of the compact within this State.

(f) The Governor shall by executive order provide for any other matters necessary for implementation of the compact at the time that it becomes effective, and except as otherwise provided for in this section, the State Council may promulgate rules or regulations necessary to implement and administer the compact.

"**§ 148-65.7. Supervision Fee.**

Persons supervised in this State pursuant to this compact shall pay the supervision fee specified in G.S. 15A-1374(c). The fee shall be paid to the clerk of court in the county in which the person initially receives supervision services in this State.

"**§ 148-65.8. Interstate parole and probation hearing procedures.**

(a) Where supervision of an offender is being administered pursuant to the Interstate Compact for the Supervision of Adult Offenders, the appropriate judicial or administrative authorities in this State shall notify the Compact Administrator of the sending state whenever, in their view, consideration should be given to retaking or reincarceration for a parole, probation, or post-release supervision violation. Prior to the giving of any such notification, a hearing shall be held in accordance with this section within a reasonable time, unless such hearing is waived by the offender. The appropriate officer or officers of this State shall as soon as practicable, following termination of any such hearing, report to the sending state, furnish a copy of the hearing record, and make recommendations regarding the disposition to be made of the offender by the sending state. Pending any proceeding pursuant to this section, the appropriate officers of this State may take custody of and detain the offender involved for a period not to exceed 15 days prior to the hearing and, if it appears to the hearing officer or officers that retaking or reincarceration is likely to follow, for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or reincarceration.

(b) Any hearing pursuant to this section may be before the Administrator of the Interstate Compact for the Supervision of Adult Offenders, a deputy of the Administrator, or any other person appointed by the Administrator, or any person authorized pursuant to the laws of this State to hear cases of alleged parole, probation, or post-release supervision violation, except that no hearing officer shall be the person making the allegation of violation.

(c) With respect to any hearing pursuant to this section, the offender:

(1) Shall have reasonable notice in writing of the nature and content of the allegations to be made, including notice that its purpose is to determine

whether there is probable cause to believe that the offender has committed a violation that may lead to a revocation of parole, probation, or post-release supervision.

(2) Shall be permitted to advise with any persons whose assistance the offender reasonably desires, prior to the hearing.

(3) Shall have the right to confront and examine any persons who have made allegations against the offender, unless the hearing officer determines that such confrontation would present a substantial present or subsequent danger of harm to such person or persons.

(4) May admit, deny, or explain the violation alleged and may present proof, including affidavits and other evidence, in support of the offender's contentions. A record of the proceedings shall be made and preserved.

(d) In any case of alleged parole or probation violation by a person being supervised in another state pursuant to the Interstate Compact for the Supervision of Adult Offenders, any appropriate judicial or administrative officer or agency in another state may hold a hearing on the alleged violation. Upon receipt of the record of a parole, probation, or post-release supervision violation hearing held in another state pursuant to a statute substantially similar to this section, that record shall have the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this State, and any recommendations contained in or accompanying the record shall be fully considered by the appropriate officer or officers of this State in making disposition of the matter.

"**§ 148-65.9. North Carolina sentence to be served in another jurisdiction.**

The Post-Release Supervision and Parole Commission, with the concurrence of the Secretary of Correction, may direct that the balance of any sentence imposed by the courts of this State shall be served concurrently with a sentence or sentences in another state or federal institution, and may effect a transfer of custody of such individual to the other jurisdiction for such purpose. In the event the individual's sentence liability in the other jurisdiction terminates prior to the expiration of his North Carolina sentence, the individual shall be either paroled (if eligible) or returned to the prison department of this State, in the discretion of the Post-Release Supervision and Parole Commission."

SECTION 2. Article 4A of Chapter 148 of the General Statutes is repealed.

SECTION 3. This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. The Department of Correction shall implement the provisions of this act with funds that are otherwise appropriated or available to the Department.

SECTION 4. Chapter 148 of the General Statutes is amended by adding a new Article to read:

"Article 13.

"Transfer of convicted foreign citizens under federal treaty.

"**§ 148-122. Transfer of convicted foreign citizens under treaty; consent by Governor.**

If a treaty in effect between the United States and a foreign country provides for the transfer or exchange of convicted offenders to the country of which the offenders are citizens or nationals, the Governor may, on behalf of the State and subject to the terms of the treaty, authorize the Secretary of Correction to consent to the transfer or exchange of offenders and take any other action necessary to initiate the participation of the State in the treaty."

SECTION 5. Section 2 of this act becomes effective one year after the effective date of Section 1 of this act. Section 4 of this act becomes effective January 1, 2003. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 2

HOUSE BILL 1641

Committee Substitute Favorable 9/26/02

Short Title: Offender Supervision Compact/Transfer. (Public)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO ADOPT THE PROVISIONS OF THE REVISED INTERSTATE COMPACT FOR THE SUPERVISION OF ADULT OFFENDERS AND TO PROVIDE FOR NORTH CAROLINA TO PARTICIPATE IN THE INTERNATIONAL PRISONER TRANSFER PROGRAM ADMINISTERED BY THE UNITED STATES DEPARTMENT OF JUSTICE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 148 of the General Statutes is amended by adding a new Article to read:

"Article 4B.

"Interstate Compact for the Supervision of Adult Offenders.

"**§ 148-65.4. Short title.**

This Article may be cited as "The Interstate Compact for the Supervision of Adult Offenders".

"**§ 148-65.5. Governor to execute compact; form of compact.**

The Governor of North Carolina is authorized and directed to execute a compact on behalf of the State of North Carolina with any state of the United States legally joining therein in the form substantially as follows:

Preamble.

Whereas: The Interstate Compact for the Supervision of Parolees and Probationers was established in 1937, it is the earliest corrections "compact" established among the states, and has not been amended since its adoption over 62 years ago;

Whereas: This compact is the only vehicle for the controlled movement of adult parolees and probationers across state lines, and it currently has jurisdiction over more than a quarter of a million offenders;

Whereas: The complexities of the compact have become more difficult to administer, and many jurisdictions have expanded supervision expectations to include

currently unregulated practices such as victim input, victim notification requirements, and sex offender registration;

Whereas: After hearings, national surveys, and a detailed study by a task force appointed by the National Institute of Corrections, the overwhelming recommendation has been to amend the document to bring about an effective management capacity that addresses public safety concerns and offender accountability;

Whereas: The General Assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety. The Governor is hereby authorized and directed to enter into a compact on behalf of the State of North Carolina with any state of the United States and other territorial possessions of the United States legally joining therein in the form substantially as follows;

Whereas: Upon the adoption of this Interstate Compact for the Supervision of Adult Offenders, it is the intention of the General Assembly to repeal the previous Interstate Compact for the Supervision of Parolees and Probationers one year after the effective date of this compact.

Article I.
Purpose.

(a) The compacting states to this Interstate Compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the bylaws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner, and when necessary return offenders to the originating jurisdictions. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. § 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

(b) It is the purpose of this compact and the Interstate Commission created hereunder, through means of joint and cooperative action among the compacting states:

(1) To provide the framework for the promotion of public safety and to protect the rights of victims through the control and regulation of the interstate movement of offenders in the community;

(2) To provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and

(3) To equitably distribute the costs, benefits, and obligations of the compact among the compacting states.

(c) In addition, this compact will:

(1) Create an Interstate Commission which will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other

criminal justice agencies, which will promulgate rules to achieve the purpose of this compact;

(2) Ensure an opportunity for input and timely notice to victims and to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;

(3) Establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of compact activities to heads of state councils, state executive, judicial, and legislative branches and criminal justice administrators;

(4) Monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct noncompliance; and

(5) Coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity.

(d) The compacting states recognize that there is no "right" of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision subject to the provision of this compact and bylaws and rules promulgated hereunder. It is the policy of the compacting states that the activities conducted by the Interstate Commission created herein are the formation of the public policies and are therefore public business.

Article II.
Definitions.

(a) As used in this compact, unless the context clearly requires a different construction:

(1) "Adult" means both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law.

(2) "Bylaws" means those bylaws established by the Interstate Commission for its governance, or for directing or controlling the Interstate Commission's actions or conduct.

(3) "Compact Administrator" means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the Interstate Commission, and policies adopted by the state council under this compact.

(4) "Compacting state" means any state that has enacted the enabling legislation for this compact.

(5) "Commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this compact.

(6) "Interstate Commission" means the Interstate Commission for Adult Offender Supervision established by this compact.

(7) "Member" means the commissioner of a compacting state or designee, who shall be a person officially connected with the commissioner.

(8) "Noncompacting state" means any state that has not enacted the enabling legislation for this compact.

(9) "Offender" means an adult placed under, or subject to, supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies.

(10) "Person" means any individual, corporation, business enterprise, or other legal entity, either public or private.

(11) "Rules" means acts of the Interstate Commission, duly promulgated pursuant to Article VIII of this compact, substantially affecting interested parties in addition to the Interstate Commission, which shall have the force and effect of law in the compacting states.

(12) "State" means a state of the United States, the District of Columbia, and any other territorial possessions of the United States.

(13) "State council" means the resident member of the State Council for Interstate Adult Offender Supervision created by each state under Article III of this compact.

Article III.
The Compact Commission.

(a) The compacting states hereby create the "Interstate Commission for Adult Offender Supervision". The Interstate Commission shall be a body corporate and joint agency of the compacting states. The Interstate Commission shall have all the responsibilities, powers, and duties set forth herein, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(b) The Interstate Commission shall consist of commissioners selected and appointed by resident members of a State Council for Interstate Adult Offender Supervision for each state. In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners but who are members of interested organizations; such noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, and crime victims. All noncommissioner members of the Interstate Commission shall be ex officio (nonvoting) members. The Interstate Commission may provide in its bylaws for such additional, ex officio, nonvoting members as it deems necessary.

(c) Each compacting state represented at any meeting of the Interstate Commission is entitled to one vote. A majority of the compacting states shall constitute

a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

(d) The Interstate Commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of 27 or more compacting states, shall call additional meetings. Public notice shall be given of all meetings, and meetings shall be open to the public.

(e) The Interstate Commission shall establish an executive committee that shall include commission officers, members, and others as shall be determined by the bylaws. The executive committee oversees the day-to-day activities managed by the executive director and Interstate Commission staff; administers enforcement and compliance with the provisions of the compact, its bylaws, and as directed by the Interstate Commission; and performs other duties as directed by the commission or set forth in the bylaws.

Article IV.
The State Council.

(a) Each member state shall create a State Council for Interstate Adult Offender Supervision that shall be responsible for the appointment of the commissioner who shall serve on the Interstate Commission from that state. Each state council shall appoint as its commissioner the Compact Administrator from that state to serve on the Interstate Commission in such capacity under or pursuant to applicable law of the member state. While each member state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and compact administrators.

(b) Each compacting state retains the right to determine the qualifications of the Compact Administrator, who shall be appointed by the state council or by the Governor in consultation with the legislature and the judiciary. In addition to appointment of its own commissioner to the National Interstate Commission, each state council shall exercise oversight and advocacy concerning its participation in Interstate Commission activities and other duties as may be determined by each member state including, but not limited to, development of policy operations and procedures of the compact within that state.

Article V.
Powers and Duties of the Interstate Commission.

The Interstate Commission shall have the following powers:

(1) To adopt a seal and suitable bylaws governing the management and operation of the Interstate Commission.

(2) To promulgate rules that shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

(3) To oversee, supervise, and coordinate the interstate movement of offenders subject to the terms of this compact and any bylaws adopted and rules promulgated by the compact commission.

(4) To enforce compliance with compact provisions, Interstate Commission rules, and bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process.

(5) To establish and maintain offices.

(6) To purchase and maintain insurance and bonds.

(7) To borrow, accept, or contract for services of personnel, including, but not limited to, members and their staffs.

(8) To establish and appoint committees and hire staff when it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

(9) To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel.

(10) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of same.

(11) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed.

(12) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

(13) To establish a budget and make expenditures and levy dues as provided in Article X of this compact.

(14) To sue or be sued.

(15) To provide for dispute resolution among compacting states.

(16) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

(17) To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

(18) To coordinate education, training, and public awareness regarding the interstate movement of offenders for officials involved in such activity.

(19) To establish uniform standards for the reporting, collecting, and exchanging of data.

Article VI.
Organization and Operation of the Interstate Commission.

(a) Bylaws. – The Interstate Commission shall, by a majority of the members, within 12 months of the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

(1) Establishing the fiscal year of the Interstate Commission;

(2) Establishing an executive committee and such other committees as may be necessary and providing reasonable standards and procedures:

a. For the establishment of committees, and

b. Governing any general or specific delegation of any authority or function of the Interstate Commission;

(3) Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;

(4) Establishing the titles and responsibilities of the officers of the Interstate Commission;

(5) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Interstate Commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the Interstate Commission;

(6) Providing a mechanism for winding up the operations of the Interstate Commission and the equitable return of any surplus funds that may exist upon the termination of the compact after the payment and/or reserving of all of its debts and obligations;

(7) Providing transition rules for "start-up" administration of the compact; and

(8) Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

(b) Officers and Staff. – The Interstate Commission shall, by a majority of the members, elect from among its members a chair and a vice-chair, each of whom shall have such authorities and duties as may be specified in the bylaws. The chair or, in the chair's absence or disability, the vice-chair shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The executive

director shall serve as secretary to the Interstate Commission, and hire and supervise such other staff as may be authorized by the Interstate Commission, but shall not be a member.

(c) Corporate Records of the Interstate Commission. – The Interstate Commission shall maintain its corporate books and records in accordance with the bylaws.

(d) Qualified Immunity, Defense, and Indemnification. – The members, officers, executive director, and employees of the Interstate Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities; provided, that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

The Interstate Commission shall defend the commissioner of a compacting state, or the commissioner's representatives or employees, or the Interstate Commission's representatives or employees, in any civil action seeking to impose liability, arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities; provided, that the actual or alleged act, error, or omission did not result from intentional wrongdoing on the part of such person.

The Interstate Commission shall indemnify and hold the commissioner of a compacting state, the appointed designee or employees, or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

Article VII.
Activities of the Interstate Commission.

(a) The Interstate Commission shall meet and take such actions as are consistent with the provisions of this compact.

(b) Except as otherwise provided in this compact and unless a greater percentage is required by the bylaws, in order to constitute an act of the Interstate Commission, such act shall have been taken at a meeting of the Interstate Commission and shall have received an affirmative vote of a majority of the members present.

