

**2005-2006**

**HOUSE  
JUDICIARY II**

**COMMITTEE  
MINUTES**

# **JUDICIARY II COMMITTEE**

**2005-2006 SESSION**

**REP. MICKEY MICHAUX  
CHAIR**

**REP. ALICE BORDSEN  
VICE CHAIR**

**REP. JAMES HARRELL  
VICE CHAIR**

**REP. TIMOTHY MOORE  
VICE CHAIR**

**Drupti Chauhan  
Committee Counsel**

**Karen Cochrane-Brown  
Committee Counsel**

**Jeff Hudson  
Committee Counsel**

**Anita Wilder  
Committee Assistant**

**NORTH CAROLINA GENERAL ASSEMBLY**

**JUDICIARY II  
2005 – 2006 SESSION**



**Rep. H. M. Michaux, Jr.**  
**Chair**



**Rep. Alice Bordsen**  
**Vice chair**



**Rep. James Harrell**  
**Vice chair**



**Rep. Timothy Moore**  
**Vice chair**



**Rep. Allen**

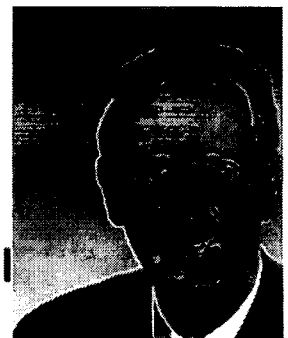


**Rep. Farmer-Butterfield**



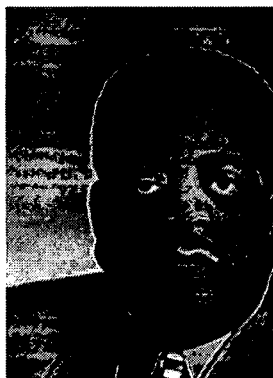
**Rep. Fisher**

**Picture  
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**Rep. Gulley**

**Rep. Folwell**



**Rep. Hall**



**Rep. Walend**



**Rep. Wiley**

**NORTH CAROLINA GENERAL ASSEMBLY**

**JUDICIARY II**  
**2005 – 2006 SESSION**



**Rep. Culpepper**  
**Ex-officio**



**Rep. Cunningham**  
**Ex-officio**



**Rep. Eddins**  
**Ex-officio**



**Rep. Hackney**  
**Ex-officio**



**HOUSE COMMITTEE ON**  
**JUDICIARY II**  
**2005-2006**

<b><u>MEMBER</u></b>	<b><u>ASSISTANT</u></b>	<b><u>PHONE</u></b>	<b><u>OFFICE</u></b>	<b><u>SEAT</u></b>
Allen, Lucy	Melissa Riddle	3-5860	1307	41
Bordsen, Alice Vice chair	Erin Wynia	3-5820	533	29
Farmer-Butterfield, Jean	Barbara Hocutt	3-5898	614	53
Fisher, Susan	Meredith Woodlief	5-2013	420	30
Folwell, Dale	Mary Marchman	3-5787	304	104
Gulley, Jim	Suzanne Gulley	3-5800	1319	114
Hall, John	Joan Peacock	3-5878	611	60
Harrell, James Vice chair	Beth LeGrande	5-1883	403	46
Michaux, H. M. Chair	Anita Wilder	5-2825	1227	57
Moore, Timothy Vice chair	Nancy Gariss	3-4838	502	85
Walend, Trudi	Ken Walend	5-4466	602	115
Wiley, Laura	Susan Brothers	3-5877	538	88