(c) Each member of the Interstate Commission shall have the right and power to cast a vote to which the compacting state is entitled and to participate in the business

and affairs of the Interstate Commission. A member shall vote in person on behalf of the state and shall not delegate a vote to another member state. However, a state council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone or other means of telecommunication or electronic communication shall be subject to the same quorum requirements of meetings where members are present in person.

(d) The Interstate Commission shall meet at least once during each calendar year. The chairperson of the Interstate Commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

(e) The Interstate Commission's bylaws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating such rules, the Interstate Commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(f) Public notice shall be given of all meetings, and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission shall promulgate rules consistent with the principles contained in the "Government in Sunshine Act", U.S.C. § 552(b), as may be amended. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

(1) Relate solely to the Interstate Commission's internal personnel practices and procedures;

(2) Disclose matters specifically exempted from disclosure by statute;

(3) Disclose trade secrets or commercial or financial information which is privileged or confidential;

(4) Involve accusing any person of a crime or formally censuring any person;

(5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) Disclose investigatory records compiled for law enforcement purposes;

(7) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of, the Interstate Commission with respect to a regulated entity for the purpose of regulation or supervision of such entity;

(8) Disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity; and

(9) Specifically relate to the Interstate Commission's issuance of a subpoena, or its participation in a civil action or proceeding.

(g) For every meeting closed pursuant to this provision, the Interstate Commission's chief legal officer shall publicly certify that, in the officer's opinion, the meeting may be closed to the public and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken and the reasons therefor, including a description of each of the views expressed on any item and the record of any recall vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(h) The Interstate Commission shall collect standardized data concerning the interstate movement of offenders as directed through its bylaws and rules which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements.

Article VIII.
Rule-making Functions of the Interstate Commission.

(a) The Interstate Commission shall promulgate rules in order to effectively and efficiently achieve the purposes of the compact including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states.

(b) Rule making shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rule making shall substantially conform to the principles of the federal Administrative Procedure Act, 5 U.S.C.S. section 551, et seq., and the Federal Advisory Committee Act, 5 U.S.C. § 1, et seq., as may be amended (hereinafter "APA"). All rules and amendments shall become binding as of the date specified in each rule or amendment.

(c) If a majority of the legislatures of the compacting states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

(d) When promulgating a rule, the Interstate Commission shall:

(1) Publish the proposed rule stating with particularity the text of the rule that is proposed and the reason for the proposed rule;

(2) Allow persons to submit written data, facts, opinions, and arguments, which information shall be publicly available;

(3) Provide an opportunity for an informal hearing; and

(4) Promulgate a final rule and its effective date, if appropriate, based on the rule-making record. Not later than 60 days after a rule is promulgated, any interested person may file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principle office is located for judicial review of such rule. If the court finds that the

Interstate Commission's action is not supported by substantial evidence, (as defined in the APA), in the rule-making record, the court shall hold the rule unlawful and set it aside. Subjects to be addressed within 12 months after the first meeting must, at a minimum, include:

a. Notice to victims and opportunity to be heard;
b. Offender registration and compliance;
c. Violations/returns;
d. Transfer procedures and forms;
e. Eligibility for transfer;
f. Collection of restitution and fees from offenders;
g. Data collection and reporting;
h. The level of supervision to be provided by the receiving state;
i. Transition rules governing the operation of the compact and the Interstate Commission during all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact; and
j. Mediation, arbitration, and dispute resolution.

(e) The existing rules governing the operation of the previous compact superceded by this Act shall be null and void 12 months after the first meeting of the Interstate Commission created hereunder.

(f) Upon determination by the Interstate Commission that an emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rule-making procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule.

Article IX.
Oversight, Enforcement, and Dispute Resolution by the Interstate Commission.

(a) Oversight. – The Interstate Commission shall oversee the interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in noncompacting states that may significantly affect compacting states.

The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the Interstate Commission, the Interstate Commission shall be entitled to receive all service of process in any such proceeding and shall have standing to intervene in the proceeding for all purposes.

(b) Dispute Resolution. – The compacting states shall report to the Interstate Commission on issues or activities of concern to them and cooperate with and support the Interstate Commission in the discharge of its duties and responsibilities.

The Interstate Commission shall attempt to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and noncompacting states.

The Interstate Commission shall enact a bylaw or promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(c) Enforcement. – The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact using any and all means set forth in Article XII, subsection (b) of this compact.

Article X.
Finance.

(a) The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(b) The Interstate Commission shall levy on and collect an annual assessment for each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff that must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

(c) The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(d) The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

Article XI.
Compacting State, Effective Date, and Amendment.

(a) Any state, as defined in Article II of this compact, is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date shall be the later of July 1, 2002, or upon enactment into law by the 35th jurisdiction. Therefore, it shall become effective and binding as to any other compacting state, upon enactment of the compact into law by that state. The governors of nonmember states or their designees will be invited to participate in Interstate Commission activities on a

nonvoting basis prior to adoption of the compact by all states and territories of the United States.

(c) Amendments to the compact may be proposed by the Interstate Commission for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

Article XII.
Withdrawal, Default, Termination, and Judicial Enforcement.

(a) Withdrawal. – Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw from the compact ("withdrawing state") by enacting a statute specifically repealing the statute which enacted the compact into law.

The effective date of withdrawal is the effective date of the repeal.

The withdrawing state shall immediately notify the Chair of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within 60 days of its receipt thereof.

The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state's reenacting the compact or upon such later date as determined by the Interstate Commission.

(b) Default. – If the Interstate Commission determines that any compacting state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this compact, the bylaws, or any duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:

(1) Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission;

(2) Remedial training and technical assistance as directed by the Interstate Commission;

(3) Suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted. Immediate notice of suspension shall be given by the Interstate Commission to the Governor; the Chief Justice or Chief Judicial Officer of the state; the Majority and Minority Leaders of the defaulting state's legislature; and the state council.

The grounds of default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, Interstate Commission bylaws, or duly promulgated rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the

Interstate Commission on the defaulting state pending a cure of the default. The Interstate Commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the Interstate Commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the compacting states, and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of suspension. Within 60 days of the effective date of termination of a defaulting state, the Interstate Commission shall notify the Governor; the Chief Justice or Chief Judicial Officer of the state; the Majority and Minority Leaders of the defaulting state's legislature; and the state council of such termination.

The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including any obligations the performance of which extends beyond the effective date of termination.

The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the Interstate Commission and the defaulting state. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

(c) Judicial Enforcement. – The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the Federal District where the Interstate Commission has its offices to enforce compliance with the provisions of the compact, its duly promulgated rules and bylaws against any compacting state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

(d) Dissolution of Compact. – The compact dissolves effective upon the date of the withdrawal or default of the compacting state that reduces membership in the compact to one compacting state.

Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be wound up, and any surplus funds shall be distributed in accordance with the bylaws.

Article XIII.
Severability and Construction.

(a) The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provision of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally constructed to effectuate its purposes.

Article XIV.
Binding Effect of Compact and Other Laws.

(a) Other Laws. – Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

All compacting states' laws conflicting with this compact are superseded to the extent of the conflict.

(b) Binding Effect of the Compact. – All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the compacting states.

All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.

Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.

In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective, and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

"**§ 148-65.6. Implementation of the compact.**

(a) The North Carolina State Council for Interstate Adult Offender Supervision shall be established, consisting of 11 members. The Secretary of Correction, or the Secretary's designee, shall serve as the Compact Administrator for the State of North Carolina and as North Carolina's Commissioner to the Interstate Compact Commission. The Secretary of Correction, or the Secretary's designee, is a member of the State Council and serves as chairperson of the State Council. The remaining members of the State Council shall consist of the following:

(1) One member representing the executive branch, to be appointed by the Governor;

(2) One member from a victim's assistance group, to be appointed by the Governor;

(3) One at-large member, to be appointed by the Governor;

(4) One member of the Senate, to be appointed by the President Pro Tempore of the Senate;

(5) One member of the House of Representatives, to be appointed by the Speaker of the House of Representatives;

(6) A superior court judge, to be appointed by the Chief Justice of the Supreme Court; and

(7) Four members representing the Division of Community Corrections, to be appointed by the Director of the Division of Community Corrections.

(b) The State Council shall meet at least twice a year and may also hold special meetings at the call of the chairperson. All terms are for three years.

(c) The State Council may advise the Compact Administrator on participation in the Interstate Commission activities and administration of the compact.

(d) The members of the State Council shall serve without compensation but shall be reimbursed for necessary travel and subsistence expenses in accordance with the policies of the Office of State Budget and Management.

(e) The State Council shall act in an advisory capacity to the Secretary of Correction concerning this State's participation in Interstate Commission activities and other duties as may be determined by each member state, including recommendations for policy concerning the operations and procedures of the compact within this State.

(f) The Governor shall by executive order provide for any other matters necessary for implementation of the compact at the time that it becomes effective, and, except as otherwise provided for in this section, the State Council may promulgate rules or regulations necessary to implement and administer the compact.

"**§ 148-65.7. Supervision fee.**

Persons supervised in this State pursuant to this compact shall pay the supervision fee specified in G.S. 15A-1374(c). The fee shall be paid to the clerk of court in the county in which the person initially receives supervision services in this State.

"**§ 148-65.8. Interstate parole and probation hearing procedures.**

(a) Where supervision of an offender is being administered pursuant to the Interstate Compact for the Supervision of Adult Offenders, the appropriate judicial or administrative authorities in this State shall notify the Compact Administrator of the sending state whenever, in their view, consideration should be given to retaking or reincarceration for a parole, probation, or post-release supervision violation. Prior to the giving of any such notification, a hearing shall be held in accordance with this section within a reasonable time, unless such hearing is waived by the offender. The appropriate officer or officers of this State shall, as soon as practicable following termination of any such hearing, report to the sending state, furnish a copy of the hearing record, and make recommendations regarding the disposition to be made of the offender by the sending state. Pending any proceeding pursuant to this section, the appropriate officers of this State may take custody of and detain the offender involved for a period not to exceed 15 days prior to the hearing and, if it appears to the hearing officer or officers that retaking or reincarceration is likely to follow, for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or reincarceration.

(b) Any hearing pursuant to this section may be before the Administrator of the Interstate Compact for the Supervision of Adult Offenders, a deputy of the Administrator, any other person appointed by the Administrator, or any person authorized pursuant to the laws of this State to hear cases of alleged parole, probation, or post-release supervision violation, except that no hearing officer shall be the person making the allegation of violation.

(c) With respect to any hearing pursuant to this section, the offender:

(1) Shall have reasonable notice in writing of the nature and content of the allegations to be made, including notice that its purpose is to determine

whether there is probable cause to believe that the offender has committed a violation that may lead to a revocation of parole, probation, or post-release supervision.

(2) Shall be permitted to advise with any persons whose assistance the offender reasonably desires, prior to the hearing.

(3) Shall have the right to confront and examine any persons who have made allegations against the offender, unless the hearing officer determines that such confrontation would present a substantial present or subsequent danger of harm to such person or persons.

(4) May admit, deny, or explain the violation alleged and may present proof, including affidavits and other evidence, in support of the offender's contentions. A record of the proceedings shall be made and preserved.

(d) In any case of alleged parole or probation violation by a person being supervised in another state pursuant to the Interstate Compact for the Supervision of Adult Offenders, any appropriate judicial or administrative officer or agency in another state may hold a hearing on the alleged violation. Upon receipt of the record of a parole, probation, or post-release supervision violation hearing held in another state pursuant to a statute substantially similar to this section, that record shall have the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this State, and any recommendations contained in or accompanying the record shall be fully considered by the appropriate officer or officers of this State in making disposition of the matter.

"**§ 148-65.9. North Carolina sentence to be served in another jurisdiction.**

The Post-Release Supervision and Parole Commission, with the concurrence of the Secretary of Correction, may direct that the balance of any sentence imposed by the courts of this State shall be served concurrently with a sentence or sentences in another state or federal institution and may effect a transfer of custody of such individual to the other jurisdiction for such purpose. In the event the individual's sentence liability in the other jurisdiction terminates prior to the expiration of the individual's North Carolina sentence, the individual shall be either paroled (if eligible) or returned to the prison department of this State, in the discretion of the Post-Release Supervision and Parole Commission."

SECTION 2. Article 4A of Chapter 148 of the General Statutes is repealed.

SECTION 3. This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. The Department of Correction shall implement the provisions of this act with funds that are otherwise appropriated or available to the Department.

SECTION 4. Chapter 148 of the General Statutes is amended by adding a new Article to read:

"Article 13.

"Transfer of convicted foreign citizens under federal treaty.

"**§ 148-122. Transfer of convicted foreign citizens under treaty; consent by Governor.**

If a treaty in effect between the United States and a foreign country provides for the transfer or exchange of convicted offenders to the country of which the offenders are citizens or nationals, the Governor may, on behalf of the State and subject to the terms of the treaty, authorize the Secretary of Correction to consent to the transfer or exchange of offenders and take any other action necessary to initiate the participation of the State in the treaty."

SECTION 5. Section 2 of this act becomes effective one year after the effective date of Section 1 of this act. Section 4 of this act becomes effective January 1, 2003. The remainder of this act is effective when it becomes law.

HOUSE BILL 1641:
Offender Supervision Compact/Transfer.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Culpepper
Date:	September 25, 2002	**Summary by:**	Jeff Hudson
Version:	Proposed Committee Substitute H1641-CSSB-76 [v.4]		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 1641 withdraws the State from the Interstate Compact for the Supervision of Parolees and Probationers and provides for the entrance of the State into the Interstate Compact for the Supervision of Adult Offenders. The PCS also provides for the participation of the State in treaties between the United States and foreign countries for the transfer or exchange of convicted offenders.***

Sections 1 through 3: Interstate Compact for the Supervision of Adult Offenders.

Background[1]

North Carolina is currently a member of the Interstate Compact for the Supervision of Parolees and Probationers. This compact regulates the transfer of adult parole and probation supervision across state boundaries. This compact has been in existence since 1937 and includes all 50 states in its membership.

The National Institute of Corrections in the United States Department of Justice developed the Interstate Compact for the Supervision of Adult Offenders to replace the Interstate Compact for the Supervision of Parolees and Probationers. The Interstate Compact for the Supervision of Adult Offenders is effective and binding the later of July 1, 2002, or upon enactment into law by the 35th jurisdiction. As of September 5, 2002, 38 states had enacted the new Interstate Compact.

Analysis

Section 1 authorizes and directs the Governor to execute the Interstate Compact for the Supervision of Adult Offenders (Compact) on behalf of the State.

Purpose

The Compact is a cooperative effort among the compacting states to regulate, supervise, and track the interstate movement of offenders who have been released to the community under the jurisdiction and supervision of courts, paroling authorities, and other criminal justice agencies.

Interstate Commission

The Compact establishes the Interstate Commission for Adult Offender Supervision (Interstate Commission). The Commission will consist of one voting commissioner from each compacting state and nonvoting members representing various interested organizations. The Secretary of Correction or the Secretary's designee will serve as North Carolina's voting commissioner.

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[1] Some background information was obtained from the website of the National Institute of Corrections, United States Department of Justice. Website: http://www.nicic.org/services/special/compact-adult. Accessed September 24, 2002.

The Interstate Commission has the following powers:

- To promulgate rules that are binding on the compacting states. If the majority of the legislatures of the compacting states reject a rule promulgated by the Interstate Commission, the rule will have no effect in any compacting state.
- To oversee, supervise, and coordinate the interstate movement of offenders.
- To enforce Compact provisions and Interstate Commission rules and bylaws. In order to enforce Compact provisions and Interstate Commission rules and bylaws, the Interstate Commission may:
    - Impose fines, fees, and costs on a compacting state.
    - Suspend or terminate the membership of a compacting state.
    - Initiate legal action in federal court to enforce compliance with the Compact.
- To levy dues. The Interstate Commission will collect an annual assessment from each compacting state to cover the costs of its operations and activities. The Council of State Governments has projected that state dues will range from $18,000 to $46,000, with North Carolina's dues projected at $39,000.[2]
- To collect, exchange, and report data concerning the interstate movement of offenders.

Binding Effect of Compact

Any law of a compacting state that conflicts with the Compact is superseded to the extent of the conflict. All lawful actions of the Interstate Commission, including its rules and bylaws are binding upon compacting states.

Withdrawal and Dissolution

A compacting state may withdraw from the Compact by repealing the statute that enacted the Compact. A withdrawing state remains responsible for all assessments, obligations, and liabilities incurred prior to the withdrawal, including obligations that extend beyond the withdrawal.

The Compact dissolves if its membership is reduced to one compacting state. Upon dissolution, the Compact has no further effect.

State Councils

The Compact directs each compacting state to establish a State Council for Interstate Adult Offender Supervision (Council). The North Carolina State Council for Interstate Adult Offender Supervision (North Carolina Council) consists of 11 members. The Secretary of Correction or the Secretary's designee is a member of the North Carolina Council and serves as its chairperson. The North Carolina Council is also composed of the following members:

- One member representing the executive branch, appointed by the Governor;
- One member from a victim's assistance group, appointed by the Governor;
- One at-large member, appointed by the Governor;
- One member of the Senate, appointed by the President Pro Tempore of the Senate;

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[2] Council of State Governments. Website: http://www.statesnews.org/clip/policy/State%20Assessments.pdf. Accessed September 25, 2002.

- One member of the House of Representatives, appointed by the Speaker of the House of Representatives;
- A superior court judge, appointed by the Chief Justice of the Supreme Court; and
- Four members representing the Division of Community Corrections, appointed by the Director of the Division of Community Corrections.

The North Carolina Council will advise the Secretary of Correction concerning the State's participation in the Interstate Compact.

Section 1 also recodifies G.S. 148-65.1(b), G.S. 148-65.1A, and G.S. 148-65.3 as G.S. 148-65.7, G.S. 148-65.8, and G.S. 148-65.9 respectively.

Section 2 repeals the existing Interstate Compact for the Supervision of Parolees and Probationers. Section 2 becomes effective one year after Section 1 becomes effective.

Section 3 provides that the act does not obligate the General Assembly to appropriate funds to implement the act and directs the Department of Correction to implement the act with funds that are otherwise appropriated or available.

Section 4: International Prisoner Transfer Program.

Background[3]

The United States Department of Justice administers the International Prisoner Transfer Program. Under this program, prisoners may be transferred to and from those countries with which the United States has a prisoner transfer treaty. When a prisoner is transferred to another country, the completion of the transferred offender's sentence is carried out in accordance with the laws of the receiving country, including those governing the reduction of the term of confinement.

A state may also transfer prisoners to their countries of citizenship if the state has enacted appropriate legislation. Currently, 44 states have enacted legislation that authorizes the transfer of foreign prisoners.

Analysis

Section 4 allows the Governor to authorize the Secretary of Correction to consent to the transfer or exchange of offenders pursuant to any treaty between the United States and a foreign country for the transfer or exchange of convicted offenders. Section 4 becomes effective January 1, 2003.

Section 5: Effective Dates.

Section 5 provides that:

- Section 2 of this act becomes effective one year after the effective date of Section 1 of this act.
- Section 4 becomes effective January 1, 2003.
- The remainder of this act is effective when it becomes law.

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[3] Some background information was obtained from the website of the Criminal Division, United States Department of Justice. Website: http://www.usdoj.gov/criminal/oeo. Accessed September 24, 2002.

VISITOR REGISTRATION SHEET

Judiciary II
Name of Committee

5/25/02
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joe Dugdale	ACE
Cam Cover	BAMHL
Sherry Purrington	DCC / DOC
Mildred Spearman	DOC
Tracy Little	DOC
Ken Titus	District Court
[illegible]	AOC
Anne Wimer	NCCADV
Michelle Frazier	NC Bar Assoc.
Katie Hunter	NC State Watch
Jeff Royall	NC Family Policy Council
John Palinko	AT&T
Michelle Cook	Weyerhaeuser
DAVID BARNES	PLS

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

October 1, 2002

The House Committee on Judiciary II met on Tuesday, October 1, 2002 at 10:00 a.m. in 421 LOB. The following members were present: Rep. Baddour, Chair and Reps. Bowie, Gulley, Haire, Hall, Jeffus, Sherrill, Weiss and Willingham. A Visitor Registration sheet is attached and made part of these minutes.

Chairman Baddour called the meeting to order. Upon the motion of Rep. Willingham, the PCS for SB 887, A BILL TO BE ENTITLED AN ACT TO PROVIDE ADDITIONAL AUTHORITY FOR MAGISTRATES WHO ARE LICENSED TO PRACTICE LAW, was adopted for discussion. Chairman Baddour explained the changes made to the bill since the last time it was before the committee.

Ken Titus, Superior Court Judge in Durham County and chair of the Jurisdiction and Organizational Courts Committee, spoke on the bill. Peter Powell with the Administrative Office of the Courts responded to Rep. Hall's question of what powers the magistrates and clerks of court would have. Rep. Baddour clarified to Rep. Haire the applicability to minors.

Reps. Sherrill, Baddour and Willingham and Mr. Powell discussed how the fines are administered. Rep. Baddour stated that Reps. Sherrill and Willingham are correct in that the bill appears to only apply to offenses involving the distribution of tobacco products to underage persons. Rep. Baddour asked Mr. Powell if this should also apply to persons who purchase and questioned if the committee would like to make this change. Mr. Powell stated this request came from the ALE. Rep. Sherrill noted she would like to amend the bill. Rep. Weiss shared her concerns about persons who repeatedly sold cigarettes. Upon the motion of Rep. Sherrill, amendment S887–CSSW–86(v.23) that amends the bill on page 2, lines 10–12 was adopted.

Rep. Baddour responded to the questions of Reps. Gulley and Haire. Rep. Willingham motioned that the amendment be rolled into a new PCS and be given a favorable report. The motion carried. Copies of the PCS, original PCS, bill summary and handouts are attached and made part of these minutes.

HB 1100, A BILL TO BE ENTITLED AND ACT TO PROVIDE CONSUMER AND FINANCIAL INSTITUTIONS GREATER PROTECTION FROM FRAUDULENT FINANCIAL TRANSACTIONS, was next on the order of business. Bill sponsor, Rep. Baddour asked Rep. Haire to chair the meeting so that he could handle the bill. Rep. Baddour explained that the Retail Merchants advocated for the bill and that he wanted this bill to come back to committee to review the Senate changes. Robin Johnson,

Committee Counsel, explained the bill and noted that the Senate incorporated HB 953, HB 1764 and SB 1345 into this bill.

Thomas Walker with the Attorney General's Office and Fran Preston of the Retail Merchants Association explained the need for this bill in response to Rep. Bowie. Ms. Preston additionally noted the RMA supported all four bills originally. Paul Stock, N.C. Bankers Association, spoke in support of the bill.

Rep. Weiss sent forth a motion to recommend that the House do concur.

Rep. Baddour responded to Rep. Willingham's question of what would happen to a divorced person using a married name to obtain property, by stating that this would be covered under the statute of obtaining property by false pretenses and depending on how the person obtained the property, it may be covered under this bill if it was identity fraud. Using Rep. Willingham's example, Rep. Haire presented a situation in which this bill would apply and asked Mr. Walker to comment. Mr. Walker noted to Rep. Haire that the bill requires intent to fraud.

Reps. Sherrill and Baddour and Ms. Johnson discussed what types of identity fraud are included in the bill.

Ms. Johnson stated this bill addressed taking someone ID, not making false IDs in response to Rep. Haire's inquiry about what class of penalty was used for a person caught using a false ID.

The motion on the floor by Rep. Weiss passed. Copies of the bill, bill summary and comparison chart are attached as part of these minutes.

Rep. Baddour stepped back up as chair and commented that this may be the last Judiciary II meeting and thanked the committee for its work. Rep. Bowie mentioned what a great committee she thought this was. Rep. Baddour noted to the committee that it looks as if he will not be taking up the workers compensation bill or the no call bill this session.

The meeting adjourned at 10:50 p.m.

Representative Philip A. Baddour, Jr.
Chairman

Tracy Dixon
Committee Assistant

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
H.B. 1100 A BILL TO BE ENTITLED AN ACT TO PROVIDE CONSUMERS AND FINANCIAL INSTITUTIONS GREATER PROTECTION FROM FRAUDULENT FINANCIAL TRANSACTIONS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☒ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

5/13/02

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 3

HOUSE BILL 1100

Senate Judiciary I Committee Substitute Adopted 8/13/02
Senate Judiciary I Committee Substitute #2 Adopted 9/24/02

Short Title: Financial Fraud Protection Enhancement. (Public)

Sponsors:

Referred to:

April 11, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE CONSUMERS AND FINANCIAL INSTITUTIONS GREATER PROTECTION FROM FRAUDULENT FINANCIAL TRANSACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-119 reads as rewritten:

"**§ 14-119. Forgery of notes, checks, and other ~~securities.~~securities; counterfeiting of instruments.**

(a) ~~If a person makes, forges, or counterfeits:~~

~~(1) Any bill, note, warrant, check, order, or similar instrument in imitation of, or purporting to be, a bill, note, warrant, check, order, or similar instrument of or on any financial institution or governmental unit, or any cashier or officer of such an institution or unit; or~~

~~(2) Any security purporting to be issued by, or on behalf of, any corporation, financial institution, or governmental unit,~~

~~with the intent to injure or defraud any person, corporation, financial institution, or governmental unit, he shall be punished as a Class I felon.~~ It is unlawful for any person to forge or counterfeit any instrument, or possess any counterfeit instrument, with the intent to injure or defraud any person, financial institution, or governmental unit. Any person in violation of this subsection is guilty of a Class I felony.

~~(b) For purposes of this section:~~

~~(1) "Financial institution" means any mutual fund, money market fund, credit union, savings and loan association, bank, or similar institution.~~

~~(2) "Governmental unit" means the United States, any United States territory, any state of the United States, or any political subdivision of any state.~~

(b) Any person who transports or possesses five or more counterfeit instruments with the intent to injure or defraud any person, financial institution, or governmental unit is guilty of a Class G felony.

(c) As used in this Article, the term:

(1) "Counterfeit" means to manufacture, copy, reproduce, or forge an instrument that purports to be genuine, but is not, because it has been falsely copied, reproduced, forged, manufactured, embossed, encoded, duplicated, or altered.

(2) "Financial institution" means any mutual fund, money market fund, credit union, savings and loan association, bank, or similar institution, either foreign or domestic.

(3) "Governmental unit" means the United States, any United States territory, any state of the United States, any political subdivision, agency, or instrumentality of any state, or any foreign jurisdiction.

(4) "Instrument" means (i) any currency, bill, note, warrant, check, order, or similar instrument of or on any financial institution or governmental unit, or any cashier or officer of the institution or unit; or (ii) any security issued by, or on behalf of, any corporation, financial institution, or governmental unit."

SECTION 2. G.S. 14-113.8 is amended by adding a new subdivision to read:

"(10) Scanning Device. – "Scanning device" means a scanner, reader, or any other device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on a financial transaction card."

SECTION 3. G.S. 14-113.9(a) reads as rewritten:

"(a) A person is guilty of financial transaction card theft ~~when:~~when the person does any of the following:

(1) ~~He takes,~~Takes, obtains or withholds a financial transaction card from the person, possession, custody or control of another without the cardholder's consent and with the intent to use it; or who, with knowledge that it has been so taken, obtained or withheld, receives the financial transaction card with intent to use it or to sell it, or to transfer it to a person other than the issuer or the ~~cardholder; or~~cardholder.

(2) ~~He receives~~ Receives a financial transaction card that he knows to have been lost, mislaid, or delivered under a mistake as to the identity or address of the cardholder, and who retains possession with intent to use it or to sell it or to transfer it to a person other than the issuer or the ~~cardholder; or~~cardholder.

(3) ~~He, not~~Not being the issuer, sells a financial transaction card or buys a financial transaction card from a person other than the ~~issuer; or~~issuer.

(4) ~~He, not~~ Not being the issuer, during any 12-month period, receives financial transaction cards issued in the names of two or more persons which he has reason to know were taken or retained under

circumstances which constitute a violation of G.S. 14-113.13(a)(3) and subdivision (3) of subsection (a) of this section.

(5) With the intent to defraud any person, either (i) uses a scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on another person's financial transaction card, or (ii) receives the encoded information from another person's financial transaction card."

SECTION 4. G.S. 14-113.20 reads as rewritten:

"**§ 14-113.20. Financial identity fraud.**

(a) A person who knowingly obtains, possesses, or uses ~~personal~~ identifying information of another ~~person~~ person, living or dead, ~~without the consent of that other person,~~ with the intent to fraudulently represent that the person is the other person for the purposes of making financial or credit transactions in the other person's ~~name~~ name, to obtain anything of value, benefit, or advantage, or for the purpose of avoiding legal consequences is guilty of a felony punishable as provided in G.S. 14-113.22(a).

(b) The term "identifying information" as used in this ~~section~~ Article 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(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.
(11) Biometric data.
(12) Fingerprints.
(13) Passwords.
(14) Parent's legal surname prior to marriage.