North Carolina General Assembly  
Through House Committee on  
Judiciary II

Date: 09/12/2005  
Time: 11:24  
Page: 001 of 003  
Leg. Day: H-125/S-126

2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0012	LaRoque	LEFT LANE FOR PASSING ONLY.	H	Re-ref Com On Rules, Calendar, and Operations of the House	01-31-05	03-17-05
H0040	Cole	STRENGTHENING INTEGRITY OF DRIVERS LICENSES.	H	Ref To Com On Judiciary II	02-03-05	
H0050=	Michaux	STREET GANG PREVENTION ACT.	*H	Ref To Com On Appropriations/ Base Budget	02-03-05	03-29-05
H0097	Moore	TERM. PAR. RIGHTS/ MURDER OF PARENT BY PARENT.	*HR	Ch. SL 2005-146	02-07-05	03-15-05
H0097	Moore	TERM. PAR. RIGHTS/ MURDER OF PARENT BY PARENT.	*HR	Ch. SL 2005-146	03-16-05	03-29-05
H0290	LaRoque	PREVAILING PARTY AWARDED ATTORNEYS' FEES.	H	Re-ref Com On Rules, Calendar, and Operations of the House	02-17-05	03-31-05
H0423	Moore	HABITUAL MISDEMEANOR LARCENY/FELONY.	*H	Re-ref Com On Appropriations	03-01-05	05-03-05
H0611	Hilton	RACHEL'S LAW.	H	Ref To Com On Judiciary II	03-14-05	
H0614	Wiley	CHILD SOLICITATION BY COMPUTER.	H	Ref To Com On Judiciary II	03-14-05	
H0684	Moore	GARNISH WAGES TO SATISFY JUDGMENTS.	H	Ref To Com On Judiciary II	03-17-05	
H0768	Howard	2005 OMNIBUS LABOR LAW CHANGES.-AB	*H	Pres. To Gov. 8/ 24/2005	03-17-05	05-09-05
H0779	Fisher	INCREASE THE PENALTY FOR TRUANCY	*HR	Ch. SL 2005-318	05-03-05	05-12-05
H0835	McGee	CONCEALED CARRY FOR LAW ENFORCEMENT OFFICERS.	H	Re-ref Com On Finance	03-22-05	05-17-05
H0926	Preston	CONCEALING A DEATH/ CRIM. OFFENSE.	*HR	Ch. SL 2005-288	03-28-05	05-11-05
H0935	Goforth	EXPAND FELONY FOR CONSTRUCTION SITE THEFT	*H	Re-ref Com On Appropriations	03-28-05	05-09-05
H1016	Hilton	DISPOSE OF FIREARMS/ BENEFIT LAW ENFORCEMENT.	*HR	Ch. SL 2005-287	03-31-05	04-18-05
H1084	Bordsen	EXPUNGE NONVIOLENT FELONIES/YOUNG OFFENDERS.	*H	Ref To Com On Rules and Operations of the Senate	04-04-05	04-21-05
H1090	Langdon	NO SSNS IN RECORDED/ FILED DOCUMENTS.	H	Ref To Com On Judiciary II	04-04-05	
H1100	Walker	BREAK INTO PLACE OF WORSHIP.	H	Ref To Com On Judiciary II	04-04-05	
H1123	Rayfield	RESTRICTIONS ON PUBLIC OFFICIALS EMPLOYMENT.	H	Ref To Com On Judiciary II	04-06-05	
H1145	Michaux	PROBATION STAYED/ APPEAL FOR TRIAL DE	*HR	Ch. SL 2005-339	04-07-05	04-19-05

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A bold line indicates the bill is an appropriation bill.

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North Carolina General Assembly  
Through House Committee on  
Judiciary II