(c) It shall not be a violation under this ~~section~~ Article for a person to do any of the following:

(1) Lawfully obtain credit information in the course of a bona fide consumer or commercial transaction.
(2) Lawfully exercise, in good faith, a security interest or a right of offset by a creditor or financial institution.
(3) Lawfully comply, in good faith, with any warrant, court order, levy, garnishment, attachment, or other judicial or administrative order, decree, or directive, when any party is required to do so."

SECTION 5. Article 19C of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-113.20A. Trafficking in stolen identities.**

(a) It is unlawful for a person to sell, transfer, or purchase the identifying information of another person with the intent to commit financial identity fraud, or to assist another person in committing financial identity fraud, as set forth in G.S. 14-113.20.

(b) A violation of this section is a felony punishable as provided in G.S. 14-113.22(a1)."

SECTION 6. G.S. 14-113.22(b) reads as rewritten:

"(b) Notwithstanding subsection (a) of this section, any person who commits an act made unlawful by this Article may also be liable for damages under G.S. 1-539.2C. ~~knowingly obtains, possesses, or uses personal identifying information of another person without the consent of that other person, with the intent to fraudulently represent that the person is the other person for the purposes of making financial or credit transactions in the other person's name or for the purpose of avoiding legal consequences, shall be liable to the other person for civil damages of up to five thousand dollars ($5,000) for each incident, or three times the amount of actual damages, if any, sustained by the person damaged, whichever amount is greater. A person damaged as set forth in this subsection may also institute a civil action to enjoin and restrain future acts which would constitute a violation of this subsection. The court, in an action brought under this subsection, may award reasonable attorneys' fees to the prevailing party.~~"

SECTION 7. Effective December 1, 2002, G.S. 14-113.22, as amended by Section 6 of this act, reads as rewritten:

"**§ 14-113.22. Punishment and liability.**

(a) A violation of ~~G.S. 14-113.20~~G.S.14-113.20(a) is punishable as a Class ~~H~~ G felony, except ~~if~~ it is punishable as a Class F felony if: (i) the victim suffers arrest, detention, or conviction as a proximate result of the offense, or (ii) the person is in possession of the identifying information pertaining to three or more separate persons. ~~then the violation is punishable as a Class G felony.~~

(a1) A violation of G.S. 14-113.20A is punishable as a Class E felony.

(a2) The court may order a person convicted under G.S. 14-113.20 or G.S. 14-113.20A to pay restitution pursuant to Article 81C of Chapter 15A of the General Statutes for financial loss caused by the violation to any person. Financial loss included under this subsection may include, in addition to actual losses, lost wages, attorneys' fees, and other costs incurred by the victim in correcting his or her credit history or credit rating, or in connection with any criminal, civil, or administrative proceeding brought against the victim resulting from the misappropriation of the victim's identifying information.

(b) Notwithstanding ~~subsection (a)~~ subsection (a), (a1), or (a2) of this section, any person who commits an act made unlawful by this Article may also be liable for damages under G.S. 1-539.2C.

(c) In any case in which a person obtains identifying information of another person in violation of ~~G.S. 14-113.20~~this Article, uses that information to commit a crime in addition to a violation of ~~G.S. 14-113.20~~this Article, and is convicted of that

additional crime, the court records shall reflect that the person whose identity was falsely used to commit the crime did not commit the crime."

SECTION 8. Article 43 of Chapter 1 of the General Statutes is amended by adding a new section to read:

"**§ 1-539.2C. Damages for identity fraud.**

(a) Any person whose property or person is injured by reason of an act made unlawful by Article 19C of Chapter 14 of the General Statutes may sue for civil damages. Damages may be in an amount of up to five thousand dollars ($5,000) for each incident, or three times the amount of actual damages, whichever amount is greater. A person seeking damages as set forth in this section may also institute a civil action to enjoin and restrain future acts that would constitute a violation of this section. The court, in an action brought under this section, may award reasonable attorneys' fees to the prevailing party.

(b) If the identifying information of a deceased person is used in a manner made unlawful by Article 19C of Chapter 14 of the General Statutes, the deceased person's estate shall have the right to recover damages pursuant to subsection (a) of this section.

(c) The venue for any civil action brought under this section shall be the county in which the plaintiff resides or any county in which any part of the alleged violation of G.S. 14-113.20 or G.S. 14-113.20A took place, regardless of whether the defendant was ever actually present in that county. Civil actions under this section must be brought within three years from the date on which the identity of the wrongdoer was discovered or reasonably should have been discovered.

(d) Civil action under this section does not depend on whether or not a criminal prosecution has been or will be instituted under Article 19C of Chapter 14 of the General Statutes for the acts which are the subject of the civil action. The rights and remedies provided by this section are in addition to any other rights and remedies provided by law."

SECTION 9. This act become effective December 1, 2002, and applies to offenses committed on or after that date.

House Bill 1100:
Financial Fraud Protection Enhancement.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Rep. Baddour
Date:	October 1, 2002	**Summary by:**	Robin Johnson*
Version:	Third Edition		Committee Counsel

SUMMARY: ***This bill has returned to the House for concurrence. The Senate used this bill as a vehicle to incorporate several bills dealing with counterfeiting and financial identity fraud.***

The bill makes several changes and additions to the criminal law statutes:

- ***The forgery and counterfeiting statute would be amended to make possession of counterfeit currency unlawful. The penalty for forging or counterfeiting an instrument would remain a Class I felony. The offense of trafficking in counterfeit instruments would be created, and would be punishable as a Class G felony. The offense would be applicable to the forgery or counterfeiting of foreign or domestic instruments.***
- ***Obtaining encoded information from another person's financial transaction card would be included in the financial transaction card theft statute.***
- ***Financial identity fraud would include the theft of the identity of a deceased person, and a violation would be punishable as a Class G Felony. If the perpetrator possessed three or more separate identities, or if the victim suffered arrest, detention, or conviction, the offense would be a Class F Felony. The offense of trafficking in stolen identities would be created, and would be punishable as a Class E felony. Restitution would be added as a court-ordered remedy.***
- ***The statute providing for the right of a victim of identity fraud to bring an action for civil damages would be recodified into Chapter 1 (Civil Procedure). The action may be filed regardless of whether criminal prosecution occurs. The statute would be amended to add venue provisions.***
- ***The act would be effective on December 1, 2002, and would apply to offenses committed on or after that date.***

*H1100-SMRH-002: *Hal Pell, Counsel to Senate Judiciary I, contributed to this summary.*

BILL ANALYSIS

ISSUE	CURRENT LAW	ORIGINAL BILL	H1100 – 3rd EDITION
Counterfeiting financial instruments and securities. *(Sec. 1)*	G.S. 14-119 and others Class I felony to make, forge or counterfeit certain financial instruments or securities, with intent to injure of defraud. Does not include currency.	Class H felony to make, forge or counterfeit, not including currency. *(H1100)* Class I felony to pass or possess (or attempt to pass or possess) counterfeit currency. *(H953)* Class G felony to transport or possess at least 3 counterfeit instruments. *(H1100)*	Adds possession, with intent to injure or defraud. Defines "counterfeit" General offense remains Class I felony. Includes currency. Class G felony to transport or possess 5 or more counterfeit instruments.
Financial Transaction Card Crime Act. *(Secs. 2-3)*	Art. 19B of Ch. 14 Offense is a Class I felony.	Added definition of scanning device. *(S1345)* Added to the list of possible offenses the use of a scanning device to obtain, without authorization and with the intent to defraud, the encoded information from another person's financial transaction card. *(S1345)*	Adds definition of scanning device. Adds to the list of possible offenses the use of a scanning device to obtain, with the intent to defraud, the encoded information from another person's financial transaction card. Receiving encoded information with the intent to defraud would also be an offense.
Financial Identity Fraud *(Secs. 4-8)*	Art. 19C of Ch. 14 Person who knowingly obtains, possesses, or uses personal identifying information of another person, without that person's consent, with intent fraudulently to represent the other person.	Added the taking of the identity of a deceased person as a violation. *(H1764)* Added biometric data, fingerprints, passwords, and parent's legal surname before marriage to the definitional list of "identifying information." *(H1764)*	Adds taking the identity of a deceased person. Definition of "identifying information" includes biometric data, fingerprints, passwords, and parent's legal surname before marriage. Victim may consent to the taking or use of the information.

ISSUE	CURRENT LAW	ORIGINAL BILL	H1100 – 3rd EDITION
Financial Identity Fraud (Continued) *(Secs. 4-8)*	Offense must be for purpose of making financial or credit transactions in another's name or to avoid legal consequences. Generally, an offense is a Class H felony This is a Class G felony if victim is arrested, detained or convicted as result of offense. No trafficking offense. Restitution for financial loss not available as a remedy.	Added taking an identity for the purpose of obtaining any thing of value, benefit or advantage. *(H1764)* Made general offense a Class F felony. *(H1764)* Made it a Class E felony if victim is elderly or disabled, or arrested, detained or convicted as result of the offense. *(H1764)* Made new offense of "trafficking" in stolen identities, i.e., possessing another's identifying information with the intent to sell or traffic it or purchasing, selling, or transferring identifying information with the intent to commit or assist another in committing financial identity fraud. Generally, trafficking would have been punishable as Class F felony. *(H1764)* A Class E felony if victim is elderly or disabled, or arrested, detained or convicted as result of the offense. *(H1764)* Person convicted of financial identity fraud may also be ordered to pay restitution for financial loss. *(H1764)*	Adds taking an identity for the purpose of obtaining any thing of value, benefit or advantage. Makes general offense a Class G felony. Makes it a Class F felony if victim was arrested, detained or convicted as result of the offense, or if the person possesses identifying information of three or more persons. Adds new offense of "trafficking" in stolen identities, i.e., possessing another's identifying information with the intent to sell or traffic it or purchasing, selling, or transferring identifying information with the intent to commit or assist another in committing financial identity fraud. Conviction of a trafficking offense is punishable as a Class E felony. Person convicted of any financial identity fraud offense may also be ordered to pay restitution for financial loss.

ISSUE	CURRENT LAW	ORIGINAL BILL	H1100 – 3rd EDITION
Civil damages for victims of identity fraud *(Secs. 6-8)*	G.S. 14-113.22		Recodified in Chapter 1 (Civil Procedure)
	Damages available for the greater of $5000 per incident or three times actual damages.	Same damages amount.	Same damages amount.
	No venue provision.	Added venue as county where plaintiff resides or any county in which any part of the alleged violation took place. *(H1764*	Adds venue as county where plaintiff resides or any county in which any part of the alleged violation took place.
	Unclear as to whether criminal prosecution was a prerequisite.	Action may be brought regardless of whether criminal prosecution occurs. *(H1764)*	Action may be brought regardless of whether criminal prosecution occurs.
	No statute of limitations specified.	Actions must be brought within 3 years from date wrongdoer's identity discovered or reasonably should have been discovered. *(H1764)*	Actions must be brought within 3 years from date wrongdoer's identity discovered or reasonably should have been discovered.

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
S.B. 887 A BILL TO BE ENTITLED AN ACT TO PROVIDE ADDITIONAL AUTHORITY FOR MAGISTRATES WHO ARE LICENSED TO PRACTICE LAW.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to the committee substitute bill ☒ which changes the title, unfavorable as to the original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

5/13/02

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 887

Second Edition Engrossed 4/25/01

PROPOSED HOUSE COMMITTEE SUBSTITUTE S887-PCS4784-SW-86

Short Title: Magistrates' & Clerks' Auth/Expunge Records. (Public)

Sponsors:

Referred to:

April 4, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE QUALIFICATIONS FOR INDIVIDUALS NOMINATED AS MAGISTRATES, TO PROVIDE ADDITIONAL AUTHORITY FOR MAGISTRATES AND CLERKS OF COURT, AND TO PROVIDE FOR THE EXPUNCTION OF RECORDS WHEN CHARGES ARE VOLUNTARILY DISMISSED AS A RESULT OF MISIDENTIFICATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-171.2(b) reads as rewritten:

"(b) To be eligible for nomination as a magistrate, an individual shall have at least 12 years' experience as a Clerk of Superior Court in this State, or shall have a four-year degree from an accredited senior institution of higher education or shall have a two-year associate degree and four years of work experience in a related field, including teaching, social services, law enforcement, arbitration or mediation, the court system, or counseling. The Administrative Officer of the Courts may determine whether the work experience is sufficiently related to the duties of the office of magistrate for the purposes of this subsection. In determining whether an individual's work experience is in a related field, the Administrative Officer of the Courts shall consider the requisite knowledge, skills, and abilities for the office of magistrate.

The eligibility requirements prescribed by this subsection do not apply to individuals holding the office of magistrate on June 30, 1994, and do not apply to individuals who have been nominated by June 30, 1994, but who have not been appointed or taken the oath of office by that date."

SECTION 2.(a) G.S. 7A-273 reads as rewritten:

"**§ 7A-273. Powers of magistrates in infractions or criminal actions.**

(a) In criminal actions or infractions, any magistrate has power:

(1) In infraction cases in which the maximum penalty that can be imposed is not more than fifty dollars ($50.00), exclusive of costs, or in Class 3

misdemeanors, other than the types of infractions and misdemeanors specified in subdivision (2) of this ~~section,~~subsection, to accept guilty pleas or admissions of responsibility and enter judgment;

(2) In misdemeanor or infraction cases involving alcohol offenses under Chapter 18B of the General Statutes, traffic offenses, hunting, fishing, State park and recreation area rule offenses under Chapter 113 of the General Statutes, boating offenses under Chapter 75A of the General Statutes, and littering offenses under G.S. 14-399(c), to accept written appearances, waivers of trial or hearing and pleas of guilty or admissions of responsibility, in accordance with the schedule of offenses and fines or penalties promulgated by the Conference of Chief District Judges pursuant to G.S. 7A-148, and in ~~such~~ these cases, to enter judgment and collect the fines or penalties and costs;

(2a) In misdemeanor cases involving the violation of a county ordinance authorized by law regulating the use of dune or beach buggies or other power-driven vehicles specified by the governing body of the county on the foreshore, beach strand, or the barrier dune system, to accept written appearances, waivers of trial or hearing, and pleas of guilty or admissions of responsibility, in accordance with the schedule of offenses and fines or penalties promulgated by the Conference of Chief District Court Judges pursuant to G.S. 7A-148, and in such cases, to enter judgment and collect the fines or penalties and costs;

(3) To issue arrest warrants valid throughout the State;

(4) To issue search warrants valid throughout the county;

(5) To grant bail before trial for any noncapital offense;

(6) Notwithstanding the provisions of subdivision (1) of this section, to hear and enter judgment as the chief district judge shall direct in all worthless check cases brought under G.S. 14-107, when the amount of the check is two thousand dollars ($2,000) or less. Provided, however, that under this section magistrates may not impose a prison sentence longer than 30 days;

(7) To conduct an initial appearance as provided in G.S. 15A-511; and

(8) To accept written appearances, waivers of trial and pleas of guilty in violations of G.S. 14-107 when the amount of the check is two thousand dollars ($2,000) or less, restitution, including service charges and processing fees allowed by G.S. 14-107, is made, and the warrant does not charge a fourth or subsequent violation of this statute, and in these cases to enter judgments as the chief district judge directs.

(9) Repealed by Session Laws 1991 (Regular Session, 1992), c. 900, s. 118(d).

(b) A magistrate has the additional authority, if so assigned by the chief district court judge and subject to any limitations imposed by the chief district court judge, to hear, decide, and enter judgment in all infractions and Class 3 misdemeanor cases, regardless of penalty or offense. The additional authority granted in this subsection may

be assigned to a magistrate only with the consent of the clerk of superior court of the county in which the magistrate is assigned and after consultation with the district attorney."

SECTION 2.(b) G.S. 15A-1115(a) reads as rewritten:

"(a) Appeal of District Court Decision. – A person who denies responsibility and is found responsible for an infraction in the district ~~court,~~court, before a magistrate pursuant to G.S. 7A-273(b), before the clerk of superior court pursuant to G.S. 7A-180(10), or before the assistant clerk of superior court pursuant to G.S. 7A-181(b) within 10 days of the hearing, may appeal the decision to the criminal division of the superior court for a hearing de novo. Upon appeal, the defendant is entitled to a jury trial unless he consents to have the hearing conducted by the judge. The State must prove beyond a reasonable doubt that the person charged is responsible for the infraction unless the person admits responsibility. Unless otherwise provided by law, the procedures applicable to misdemeanors disposed of in the superior court apply to those infraction hearings. In the superior court, a prosecutor must represent the State. Appeal from the judgment in the superior court is as provided for other criminal actions in superior court, and the Attorney General must represent the State in an appeal of such actions."

SECTION 3.(a) G.S. 7A-180 is amended by adding a new subdivision to read:

"(10) Has the power, upon the mutual consent of the chief district court judge and clerk of superior court and after consultation with the district attorney of the county in which the clerk of superior court serves, to hear, decide, and enter judgment in all infraction and Class 3 misdemeanor cases, regardless of penalty or offense."

SECTION 3.(b) G.S. 7A-181 reads as rewritten:

"**§ 7A-181. Functions of assistant and deputy clerks of superior court in district court matters.**

(a) Assistant and deputy clerks of superior court:

(1) Have the same powers and duties with respect to matters in the district court division as they have in the superior court division;

(2) Have the same powers as the clerk of superior court with respect to the issuance of warrants and acceptance of written appearances, waivers of trial and pleas of guilty; and

(3) Have the same power as the clerk of superior court to fix conditions of release in accordance with Chapter 15A, Article 26, Bail, and the same power as the clerk of superior court to conduct an initial appearance in accordance with Chapter 15A, Article 24, Initial Appearance.

(b) An assistant clerk of superior court also has the power, upon the mutual consent of the chief district court judge and clerk of superior court and after consultation with the district attorney of the county in which the assistant clerk of superior court serves, to hear, decide, and enter judgment in all infraction and Class 3 misdemeanor cases, regardless of penalty or offense."

SECTION 3.(c) G.S. 15A-1431 reads as rewritten:

"**§ 15A-1431. Appeals by defendants from ~~magistrate~~magistrate, clerk of superior court, assistant clerk of superior court, and district court judge; trial de novo.**

(a) A defendant convicted before a magistrate pursuant to G.S. 7A-273(a) may appeal for trial de novo before a district court judge without a jury. A defendant convicted before a magistrate pursuant to G.S. 7A-273(b), before a clerk of superior court pursuant to G.S. 7A-180(10), or before an assistant clerk of superior court pursuant to G.S. 7A-181(b) may appeal the decision to the criminal division of the superior court for a hearing de novo.

(b) A defendant convicted in the district court before the judge may appeal to the superior court for trial de novo with a jury as provided by law. Upon the docketing in the superior court of an appeal from a judgment imposed pursuant to a plea arrangement between the State and the defendant, the jurisdiction of the superior court over any misdemeanor dismissed, reduced, or modified pursuant to that plea arrangement shall be the same as was had by the district court prior to the plea arrangement.

(c) Within 10 days of entry of judgment, notice of appeal may be given orally in open court or in writing to the clerk. Within 10 days of entry of judgment, the defendant may withdraw his appeal and comply with the judgment. Upon expiration of the 10-day period, if an appeal has been entered and not withdrawn, the clerk ~~must~~ shall transfer the case to the appropriate court.

(d) A defendant convicted by a ~~magistrate~~ magistrate, clerk of superior court pursuant to G.S. 7A-180(10), assistant clerk of superior court pursuant to G.S. 7A-181(b), or district court judge is not barred from appeal because of compliance with the judgment, but notice of appeal after compliance ~~must~~ shall be given by the defendant in person to the ~~magistrate or judge~~ judicial official who heard the case or, if ~~he~~ that official is not available, notice ~~must~~ shall be given in one of the following ways:

(1) Before a magistrate in the county, in the case of appeals from the ~~magistrate; or~~ magistrate.

(1a) Before an assistant clerk of superior court in the county, in the case of appeals from the clerk or assistant clerk of superior court.

(2) During an open session of district court in the district court district as defined in G.S. 7A-133, in the case of appeals from district court.

The ~~magistrate~~ magistrate, clerk, assistant clerk, or district court judge ~~must~~ shall review the case and fix conditions of pretrial release as appropriate. If a defendant has paid a fine or costs and then appeals, the amount paid ~~must~~ shall be remitted to the defendant, but the judge, ~~clerk~~ clerk, assistant clerk, or magistrate to whom notice of appeal is given may order the remission delayed pending the determination of the appeal.

(e) Any order of pretrial release remains in effect pending appeal by the defendant unless the judge modifies the order.

(f) Appeal pursuant to this section stays the execution of portions of the judgment relating to fine and costs. Appeal stays portions of the judgment relating to confinement when the defendant has complied with conditions of pretrial release. If the

defendant cannot comply with conditions of pretrial release, the judge may order confinement in a local confinement facility pending the trial de novo in superior court.

(g) The defendant may withdraw his appeal at any time prior to calendaring of the case for trial de novo. The case is then automatically remanded to the court from which the appeal was taken, for execution of the judgment.

(h) The defendant may withdraw his appeal after the calendaring of the case for trial de novo only by consent of the court, and with the attachment of costs of that court, unless the costs or any part of the costs are remitted by the court. The case may then be remanded by order of the court to the court from which the appeal was taken for execution of the judgment with any additional court costs that attached and that have not been remitted."

SECTION 3.(d) Article 5 of Chapter 45 of the General Statutes is amended to add a new section to read:

"**§ 45-45.3. Clerk of superior court as trustee in a mortgage or deed of trust.**

(a) When the clerk of superior court is named trustee in any mortgage or deed of trust, it shall be sufficient to identify the office and county only. The name of the clerk may be omitted.

(b) Whenever a clerk of superior court is named, whether by name or office, as trustee in any deed of trust or mortgage in which the State is named as beneficiary and that is given to secure the appearance of the grantor or mortgagor in a case pending in the General Court of Justice, the authority of the trustee shall be vested in the office of the clerk of superior court of the county in which the subject property is located. This authority shall include the authority to discharge and release the deed of trust or mortgage of record."

SECTION 4. G.S. 15A-147 reads as rewritten:

"**§ 15A-147. Expunction of records when charges are dismissed or there are findings of not guilty as a result of identity ~~fraud.~~fraud or misidentification.**

(a) If any person is named in a charge for an infraction or a crime, either a misdemeanor or a felony, as a result of another person using the identifying information of the named person to commit an infraction or crime and the charge against the named person is dismissed, a finding of not guilty is entered, or the conviction is set aside, the named person may apply by petition or written motion to the court where the charge was last pending on a form approved by the Administrative Office of the Courts supplied by the clerk of court for an order to expunge from all official records any entries relating to the person's apprehension, charge, or trial. The court, after notice to the district attorney, shall hold a hearing on the motion or petition and, upon finding that the person's identity was used without permission and the charges were dismissed or the person was found not guilty, the court shall order the expunction.

(a1) If any person is named in a charge for an infraction or a crime, either a misdemeanor or a felony, as a result of misidentification and the charge against the named person is voluntarily dismissed, the named person may apply by petition or written motion to the court where the charge was last pending on a form approved by the Administrative Office of the Courts supplied by the clerk of court for an order to

expunge from all official records any entries relating to the person's apprehension, or charge. The court, after notice to the district attorney, shall hold a hearing on the motion or petition and, upon finding that the person was mistakenly identified and the charges were voluntarily dismissed, the court shall order the expunction.

(b) No person as to whom such an order has been entered under this section shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of the person's failure to recite or acknowledge any expunged entries concerning apprehension, charge, or trial.

(c) The court shall also order that the said entries shall be expunged from the records of the court and direct all law enforcement agencies, the Division of Motor Vehicles, or any other State or local government agencies bearing record of the same to expunge their records of the entries. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other charging agency; and, when applicable, to the Division of Motor Vehicles and any other State or local agency. The sheriff, chief, or head of such other charging agency shall then transmit the copy of the order with the form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. Upon receipt of a certified copy of the order, the agency must purge its records as required by this section. The costs of expunging these records shall not be taxed against the petitioner.

(d) The Division of Motor Vehicles shall expunge from its records entries made as a result of the charge or conviction ordered expunged under this section. The Division of Motor Vehicles shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged, including the assessment of drivers license points and drivers license suspension or revocation. Notwithstanding any other provision of this Chapter, the Division of Motor Vehicles shall provide to the person whose motor vehicle record is expunged under this section a certified corrected driver history at no cost and shall reinstate at no cost any drivers license suspended or revoked as a result of a charge or conviction expunged under this section.

(e) Any other applicable State or local government agency shall expunge from its records entries made as a result of the charge or conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. Notwithstanding any other provision of law, the normal fee for any reinstatement of a license or privilege resulting under this section shall be waived.

(f) Any insurance company that charged any additional premium based on insurance points assessed against a policyholder as a result of a charge or conviction that was expunged under this section shall refund those additional premiums to the policyholder upon notification of the expungement."

SECTION 5. Sections 1, 2, 3(a), 3(b), and 3(c) of this act become effective December 1, 2002, and apply to cases pending or filed on or after that date. Section

3(d) is effective when it becomes law and applies to all mortgages or deeds of trust of record on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 887

Second Edition Engrossed 4/25/01

PROPOSED HOUSE COMMITTEE SUBSTITUTE S887-CSSW-86 [v.23]

9/25/2002 1:37:34 PM

Short Title: Magistrates' and Clerks' Auth/Expunge Records (Public)

Sponsors:

Referred to:

April 4, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE QUALIFICATIONS FOR INDIVIDUALS NOMINATED AS MAGISTRATES, TO PROVIDE ADDITIONAL AUTHORITY FOR MAGISTRATES AND CLERKS OF COURT, TO PERMIT THE CONFERENCE OF CHIEF DISTRICT COURT JUDGES TO MAKE THE DISTRIBUTION OF TOBACCO PRODUCTS TO MINORS A WAIVABLE OFFENSE, AND TO PROVIDE FOR THE EXPUNCTION OF RECORDS WHEN CHARGES ARE VOLUNTARILY DISMISSED AS A RESULT OF MISIDENTIFICATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-171.2(b) reads as rewritten:

"(b) To be eligible for nomination as a magistrate, an individual shall have at least twelve years' experience as a Clerk of Superior Court in this State, or shall have a four-year degree from an accredited senior institution of higher education or shall have a two-year associate degree and four years of work experience in a related field, including teaching, social services, law enforcement, arbitration or mediation, the court system, or counseling. The Administrative Officer of the Courts may determine whether the work experience is sufficiently related to the duties of the office of magistrate for the purposes of this subsection. In determining whether an individual's work experience is in a related field, the Administrative Officer of the Courts shall consider the requisite knowledge, skills, and abilities for the office of magistrate.

The eligibility requirements prescribed by this subsection do not apply to individuals holding the office of magistrate on June 30, 1994, and do not apply to individuals who have been nominated by June 30, 1994, but who have not been appointed or taken the oath of office by that date."

SECTION 2.(a) G.S. 7A-273 reads as rewritten:

"**§ 7A-273. Powers of magistrates in infractions or criminal actions.**

(a) In criminal actions or infractions, any magistrate has power:

(1) In infraction cases in which the maximum penalty that can be imposed is not more than fifty dollars ($50.00), exclusive of costs, or in Class 3 misdemeanors, other than the types of infractions and misdemeanors specified in subdivision (2) of this ~~section,~~subsection, to accept guilty pleas or admissions of responsibility and enter judgment;

(2) In misdemeanor or infraction cases involving alcohol offenses under Chapter 18B of the General Statutes, traffic offenses, hunting, fishing, State park and recreation area rule offenses under Chapter 113 of the General Statutes, boating offenses under Chapter 75A of the General Statutes, ~~and~~ littering offenses under G.S. 14-399(c), and offenses involving the distribution of tobacco products to underage persons under G.S. 14-313, to accept written appearances, waivers of trial or hearing and pleas of guilty or admissions of responsibility, in accordance with the schedule of offenses and fines or penalties promulgated by the Conference of Chief District Judges pursuant to G.S. 7A-148, and in ~~such~~ these cases, to enter judgment and collect the fines or penalties and costs;

(2a) In misdemeanor cases involving the violation of a county ordinance authorized by law regulating the use of dune or beach buggies or other power-driven vehicles specified by the governing body of the county on the foreshore, beach strand, or the barrier dune system, to accept written appearances, waivers of trial or hearing, and pleas of guilty or admissions of responsibility, in accordance with the schedule of offenses and fines or penalties promulgated by the Conference of Chief District Court Judges pursuant to G.S. 7A-148, and in such cases, to enter judgment and collect the fines or penalties and costs;

(3) To issue arrest warrants valid throughout the State;

(4) To issue search warrants valid throughout the county;

(5) To grant bail before trial for any noncapital offense;

(6) Notwithstanding the provisions of subdivision (1) of this section, to hear and enter judgment as the chief district judge shall direct in all worthless check cases brought under G.S. 14-107, when the amount of the check is two thousand dollars ($2,000) or less. Provided, however, that under this section magistrates may not impose a prison sentence longer than 30 days;

(7) To conduct an initial appearance as provided in G.S. 15A-511; and

(8) To accept written appearances, waivers of trial and pleas of guilty in violations of G.S. 14-107 when the amount of the check is two thousand dollars ($2,000) or less, restitution, including service charges and processing fees allowed by G.S. 14-107, is made, and the warrant does not charge a fourth or subsequent violation of this statute, and in these cases to enter judgments as the chief district judge directs.