Date: 09/12/2005  
Time: 11:24  
Page: 002 of 003  
Leg. Day: H-125/S-126

2005-2006 Biennium

Bill	Introducer	Short Title	Latest Action	In Date	Out Date
		NOVO.			
H1146	Michaux	FORECLOSURE REFORM.	*H Ref To Com On Judiciary I	04-07-05	06-01-05
H1213	Moore	EXPUNGE MULTIPLE CHARGES/OCCUR WITHIN 1 YR.	*H Pres. To Gov. 8/ 23/2005	04-13-05	05-09-05
H1243	Fisher	MANUFACTURED HOMES/ LONGER TERMINATION NOTICE.	*HR Ch. SL 2005-291	04-18-05	05-12-05
H1243	Fisher	MANUFACTURED HOMES/ LONGER TERMINATION NOTICE.	*HR Ch. SL 2005-291	05-24-05	06-01-05
H1298	Bordsen	YOUTHFUL OFFENDER CODE STUDY.	*H Re-ref Com On Rules, Calendar, and Operations of the House	04-20-05	05-11-05
H1299	Bordsen	MOTOR VEHICLE REPAIRS/ CLARIFY COST OF REPAIR.	*HR Ch. SL 2005-304	04-20-05	05-09-05
H1308	Michaux	PUBLIC SAFETY & TREATMENT ACT.	H Ref To Com On Judiciary II	04-20-05	
H1309	Michaux	REFUSAL RIGHTS-FORCED PUBLIC PARTITION SALES.	*H Re-ref Com On Judiciary II	04-20-05	05-18-05
H1309	Michaux	REFUSAL RIGHTS-FORCED PUBLIC PARTITION SALES.	*H Re-ref Com On Judiciary II	05-31-05	
H1324	Walend	UNBORN VICTIMS OF VIOLENCE.	H Ref To Com On Judiciary II	04-20-05	
H1333	Allred	ARBITRATION NOTICE TO CONSUMER.	H Ref To Com On Judiciary II	04-20-05	
H1362	Allred	ENFORCE IMMIGRATION LAWS.	H Ref To Com On Judiciary II	04-21-05	
H1394	Moore	TESTAMENTARY RECOMMENDATION OF GUARDIAN.	*HR Ch. SL 2005-333	04-21-05	05-25-05
H1400	Folwell	SCHOOL BUS SAFETY ACT.	*HR Ch. SL 2005-204	04-21-05	05-17-05
H1401	Folwell	CONCEALED CARRY BY LAW ENFORCEMENT OFFICERS.	*HR Ch. SL 2005-337	04-21-05	05-25-05
H1404	Folwell	SEIZURE OF DOCUMENTS AND PLATES.	*HR Ch. SL 2005-357	04-21-05	06-01-05
H1426	Culp	GRANDPARENT VISITATION BY SPECIAL PROCEEDING.	H Ref To Com On Judiciary II	04-21-05	
H1428	Harrell	DISTRICT JUDGE RETENTION ELECTIONS.	*H Re-ref Com On Rules, Calendar, and Operations of the House	04-21-05	05-26-05
H1516	Setzer	FALSE CERT. AN UNFAIR AND DECEPTIVE ACT.	*H Ref To Com On Judiciary II	04-21-05	05-31-05
<b>\$ H1550</b>	<b>Farmer-Butterfie</b>	<b>GUARDIANSHIP STUDY.</b>	<b>*H Re-ref Com On Appropriations</b>	<b>04-21-05</b>	<b>05-12-05</b>
H1554	Womble	EXPUNCTION/ CONVICTIONS OF CERTAIN CRIMES.	H Ref To Com On Judiciary II	04-21-05	

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North Carolina General Assembly  
Through House Committee on  
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Date: 09/12/2005  
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Page: 003 of 003  
Leg. Day: H-125/S-126