(9) Repealed by Session Laws 1991 (Regular Session, 1992), c. 900, s. 118(d).

(b) A magistrate has the additional authority, if so assigned by the chief district court judge and subject to any limitations imposed by the chief district court judge, to hear, decide, and enter judgment in all infractions and Class 3 misdemeanor cases, regardless of penalty or offense. The additional authority granted in this subsection may be assigned to a magistrate only with the consent of the clerk of superior court of the county in which the magistrate is assigned and after consultation with the district attorney."

SECTION 2.(b) G.S. 15A-1115(a) reads as rewritten:

"(a) Appeal of District Court Decision. – A person who denies responsibility and is found responsible for an infraction in the district ~~court,~~court, before a magistrate pursuant to G.S. 7A-273(b), before the clerk of superior court pursuant to G.S. 7A-180(10), or before the assistant clerk of superior court pursuant to G.S. 7A-181(b) within 10 days of the hearing, may appeal the decision to the criminal division of the superior court for a hearing de novo. Upon appeal, the defendant is entitled to a jury trial unless he consents to have the hearing conducted by the judge. The State must prove beyond a reasonable doubt that the person charged is responsible for the infraction unless the person admits responsibility. Unless otherwise provided by law, the procedures applicable to misdemeanors disposed of in the superior court apply to those infraction hearings. In the superior court, a prosecutor must represent the State. Appeal from the judgment in the superior court is as provided for other criminal actions in superior court, and the Attorney General must represent the State in an appeal of such actions."

SECTION 3.(a) G.S. 7A-180 is amended by adding a new subsection to read:

"(10) Has the power, upon the mutual consent of the chief district court judge and clerk of superior court and after consultation with the district attorney of the county in which the clerk of superior court serves, to hear, decide, and enter judgment in all infraction and Class 3 misdemeanor cases, regardless of penalty or offense."

SECTION 3.(b) G.S. 7A-181 reads as rewritten:

"**§ 7A-181. Functions of assistant and deputy clerks of superior court in district court matters.**

(a) Assistant and deputy clerks of superior court:

(1) Have the same powers and duties with respect to matters in the district court division as they have in the superior court division;

(2) Have the same powers as the clerk of superior court with respect to the issuance of warrants and acceptance of written appearances, waivers of trial and pleas of guilty; and

(3) Have the same power as the clerk of superior court to fix conditions of release in accordance with Chapter 15A, Article 26, Bail, and the same power as the clerk of superior court to conduct an initial appearance in accordance with Chapter 15A, Article 24, Initial Appearance.

(b) An assistant clerk of superior court also has the power, upon the mutual consent of the chief district court judge and clerk of superior court and after consultation

with the district attorney of the county in which the assistant clerk of superior court serves, to hear, decide, and enter judgment in all infraction and Class 3 misdemeanor cases, regardless of penalty or offense."

SECTION 3.(c) G.S. 15A-1431 reads as rewritten:

"**§ 15A-1431. Appeals by defendants from ~~magistrate~~magistrate, clerk of superior court, assistant clerk of superior court, and district court judge; trial de novo.**

(a) A defendant convicted before a magistrate pursuant to G.S. 7A-273(a) may appeal for trial de novo before a district court judge without a jury. A defendant convicted before a magistrate pursuant to G.S. 7A-273(b), before a clerk of superior court pursuant to G.S. 7A-180(10), or before an assistant clerk of superior court pursuant to G.S. 7A-181(b) may appeal the decision to the criminal division of the superior court for a hearing de novo.

(b) A defendant convicted in the district court before the judge may appeal to the superior court for trial de novo with a jury as provided by law. Upon the docketing in the superior court of an appeal from a judgment imposed pursuant to a plea arrangement between the State and the defendant, the jurisdiction of the superior court over any misdemeanor dismissed, reduced, or modified pursuant to that plea arrangement shall be the same as was had by the district court prior to the plea arrangement.

(c) Within 10 days of entry of judgment, notice of appeal may be given orally in open court or in writing to the clerk. Within 10 days of entry of judgment, the defendant may withdraw his appeal and comply with the judgment. Upon expiration of the 10-day period, if an appeal has been entered and not withdrawn, the clerk ~~must~~ shall transfer the case to the appropriate court.

(d) A defendant convicted by a ~~magistrate~~ magistrate, clerk of superior court pursuant to G.S. 7A-180(10), assistant clerk of superior court pursuant to G.S. 7A-181(b), or district court judge is not barred from appeal because of compliance with the judgment, but notice of appeal after compliance ~~must~~ shall be given by the defendant in person to the ~~magistrate or judge~~ judicial official who heard the case or, if ~~he~~ that official is not available, notice ~~must~~ shall be given in one of the following ways:

(1) Before a magistrate in the county, in the case of appeals from the ~~magistrate; or~~ magistrate.

(1a) Before an assistant clerk of superior court in the county, in the case of appeals from the clerk or assistant clerk of superior court.

(2) During an open session of district court in the district court district as defined in G.S. 7A-133, in the case of appeals from district court.

The ~~magistrate~~ magistrate, clerk, assistant clerk, or district court judge ~~must~~ shall review the case and fix conditions of pretrial release as appropriate. If a defendant has paid a fine or costs and then appeals, the amount paid ~~must~~ shall be remitted to the defendant, but the judge, ~~clerk~~ clerk, assistant clerk, or magistrate to whom notice of appeal is given may order the remission delayed pending the determination of the appeal.

(e) Any order of pretrial release remains in effect pending appeal by the defendant unless the judge modifies the order.

(f) Appeal pursuant to this section stays the execution of portions of the judgment relating to fine and costs. Appeal stays portions of the judgment relating to confinement when the defendant has complied with conditions of pretrial release. If the defendant cannot comply with conditions of pretrial release, the judge may order confinement in a local confinement facility pending the trial de novo in superior court.

(g) The defendant may withdraw his appeal at any time prior to calendaring of the case for trial de novo. The case is then automatically remanded to the court from which the appeal was taken, for execution of the judgment.

(h) The defendant may withdraw his appeal after the calendaring of the case for trial de novo only by consent of the court, and with the attachment of costs of that court, unless the costs or any part of the costs are remitted by the court. The case may then be remanded by order of the court to the court from which the appeal was taken for execution of the judgment with any additional court costs that attached and that have not been remitted."

SECTION 3.(d) Article 5 of Chapter 45 of the General Statutes is amended to add a new section to read:

"**§ 45-45.3. Clerk of superior court as trustee in a mortgage or deed of trust.**

(a) When the clerk of superior court is named trustee in any mortgage or deed of trust, it shall be sufficient to identify the office and county only. The name of the clerk may be omitted.

(b) Whenever a clerk of superior court is named, whether by name or office, as trustee in any deed of trust or mortgage in which the State is named as beneficiary and that is given to secure the appearance of the grantor or mortgagor in a case pending in the General Court of Justice, the authority of the trustee shall be vested in the office of the clerk of superior court of the county in which the subject property is located. This authority shall include the authority to discharge and release the deed of trust or mortgage of record."

SECTION 4. G.S. 15A-147 reads as rewritten:

"**§ 15A-147. Expunction of records when charges are dismissed or there are findings of not guilty as a result of identity ~~fraud.~~fraud or misidentification.**

(a) If any person is named in a charge for an infraction or a crime, either a misdemeanor or a felony, as a result of another person using the identifying information of the named person to commit an infraction or crime and the charge against the named person is dismissed, a finding of not guilty is entered, or the conviction is set aside, the named person may apply by petition or written motion to the court where the charge was last pending on a form approved by the Administrative Office of the Courts supplied by the clerk of court for an order to expunge from all official records any entries relating to the person's apprehension, charge, or trial. The court, after notice to the district attorney, shall hold a hearing on the motion or petition and, upon finding that the person's identity was used without permission and the charges were dismissed or the person was found not guilty, the court shall order the expunction.

(a1) If any person is named in a charge for an infraction or a crime, either a misdemeanor or a felony, as a result of misidentification and the charge against the

named person is voluntarily dismissed, the named person may apply by petition or written motion to the court where the charge was last pending on a form approved by the Administrative Office of the Courts supplied by the clerk of court for an order to expunge from all official records any entries relating to the person's apprehension, or charge. The court, after notice to the district attorney, shall hold a hearing on the motion or petition and, upon finding that the person was mistakenly identified and the charges were voluntarily dismissed, the court shall order the expunction.

(b) No person as to whom such an order has been entered under this section shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of the person's failure to recite or acknowledge any expunged entries concerning apprehension, charge, or trial.

(c) The court shall also order that the said entries shall be expunged from the records of the court and direct all law enforcement agencies, the Division of Motor Vehicles, or any other State or local government agencies bearing record of the same to expunge their records of the entries. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other charging agency; and, when applicable, to the Division of Motor Vehicles and any other State or local agency. The sheriff, chief, or head of such other charging agency shall then transmit the copy of the order with the form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. Upon receipt of a certified copy of the order, the agency must purge its records as required by this section. The costs of expunging these records shall not be taxed against the petitioner.

(d) The Division of Motor Vehicles shall expunge from its records entries made as a result of the charge or conviction ordered expunged under this section. The Division of Motor Vehicles shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged, including the assessment of drivers license points and drivers license suspension or revocation. Notwithstanding any other provision of this Chapter, the Division of Motor Vehicles shall provide to the person whose motor vehicle record is expunged under this section a certified corrected driver history at no cost and shall reinstate at no cost any drivers license suspended or revoked as a result of a charge or conviction expunged under this section.

(e) Any other applicable State or local government agency shall expunge from its records entries made as a result of the charge or conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. Notwithstanding any other provision of law, the normal fee for any reinstatement of a license or privilege resulting under this section shall be waived.

(f) Any insurance company that charged any additional premium based on insurance points assessed against a policyholder as a result of a charge or conviction that was expunged under this section shall refund those additional premiums to the policyholder upon notification of the expungement."

SECTION 5. Sections 1, 2, 3.(a), 3.(b), and 3.(c) of this act become effective December 1, 2002 and apply to cases pending or filed on or after that date. Section 3.(d) is effective when it becomes law and applies to all mortgages or deeds of trust of record on or after that date. The remainder of this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 887 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S887-CSSW-86 [v.23]

Rep.) Sherrill
)
Sen.)

1 moves to amend the bill on page 2, lines 10-12
2 ( ) WHICH CHANGES THE TITLE
3 by rewriting the lines to remove redlined
4 language and restore original language
5
6
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SIGNED Shirley Sherrill

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE BILL 887:
Magistrates and Clerks' Auth/Expunge Records

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Sen. Clodfelter
Date:	September 26, 2002	**Summary by:**	Robin Johnson Committee Counsel
Version:	Proposed Committee Substitute S887-CSSW-86 [v.23]		

SUMMARY: The PCS for Senate Bill 887 would amend the qualifications and authority of magistrates, amend the authority of clerks of superior court, and amend the law to permit a simpler procedure to expunge a criminal record in the case of a voluntary dismissal resulting because of misidentification.

QUALIFICATIONS AND AUTHORITY OF MAGISTRATES

Current Law: Magistrates are appointed officers of the district court. Every even-numbered year, the clerk of superior court submits the names of persons qualified for the position of magistrate to the senior regular resident superior court judge. In order to be eligible to be nominated as a magistrate, a person must either have a four-year degree from an accredited college or university, or have a two-year associate's degree and four years of work experience in a related field, including teaching, social service, law enforcement, arbitration or mediation. the court system. or counseling. From these nominations, the senior resident superior court judge appoints the requisite number of magistrates. Magistrates are appointed for two-year terms.

Magistrates preside over and decide civil small claims actions. In criminal actions and infractions, magistrates can issue arrest warrants and search warrants, grant bail for any noncapital offense, and conduct initial appearances. Also, in certain traffic, alcohol and other minor offenses that are waivable[1], magistrates can accept guilty pleas, enter judgment, and collect the fines or penalties and costs in accordance with the schedule of offenses and fines or penalties promulgated by the Conference of Chief District Judges.

Bill Analysis: The bill would amend current law to permit a person to be nominated to serve as a magistrate if that person has at least 12 years' experience as a Clerk of Superior Court in this State. (See below for qualifications of clerks.) *Section 1.*

The bill would grant additional authority to magistrates, in infractions or criminal actions, if so assigned by the chief district judge and subject to any limitations imposed by the chief district court judge, to hear, decide and enter judgment in all infractions and Class 3 misdemeanor cases, regardless of the penalty or offense. This additional authority may be assigned only with the consent of the clerk of superior court and after consultation with the district attorney. Magistrates would be able to accept written appearances, waivers of trial, and guilty pleas in the case of misdemeanor or infraction charges for offenses involving the distribution of tobacco products[2] to underage persons. *Section 2.(a)*

These changes would become effective December 1, 2002, and apply to cases pending or filed on or after that date.

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[1] *A waivable offense is one where the person charged with the offense may waive his or her appearance and enter a plea of guilty or responsible.*

[2] *G.S. 14-313 prohibits the sale or distribution of tobacco produces or cigarette wrapping papers to any person under age 18 or the purchase of these products on a minor's behalf. Violation of this provision is a Class 2 misdemeanor. This statute also proscribes the display of a point of sale sign that notifies persons of the tobacco sales restriction, prohibits the sale of tobacco products in vending machines except in establishments which are open only to persons aged 18 or over.*

QUALIFICATIONS AND AUTHORITY OF CLERKS OF SUPERIOR COURT

Current Law: Clerks of superior court are elected officials who serve terms of four years. Persons who are qualified voters aged 21 and over and who are not convicted felons are eligible to be elected as clerks of superior court. Clerks of superior court appoint assistant clerks.

Clerks of superior court are authorized to perform a number of legal tasks, including issuing summonses and subpoenas, administering oaths, certifying records, entering default judgments, granting and revoking letters testamentary, letters of administration, and letters of trusteeship in estate matters, appointing and removing guardians and trustees (G.S. 7A-103), issuing arrest and search warrants (G.S. 7A-180), and entering orders of possession in sales of property under power of sale (G.S. 45-21.29). Assistant clerks are authorized to perform all the duties and functions of the office of clerk of superior court.

When real property is pledged for a bond, the then current clerk of superior court is the named trustee.

Bill Analysis: The bill would give a clerk of superior court, if agreed upon by the chief district court judge and clerk after consultation with the district attorney, the same authority as a magistrate to hear, decide and enter judgment in all infraction and Class 3 misdemeanor cases, regardless of penalty or offense. This authority would extend to the assistant clerks of that clerk. These sections of the bill would become effective December 1, 2002, and apply to cases pending or filed on or after that date. *Sections 3.(a) and (b).*

The bill also would amend Chapter 45 (Mortgages and Deeds of Trust) to provide that when the clerk of superior court is named as a trustee in a mortgage or deed of trust (such as in the case of when real property is pledged for a bond), it will be sufficient to identify the office of the clerk (and not the clerk's name) on the mortgage or deed of trust. In that case, the office of the clerk would be authorized to discharge or release the mortgage or deed of trust. This section would take effect when the bill becomes law and would apply to mortgages and deeds of trust that are of record on or after that date. *Section 3.(d)*

APPEALS

Current Law: A person can appeal a decision of a magistrate to the district court, and the case on appeal is tried anew (*de novo*).

Bill Analysis: The following persons may appeal to the criminal division of superior court for a hearing de novo: (i) a person who denies responsibility and is found responsible for an infraction before a magistrate, clerk of superior court, or assistant clerk of superior court, and (ii) a person convicted before a magistrate under G.S. 7A-273(b), a clerk of superior court, or an assistant clerk of superior court. A person who is convicted before a magistrate under G.S. 7A-273(a) will continue to be allowed to appeal for trial de novo before a district court judge without a jury. *Sections 2.(b) and 3.(c).*

EXPUNCTION OF RECORDS

Current Law: Current law provides the circumstances in which a person may have his or her record expunged of infractions or criminal charges or convictions. Current law also sets out various procedures for having a person's record expunged. Those procedures, while similar, vary slightly depending on the circumstances of the infraction, criminal charge or conviction. Under current law, if a person is wrongly charged with an infraction or crime as a result of misidentification and the charges against that person are voluntarily dismissed, the person may apply to the court to expunge his or her record, and a hearing is held. A similar procedure exists for expunging criminal charges or convictions that occur as a result of identity fraud, but this expunction procedure is simpler to use than the procedure currently provided for in the case of misidentification. The procedure for expunction of a record for identity fraud is, for the most part, automatic: a person fills out a form provided by the court, the court notifies the district attorney of the petition, a hearing is held on the motion or petition, and, upon a finding that person's identity

was used without permission and that the charges were dismissed or the person found not guilty, the court orders the expunction.

Bill Analysis: Effective when it becomes law, the bill would amend current law to provide that when a person is charged with an infraction or criminal offense and that charge is voluntarily dismissed as a result of misidentification, the person may petition the court to expunge that person's criminal record using the simpler procedure that is currently available to those charged or convicted as a result of identity fraud. *Section 4.*

S887-SMRH-002: Dianna Jessup, Counsel to House Rules, substantially prepared this summary.

County	Name	Entry Date	Months as CSC	Assoc., College or Grad. Degree
Nash	Rachel M. Joyner	12/2/1968	404	
Gaston	Betty B. Jenkins	2/5/1973	353	
Sampson	Charlie T. McCullen, Jr.	3/5/1973	353	
Chatham	Janice E. Oldham	12/2/1974	332	
Henderson	Thomas H. Thompson	12/2/1974	332	C
Union	Nola H. McCollum	6/27/1975	326	
Anson	Robert F. Hightower	2/18/1976	318	
Durham	James L. Carr	7/26/1976	313	G
Jackson	Frank Watson,Jr.	12/1/1978	284	C
Johnston	Will R. Crocker	12/4/1978	284	
Person	William T. Humphries	12/4/1978	284	C
Scotland	C. Whitfield Gibson, Jr.	2/1/1981	260	C
Warren	Richard E. Hunter, Jr.	11/1/1982	247	C
Alexander	Seth W. Chapman	12/6/1982	236	
Beaufort	Thomas S. Payne	12/6/1982	236	C
Caswell	Janet H. Cobb	12/6/1982	236	
Stanly	David R. Fisher	12/6/1982	236	
Swain	Sara H. Robinson	12/6/1982	236	
Washington	Timothy L. Spear	12/1/1982	236	
Lenior	Claude C. Davis	10/1/1983	226	
Yancey	F. Warren Hughes	1/13/1984	223	G
Bertie	John C. Tyler	11/1/1984	213	C
Avery	Robert E. Taylor	12/3/1984	212	
Martin	Phyllis G. Pearson	1/1/1985	211	
Carteret	Darlene H. Leonard	8/1/1986	192	
Alleghany	Rebecca J. Gambill	12/1/1986	188	C
Ashe	Jerry L. Roten	12/1/1986	188	
Clay	James H. McClure	12/1/1986	188	
Currituck	Sheila R. Romm	12/1/1986	188	
Gates	Terry L. Riddick	12/1/1986	188	
Randolph	Lynda B. Skeen	12/1/1986	188	
Richmond	Catherine S. Wilson	12/1/1986	188	
Rutherford	Keith H. Melton	12/1/1986	188	
Tyrrell	Nathan T. Everett	12/1/1986	188	C
Macon	Anna J. Carson	8/31/1987	180	
Brunswick	Diana R. Morgan	10/6/1987	178	
Perquimans	Lois G. Godwin	12/5/1988	164	
Buncombe	Robert H. Christy, Jr.	9/1/1990	143	G
Cleveland	Linda C. Thrift	12/3/1990	140	
Davie	Kenneth D. Boger	12/3/1990	140	C

Hertford	Shirley G. Johnson	12/3/1990	140	
Mecklenburg	Martha H. Curran	12/3/1990	140	G
New Hanover	Brenda A. Tucker	12/3/1990	140	
Onslow	Edward T. Cole, Sr.	12/3/1990	140	
Surry	Patricia C. Todd	12/3/1990	140	
Watauga	Dillard G. Hodges	11/30/1992	117	
Wilson	Ann T. Harrell	12/7/1992	116	
Cherokee	Gerald P. Breedlove	1/1/1993	115	A
Pasquotank	Lynne W. Pike	1/1/1993	115	
Moore	Catherine P. Graham	1/3/1994	103	
Transylvania	Dorene P. MaHoney	2/1/1994	102	
Robeson	Jo Ann Locklear	7/1/1994	97	
Yadkin	Dorothy M. Shore	7/27/1994	97	
Cabarrus	Marshall G. Morris	12/5/1994	92	C
Chowan	Michael J. McArthur	12/5/1994	92	
Duplin	Bertha S. Whaley	12/1/1994	92	
Edgecombe	Carol A. White	*12/7/1998	92	
Iredell	Rena W. Turner	12/1/1994	92	G
Stokes	Robert D. Hartgrove	12/5/1994	92	
Wilkes	Shirley B. Randleman	12/1/1994	92	
Granville	Hattie S. Overton	7/1/1995	85	
Rockingham	Margaret E. Russell	4/1/1997	64	
Camden	Ann D. Spivey	10/1/1997	58	
Rowan	Jeffrey T. Barger	**12/7/1998	54	
Alamance	Carolyn Pickett	12/1/1998	44	
Bladen	Pamela R. Paschal	12/1/1998	44	
Burke	Mabel H. Lowman	12/7/1998	44	
Columbus	Shelia S. Pridgen	12/1/1998	44	
Davidson	Brian L. Shipwash	12/7/1998	44	G
Graham	Wanda A. Brooms	12/7/1998	44	
Guilford	David L. Churchill	12/7/1998	44	G
Hoke	Vera M. Hollingsworth	12/7/1998	44	C
Madison	Timothy C. Cantrell	12/7/1998	44	C
McDowell	Donald R. Ramsey	12/1/1998	44	G
Mitchell	Ted M. McKinney	12/7/1998	44	C
Montgomery	Thomas W. Wooten	12/7/1998	44	A
Northampton	Venus M. Spruill	12/7/1998	44	C
Pamlico	Charles H. Autry	12/1/1998	44	
Polk	Charlene T. Owens	12/7/1998	44	
Wayne	James M. Minchew	12/7/1998	44	
Lee	Ann H Blakely	10/1/1999	34	
Catawba	Aljean M. Bogle	11/8/1999	33	C

Pitt	Eleanor H. Farr	11/1/1999	33	
Vance	Deborah W. Finch	11/1/2000	21	
Caldwell	Sandra W. Cannon	12/1/2000	20	
Halifax	Rebecca C. Spargins	12/1/2000	20	C
Harnett	Edward M. Woodall	12/1/2000	20	G
Dare	Merlee T. Austin	1/2/2001	19	
Jones	Charles C. Henderson	3/1/2001	17	G
Forsyth	Terry L. Holbrook	4/3/2000	16	
Orange	James C. Stanford	5/1/2001	15	G
Hyde	Sharon G. Sadler	7/2/2001	13	
Pender	Mary A. Briley	8/14/2001	12	
Greene	Sandra B. Sutton	9/1/2001	11	
Craven	Janette H. Cahoon	10/1/2001	10	
Cumberland	Linda H. Priest	10/1/2001	10	
Wake	Gilbert W. File	11/19/2001	9	G
Franklin	Alice P. Hunter	1/1/2002	7	
Lincoln	Teresa H. Peeler	5/1/2002	3	
Haywood	June L. Ray	6/1/2002	2	C
* Ms. White also served as CSC of Edgecombe Co. from 12/3/90 to12/2/94.				
** Mr. Barger also served as CSC of Rowan Co. from 2/1/94 to 12/2/94.				

VISITOR REGISTRATION SHEET

JH
Name of Committee

10·1·02
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
VB Lovell	AOC
Jon Titus	District Court
Paul Stock	NC Bankers Assn.
Ken Hinion	AIG
RH Martin	Edenton
GARY GOVERT	DOS
Thomas Walker	"
FRAN PRESTON	NCRMA
Cam Bowen	BPMHL

MINUTES
HOUSE COMMITTEE ON JUDICIARY II

October 3, 2002

The House Committee on Judiciary II met on Thursday, October 3, 2002 around Rep. Baddour's chamber desk at 12:00 noon. The following members were present: Rep. Baddour, Chair and Reps. Bowie, Hall, Jeffus, Sherrill, Weiss and Willingham.

Chairman Baddour called the meeting to order for the purpose of taking action on the remaining bills in the Judiciary II Committee. The following bills were indefinitely postponed:

HB 45, Gas Drive Aways/License Suspension
HB 178, Drunk Driving Death Is Felony Murder
HB 862, Union County/Albemarle Red Light Cameras
HB 967, Collateral Source Evidence Rule
HB 971, Collateral Source Evidence Rule
HB 1129, Grandparent Visitation
HB 1767, DNA Testing

All other House bills have been requested not to be heard by the bill sponsor.

Copies of all action taken on the remaining bills in the Judiciary II Committee are attached as part of these minutes.

The meeting adjourned at 12:05 p.m.

Representative Philip A. Baddour, Jr.
Chairman

Tracy Dixon
Committee Assistant

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 45 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT PERSONS CONVICTED OF OFFENSES INVOLVING DRIVING AWAY WITHOUT PAYING FOR GASOLINE OR MOTOR FUEL SHALL HAVE THEIR DRIVERS LICENSE SUSPENDED.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☒ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

5/13/02

MEMORANDUM

FROM: Rep. Phil Baddour

SUBJECT: HB 137, Financial Responsibility (Short Title)

I request that HB 137 not be considered by the Committee on Judiciary II.

(Sponsor's Signature)

9/20/02
Date

MEMORANDUM

FROM: Rep. Phil Baddour

SUBJECT: HB 138, Juvenile Capacity to Proceed(Short Title)

I request that HB 138 not be considered by the Committee on Judiciary II.

(Sponsor's Signature)

9/24/02 Date

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 178 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A PERSON WHO COMMITS THE OFFENSE OF HABITUAL IMPAIRED DRIVING AND WHO KILLS ANOTHER PERSON AS A RESULT OF THAT OFFENSE MAY BE GUILTY OF FELONY MURDER.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☒ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

5/13/02

MEMORANDUM

DATE: **9/25/02**

TO: **Representative Haire**

FROM: **Representative Baddour**

SUBJECT: **Bills Pending in the Committee on Judiciary II**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

If you would like to request that your bill not be considered by the Committee on Judiciary II, for your convenience, a printed form is included at the bottom of this page. Please complete, sign and return the form to Room 2301. This form may not be e-mailed because it requires the sponsor's signature.

MEMORANDUM

TO: **Representative Baddour**

FROM: **Representative Haire**
Bill Sponsor

SUBJECT: **HB 277, Juvenile Extended Commitment Procedure** (Short Title)

I request that HB 277 not be considered by the Committee on Judiciary II.

(Sponsor's Signature)

9/30/02 Date

MEMORANDUM

DATE: **9/25/02**

TO: **Representative Haire**

FROM: **Representative Baddour**

SUBJECT: **Bills Pending in the Committee on Judiciary II**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

If you would like to request that your bill not be considered by the Committee on Judiciary II, for your convenience, a printed form is included at the bottom of this page. Please complete, sign and return the form to Room 2301. This form may not be e-mailed because it requires the sponsor's signature.

MEMORANDUM

TO: **Representative Baddour**

FROM: **Representative Haire**
Bill Sponsor

SUBJECT: **HB 372, Amend Rule 68 Offer of Judgement** (Short Title)

I request that HB 372 not be considered by the Committee on Judiciary II.

(Sponsor's Signature)

9/30/02 Date

MEMORANDUM

DATE: **9/25/02**

TO: **Representative Ellis**

FROM: **Representative Baddour**

SUBJECT: **Bills Pending in the Committee on Judiciary II**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

If you would like to request that your bill not be considered by the Committee on Judiciary II, for your convenience, a printed form is included at the bottom of this page. Please complete, sign and return the form to Room 2301. This form may not be e-mailed because it requires the sponsor's signature.

MEMORANDUM

TO: **Representative Baddour**

FROM: **Representative Ellis**
Bill Sponsor

SUBJECT: **HB 533, Fuquay-Varina Red Light Cameras** (Short Title)

I request that HB 533 not be considered by the Committee on Judiciary II.

(Sponsor's Signature)

5/29/02 Date

MEMORANDUM

DATE: **9/25/02**

TO: **Representative Ellis**

FROM: **Representative Baddour**

SUBJECT: **Bills Pending in the Committee on Judiciary II**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

If you would like to request that your bill not be considered by the Committee on Judiciary II, for your convenience, a printed form is included at the bottom of this page. Please complete, sign and return the form to Room 2301. This form may not be e-mailed because it requires the sponsor's signature.