2005-2006 Biennium

Bill	Introducer	Short Title	Latest Action	In Date	Out Date
S0002	Julia Boseman	NO VIOLENT/OBSCENE VIDEO GAME SALES TO MINOR.	*H Re-ref Com On Judiciary II	08-23-05	
S0109	Scott Thomas	HANDGUN PERMIT RENEWAL/DEPLOYED MILITARY.	*HR Ch. SL 2005-232	03-15-05	07-07-05
S0421=	Jim Jacumin	EXEMPT REACT/CHARITABLE SOLICITATIONS.	HR Ch. SL 2005-230	04-20-05	07-07-05
S0472	Scott Thomas	CHILD EXPLOITATION PREVENTION ACT.	*HR Ch. SL 2005-121	05-03-05	05-31-05
S0486=	Austin M. Allran	RACHEL'S LAW.	*H Pres. To Gov. 8/24/2005	05-31-05	07-20-05
S0527	Daniel G. Clodfe	CAMPUS POLICE ACT.	*HR Ch. SL 2005-231	06-07-05	07-05-05
S0776	John Snow	AMEND INDECENT EXPOSURE LAW.	*HR Ch. SL 2005-226	05-17-05	06-27-05
S0832	Kay R. Hagan	WRECKERS/TRAVEL MILEAGE.	*HR Ch. SL 2005-248	06-02-05	07-20-05
S0846	A. B Swindell	MODERNIZE BAIL BONDSMAN REGISTRATION.	*H Ref To Com On Judiciary II	05-27-05	
S0972=	Fred Smith	BREAK INTO PLACE OF WORSHIP	*HR Ch. SL 2005-235	05-05-05	07-07-05
S1118	Tony Rand	TORTS BY STATE LAW ENFORCEMENT.	*HR Ch. SL 2005-243	05-09-05	07-05-05

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## 2005-2006

[illegible]

## 2005-2006

[illegible]

## 2005-2006

[illegible]

**MINUTES  
HOUSE COMMITTEE ON  
JUDICIARY II**

Tuesday, March 1, 2005

The House Committee on Judiciary II met on Tuesday, March 1, 2005, in Room 421 of the Legislative Office Building at 10:00 AM. The following members were present: Chairman Mickey Michaux, Vice-Chairs Alice Bordsen and Timothy Moore, Representatives Allen, Farmer-Butterfield, Fisher, Folwell, Gulley, Walend, and Wiley. Drupti Chauhan, Karen Cochrane-Brown and Jeff Hudson, Staff Counselors were also in attendance. A Visitor Registration list is attached and made part of these minutes.

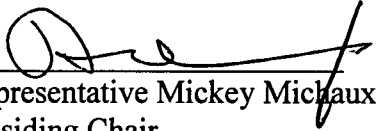
The Chairman called the meeting to order and recognized Pages, Sergeant-At-Arms, Staff and visitors.

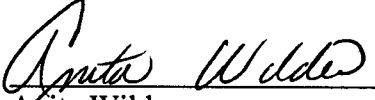
Rep. Nelson Cole was recognized to explain bill **HB 40, A BILL TO BE ENTITLED AN ACT STRENGTHENING THE INTEGRITY OF THE DRIVERS LICENSE, IDENTIFICATION CARD, AND LEARNERS PERMIT AS IDENTIFICATION DOCUMENTS**. Rep. Cary Allred was also recognized to give further explanation of bill along with Staff Counselor, Drupti Chauhan.

After much discussion and comments from visitors, Chairman Michaux announced that no action would be taken on this bill as the U.S. Congress was debating this bill and we would wait to see what happened on the national level and what it's impact would be on the state level. Committee members asked Staff Counselor for a copy of the federal guidelines, which was provided (See attachment 1).

There being no further business, the Chair adjourned the meeting at 10:50 AM.

Respectfully submitted,

  
Representative Mickey Michaux  
Presiding Chair

  
Anita Wilder  
Committee Assistant



# **AGENDA**

## **HOUSE COMMITTEE ON JUDICIARY II**

**March 1, 2005  
Room 421  
10:00 AM**

### **OPENING REMARKS**

Representative Mickey Michaux, Chair

### **AGENDA ITEMS**

**HB 40 – Strengthening Integrity of Drivers Licenses – Reps. Cole and Allred.**

**Anita Wilder (Rep. Michaux)**

---

**From:** Anita Wilder (Rep. Michaux)  
**Sent:** Thursday, February 24, 2005 10:49 AM  
**To:** Suzanne Smith (Rep. Cole); Jean Allred (Rep. Allred)  
**Cc:** @House/Judiciary II; @HouseCommitteeNotice; Drupti Chauhan (Research); Jeffrey Hudson (Research); Karen Cochrane-Brown (Research)  
**Subject:** House Committee Meeting (Date)

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2005-2006 SESSION**

You are hereby notified that the Committee on **JUDICIARY II** will meet as follows:

**DAY & DATE:** Tuesday, March 1, 2005

**TIME:** 10:00 a.m.

**LOCATION:** Room 421

The following bills will be considered (Bill # & Short Title & Bill Sponsor):  
**HB 40 - Strengthening Integrity of Drivers Licenses**

Respectfully,  
Representative H. M. Michaux, Jr.  
Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **11:00 A.M.** on **February 24, 2005.**

\_\_\_\_ Principal Clerk  
\_\_\_\_ Reading Clerk - House Chamber

Anita Wilder (Committee Assistant)

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2005**

**H**

**1**

**HOUSE BILL 40**

Short Title: Strengthening Integrity of Drivers Licenses. (Public)

Sponsors: Representatives Cole, Allred (Primary Sponsors); L. Allen, Barnhart, Blackwood, Bordsen, Brown, Capps, Church, Cleveland, Coates, Crawford, Daughtridge, Folwell, Frye, Gibson, Goodwin, Harrell, Hill, Hilton, Justus, Kiser, LaRoque, Lucas, McGee, Preston, Rapp, Saunders, Steen, Tolson, and Yongue.

Referred to: Judiciary II.

February 3, 2005

A BILL TO BE ENTITLED  
AN ACT STRENGTHENING THE INTEGRITY OF THE DRIVERS LICENSE,  
IDENTIFICATION CARD, AND LEARNERS PERMIT AS IDENTIFICATION  
DOCUMENTS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 20-7(b1) reads as rewritten:

"(b1) Application. – To obtain an identification card, learners permit, or drivers license from the Division, a person shall complete an application form provided by the Division, present at least two forms of identification approved by the Commissioner, be a resident of this State, and, except for an identification card, demonstrate his or her physical and mental ability to drive safely a motor vehicle included in the class of license for which the person has applied. At least one of the forms of identification shall indicate the applicant's residence address. The Division may copy the identification presented or hold it for a brief period of time to verify its authenticity. To obtain an endorsement, a person shall demonstrate his or her physical and mental ability to drive safely the type of motor vehicle for which the endorsement is required.

The application form shall request all of the following information, and it shall contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579:

- (1) The applicant's full name.
- (2) The applicant's mailing address and residence address.
- (3) A physical description of the applicant, including the applicant's sex, height, eye color, and hair color.
- (4) The applicant's date of birth.
- (5) The applicant's valid social security number.

1 (6) The applicant's signature.

2 If an applicant does not have a valid social security number and is ineligible to  
3 obtain one, the applicant shall swear to or affirm that fact under penalty of perjury. ~~In~~  
4 ~~such case, the applicant may provide a valid Individual Taxpayer Identification Number~~  
5 ~~issued by the Internal Revenue Service to that person.~~

6 The Division shall not issue an identification card, learners permit, or drivers license  
7 to an applicant who fails to provide either the applicant's valid social security number or  
8 ~~the applicant's valid Individual Taxpayer Identification Number.~~ to swear or affirm that  
9 the applicant is ineligible to receive one."

10 **SECTION 2.** G.S. 20-7(b1), as amended by Section 1 of this act, reads as  
11 rewritten:

12 "(b1) Application. – To obtain an identification card, learners permit, or drivers  
13 license from the Division, a person shall complete an application form provided by the  
14 Division, present at least two forms of identification approved by the Commissioner, be  
15 a resident of this State, and, except for an identification card, demonstrate his or her  
16 physical and mental ability to drive safely a motor vehicle included in the class of  
17 license for which the person has applied. At least one of the forms of identification shall  
18 indicate the applicant's residence address. The Division may copy the identification  
19 presented or hold it for a brief period of time to verify its authenticity. To obtain an  
20 endorsement, a person shall demonstrate his or her physical and mental ability to drive  
21 safely the type of motor vehicle for which the endorsement is required.