MEMORANDUM

TO: **Representative Baddour**

FROM: **Representative Ellis**
Bill Sponsor

SUBJECT: **HB 534, Knightdale Red Light Cameras** (Short Title)

I request that HB 534 not be considered by the Committee on Judiciary II.

(Sponsor's Signature)

9/25/02
Date

MEMORANDUM

DATE: **9/25/02**

TO: **Representative Ellis**

FROM: **Representative Baddour**

SUBJECT: **Bills Pending in the Committee on Judiciary II**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

If you would like to request that your bill not be considered by the Committee on Judiciary II, for your convenience, a printed form is included at the bottom of this page. Please complete, sign and return the form to Room 2301. This form may not be e-mailed because it requires the sponsor's signature.

MEMORANDUM

TO: **Representative Baddour**

FROM: **Representative Ellis**
Bill Sponsor

SUBJECT: **HB 535, Garner Red Light Cameras** (Short Title)

I request that HB 535 not be considered by the Committee on Judiciary II.

(Sponsor's Signature)

9/25/02
Date

MEMORANDUM

DATE: **9/25/02**

TO: **Representative Rogers**

FROM: **Representative Baddour**

SUBJECT: **Bills Pending in the Committee on Judiciary II**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

If you would like to request that your bill not be considered by the Committee on Judiciary II, for your convenience, a printed form is included at the bottom of this page. Please complete, sign and return the form to Room 2301. This form may not be e-mailed because it requires the sponsor's signature.

MEMORANDUM

TO: **Representative Baddour**

FROM: **Representative Rogers**
Bill Sponsor

SUBJECT: **HB 705, Greenville Speed Enforcement Cameras** (Short Title)

I request that HB 705 not be considered by the Committee on Judiciary II.

Jane Rogers
(Sponsor's Signature)

10/2/02 Date

MEMORANDUM

DATE: **9/25/02**

TO: **Representative Earle**

FROM: **Representative Baddour**

SUBJECT: **Bills Pending in the Committee on Judiciary II**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

If you would like to request that your bill not be considered by the Committee on Judiciary II, for your convenience, a printed form is included at the bottom of this page. Please complete, sign and return the form to Room 2301. This form may not be e-mailed because it requires the sponsor's signature.

MEMORANDUM

TO: **Representative Baddour**

FROM: **Representative Earle**
Bill Sponsor

SUBJECT: **HB 737, Amend Adoption Laws** (Short Title)

I request that HB 737 not be considered by the Committee on Judiciary II.

Beverly Earle
(Sponsor's Signature)

10/2/02 Date

MEMORANDUM

DATE: **9/25/02**

TO: **Representative Culpepper**

FROM: **Representative Baddour**

SUBJECT: **Bills Pending in the Committee on Judiciary II**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

If you would like to request that your bill not be considered by the Committee on Judiciary II, for your convenience, a printed form is included at the bottom of this page. Please complete, sign and return the form to Room 2301. This form may not be e-mailed because it requires the sponsor's signature.

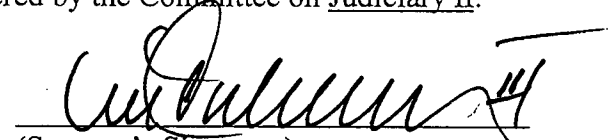
MEMORANDUM

TO: **Representative Baddour**

FROM: **Representative Culpepper**
Bill Sponsor

SUBJECT: **HB 849, Judicial & Execution Sales/Revise Procedure (Short Title)**

I request that HB 849 not be considered by the Committee on Judiciary II.



(Sponsor's Signature)

10/2/02 Date

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 862 A BILL TO BE ENTITLED AN ACT TO ALLOW UNION COUNTY AND ALL OF THE MUNICIPALITIES IN UNION COUNTY AND THE CITY OF ALBEMARLE TO USE TRAFFIC CONTROL PHOTOGRAPHIC SYSTEMS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☒ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

5/13/02

MEMORANDUM

DATE: **9/25/02**

TO: **Representative Luebke**

FROM: **Representative Baddour**

SUBJECT: **Bills Pending in the Committee on Judiciary II**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

If you would like to request that your bill not be considered by the Committee on Judiciary II, for your convenience, a printed form is included at the bottom of this page. Please complete, sign and return the form to Room 2301. This form may not be e-mailed because it requires the sponsor's signature.

MEMORANDUM

TO: **Representative Baddour**

FROM: **Representative Luebke**
Bill Sponsor

SUBJECT: **HB 918, Durham Red Light Cameras** (Short Title)

I request that HB 918 not be considered by the Committee on Judiciary II.

(Sponsor's Signature)

Sept 30, 2002
Date

MEMORANDUM

DATE: **9/25/02**

TO: **Representative Eddins**

FROM: **Representative Baddour**

SUBJECT: **Bills Pending in the Committee on Judiciary II**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

If you would like to request that your bill not be considered by the Committee on Judiciary II, for your convenience, a printed form is included at the bottom of this page. Please complete, sign and return the form to Room 2301. This form may not be e-mailed because it requires the sponsor's signature.

MEMORANDUM

TO: **Representative Baddour**

FROM: **Representative Eddins**
Bill Sponsor

SUBJECT: **HB 946, Possession/Manufacture of Fraudulent IDs** (Short Title)

I request that HB 946 not be considered by the Committee on Judiciary II.

(Sponsor's Signature)

10/3/02
Date

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 967 . A BILL TO BE ENTITLED AN ACT TO PREVENT DOUBLE RECOVERIES IN PROPERTY DAMAGE, PERSONAL INJURY, AND WRONGFUL DEATH ACTIONS BY ALLOWING EVIDENCE OF OTHER SOURCES OF RECOVERY.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☒ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

5/13/02

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 971 A BILL TO BE ENTITLED AN ACT TO RESTRICT THE AUTHORITY OF A SOCIAL WORKER TO ENTER A PRIVATE RESIDENCE FOR INVESTIGATION PURPOSES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☒ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

5/13/02

MEMORANDUM

DATE: **9/25/02**

TO: **Representative Michaux**

FROM: **Representative Baddour**

SUBJECT: **Bills Pending in the Committee on Judiciary II**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

If you would like to request that your bill not be considered by the Committee on Judiciary II, for your convenience, a printed form is included at the bottom of this page. Please complete, sign and return the form to Room 2301. This form may not be e-mailed because it requires the sponsor's signature.

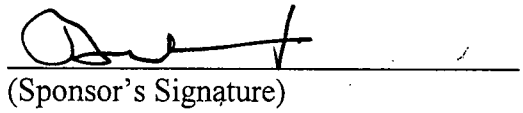
MEMORANDUM

TO: **Representative Baddour**

FROM: **Representative Michaux**
Bill Sponsor

SUBJECT: **HB 989, Judicial App./ Voter Retention** (Short Title)

I request that HB 989 not be considered by the Committee on Judiciary II.



(Sponsor's Signature)

10/2/02 Date

MEMORANDUM

DATE: **9/25/02**

TO: **Representative Sutton**

FROM: **Representative Baddour**

SUBJECT: **Bills Pending in the Committee on Judiciary II**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

If you would like to request that your bill not be considered by the Committee on Judiciary II, for your convenience, a printed form is included at the bottom of this page. Please complete, sign and return the form to Room 2301. This form may not be e-mailed because it requires the sponsor's signature.

MEMORANDUM

TO: **Representative Baddour**

FROM: **Representative Sutton**
Bill Sponsor

SUBJECT: **HB 989, Judicial Appointment/Voter Retention** (Short Title)

I request that HB 989 not be considered by the Committee on Judiciary II.

(Sponsor's Signature)

9-30-02
Date

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1129 A BILL TO BE ENTITLED AN ACT CLARIFYING CERTAIN PROVISIONS UNDER THE LAWS RELATING TO GRANDPARENT VISITATION AND REQUIRING A COURT TO REVIEW SEVERAL FACTORS PRIOR TO AWARDING GRANDPARENT VISITATION.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☒ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

5/13/02

MEMORANDUM

DATE: **9/25/02**

TO: **Representative Hurley**

FROM: **Representative Baddour**

SUBJECT: **Bills Pending in the Committee on Judiciary II**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

If you would like to request that your bill not be considered by the Committee on Judiciary II, for your convenience, a printed form is included at the bottom of this page. Please complete, sign and return the form to Room 2301. This form may not be e-mailed because it requires the sponsor's signature.

MEMORANDUM

TO: **Representative Baddour**

FROM: **Representative Hurley**
Bill Sponsor

SUBJECT: **HB 1146, Presumptive Fines for Speeding** (Short Title)

I request that HB 1146 not be considered by the Committee on Judiciary II.

(Sponsor's Signature)

10-1-02 Date

MEMORANDUM

FROM: Rep. Phil Baddour

SUBJECT: HB 1164, Post Adoption Privileges (Short Title)

I request that HB 1164 not be considered by the Committee on Judiciary II.

(Sponsor's Signature)

9/20/02 Date

MEMORANDUM

FROM: Rep. Phil Baddour

SUBJECT: **HB 1166, State Employee's Health Plan/ Worker's Comp**(Short Title)

I request that HB 1166 not be considered by the Committee on Judiciary II.

(Sponsor's Signature)

9/20/02 Date

MEMORANDUM

FROM: Rep. Phil Baddour

SUBJECT: HB 1244 , Family Court Pilot Districts (Short Title)

I request that HB 1244 not be considered by the Committee on Judiciary II.

(Sponsor's Signature)

9/26/02
Date

MEMORANDUM

DATE: **9/25/02**

TO: **Representative Carpenter**

FROM: **Representative Baddour**

SUBJECT: **Bills Pending in the Committee on Judiciary II**

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MEMORANDUM

TO: **Representative Baddour**

FROM: **Representative Carpenter**
Bill Sponsor

SUBJECT: **HB 1281, Eastern Band Cherokees Full Faith Credit** (Short Title)

I request that HB 1281 not be considered by the Committee on Judiciary II.

Marge Carpenter
(Sponsor's Signature)

10-1-02
Date

MEMORANDUM

DATE: **9/25/02**

TO: **Representative Weiss**

FROM: **Representative Baddour**

SUBJECT: **Bills Pending in the Committee on Judiciary II**

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MEMORANDUM

TO: **Representative Baddour**

FROM: **Representative Weiss**
Bill Sponsor

SUBJECT: **HB 1282, Criminal Background Checks Long-Term Care** (Short Title)

I request that HB 1282 not be considered by the Committee on Judiciary II.

(Sponsor's Signature)

10/1/02 Date

MEMORANDUM

FROM: Rep. Phil Baddour

SUBJECT: **HB 1314, County Appeals of Juvenile Orders** (Short Title)

I request that HB 1314 not be considered by the Committee on Judiciary II.

(Sponsor's Signature)

9/26/02
Date

MEMORANDUM

DATE: **9/25/02**

TO: **Representative Easterling**

FROM: **Representative Baddour**

SUBJECT: **Bills Pending in the Committee on Judiciary II**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

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MEMORANDUM

TO: **Representative Baddour**

FROM: **Representative Easterling**
Bill Sponsor

SUBJECT: **HB 1317, Restrictive Covenants - Child Care** (Short Title)

I request that HB 1317 not be considered by the Committee on Judiciary II.

Ruth M. Easterling
(Sponsor's Signature)

10/1/02
Date

MEMORANDUM

DATE: 9/25/02

TO: **Representative Culpepper**

FROM: **Representative Baddour**

SUBJECT: **Bills Pending in the Committee on Judiciary II**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

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MEMORANDUM

TO: **Representative Baddour**

FROM: **Representative Culpepper**
Bill Sponsor

SUBJECT: **HB 1512, Amend Condominium and Planned Community** (Short Title)

I request that HB 1512 not be considered by the Committee on Judiciary II.

(Sponsor's Signature)

10/2/02 Date

MEMORANDUM

DATE: 9/25/02

TO: Representative Culpepper

FROM: Representative Baddour

SUBJECT: **Bills Pending in the Committee on Judiciary II**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

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MEMORANDUM

TO: **Representative Baddour**

FROM: **Representative Culpepper**
Bill Sponsor

SUBJECT: **HB 1556, 2002 Technical Corrections** (Short Title)

I request that HB 1556 not be considered by the Committee on Judiciary II.

(Sponsor's Signature)

10/2/02 Date

MEMORANDUM

FROM: Rep. Phil Baddour

SUBJECT: HB 1612, Stop Unwanted Telephone Solicitations (Short Title)

I request that HB 1612 not be considered by the Committee on Judiciary II.

(Sponsor's Signature)

9/26/02 Date

MEMORANDUM

DATE: **9/25/02**

TO: **Representative Redwine**

FROM: **Representative Baddour**

SUBJECT: **Bills Pending in the Committee on Judiciary II**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

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MEMORANDUM

TO: **Representative Baddour**

FROM: **Representative Redwine**
Bill Sponsor

SUBJECT: **HB 1612, Stop Unwanted Telephone Solicitation** (Short Title)

I request that HB 1612 not be considered by the Committee on Judiciary II.

(Sponsor's Signature)

10/1/02 Date

MEMORANDUM

FROM: Rep. Phil Baddour

SUBJECT: HB 1738, DNA Bank/ DNA Analysis Fee (Short Title)

I request that HB 1738 not be considered by the Committee on Judiciary II.

(Sponsor's Signature)

9/20/02 Date

MEMORANDUM

DATE: **9/25/02**

TO: **Representative Culpepper**

FROM: **Representative Baddour**

SUBJECT: **Bills Pending in the Committee on Judiciary II**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

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MEMORANDUM

TO: **Representative Baddour**

FROM: **Representative Culpepper**
Bill Sponsor

SUBJECT: **HB 1764, Financial Identity Fraud** (Short Title)

I request that HB 1764 not be considered by the Committee on Judiciary II.

(Sponsor's Signature)

10/2/02 Date

MEMORANDUM

FROM: Rep. Phil Baddour

SUBJECT: **HB 1764, Financial Identity Fraud** (Short Title)

I request that HB 1764 not be considered by the Committee on Judiciary II.

(Sponsor's Signature)

9/20/02 Date

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1767 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE STATE BUREAU OF INVESTIGATION MUST DO DNA TESTING AND ANALYSIS OF EVIDENCE COLLECTED AT A RAPE CRIME SCENE IF REQUESTED BY THE VICTIM OR THE INVESTIGATING LOCAL LAW ENFORCEMENT AGENCY AND THAT THE COSTS OF THE TESTS AND ANALYSIS SHALL BE BORNE BY THE STATE.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☒ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

5/13/02