22 The application form shall request all of the following information, and it shall  
23 contain the disclosures concerning the request for an applicant's social security number  
24 required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579:

25 (1) The applicant's full name.

26 (2) The applicant's mailing address and residence address.

27 (3) A physical description of the applicant, including the applicant's sex,  
28 height, eye color, and hair color.

29 (4) The applicant's date of birth.

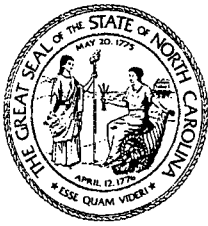
30 (5) The applicant's valid social security number.

31 (6) The applicant's signature.

32 If an applicant does not have a valid social security number and is ineligible to  
33 obtain one, the applicant shall swear to or affirm that fact under penalty of perjury. The  
34 Division shall not issue an identification card, learners permit, or drivers license to an  
35 applicant who fails to provide either the applicant's valid social security number or to  
36 swear or affirm that the applicant is ineligible to receive one.

37 An applicant for an original drivers license, learners permit, or identification card  
38 shall be a citizen of the United States or otherwise demonstrate unexpired legal  
39 authorization to be in the United States."

40 **SECTION 3.** Section 2 of this act becomes effective July 1, 2005. The  
41 remainder of this act is effective when it becomes law.



# HOUSE BILL 40: Strengthening Integrity of Drivers Licenses

## BILL ANALYSIS

**Committee:** House Judiciary II  
**Date:** March 1, 2005  
**Version:** First Edition

**Introduced by:** Reps. Cole and Allred  
**Summary by:** Drupti Chauhan and Jeff  
Hudson  
Committee Counsel

**SUMMARY:** *House Bill 40 would prohibit the Division of Motor Vehicles from issuing a drivers license, identification card, or learners permit based on an Individual Taxpayer Identification Number (ITIN), issued by the Internal Revenue Service. In addition, the bill would require that an applicant for an original drivers license, learners permit, or identification card be a citizen of the United States or otherwise demonstrate that the applicant has unexpired legal authorization to be in the United States.*

**CURRENT LAW:** Under current North Carolina law, a person applying for a drivers license, identification card, or learners permit must present a social security number or ITIN. North Carolina does not require proof of legal presence within the United States to obtain a drivers license.

### BILL ANALYSIS:

Section 1 of House Bill 40 would amend the application procedure for obtaining a North Carolina drivers license, identification card, or learners permit by prohibiting the Division of Motor Vehicles from accepting an ITIN instead of a social security number. The bill would also require any applicant who is ineligible to obtain a social security number to swear or affirm that he or she is ineligible to obtain a social security number.

Section 2 of the bill would provide that applicants for drivers licenses, identification cards, or learners permits must be citizens of the United States or otherwise show that they have unexpired legal authorization to be in the United States.

**BACKGROUND:** According to the National Immigration Law Center, 11 states do not have a legal presence requirement in order to obtain a drivers license: Hawaii, Maryland, Michigan, Montana, New Mexico, North Carolina, Oregon, Tennessee, Utah, Washington, and Wisconsin. Six states currently accept the ITIN as an alternative to the social security number: Illinois, Kentucky, New Mexico, North Carolina, Utah, and West Virginia.

### EFFECTIVE DATE:

Section 1 of the bill is effective when it becomes law. Section 2 of the bill becomes effective July 1, 2005.

**Anita Wilder (Rep. Michaux)**

---

**From:** Drupti Chauhan (Research)  
**Sent:** Wednesday, March 09, 2005 1:47 PM  
**To:** Anita Wilder (Rep. Michaux)  
**Cc:** Jeffrey Hudson (Research); Karen Cochrane-Brown (Research)  
**Subject:** federal HR 418



federal HR 418  
identity bill.d...

Anita,

I've attached some information on the federal identity bill that some members of House JII were asking about at the last meeting. You may want to make copies and have them available for the members for tomorrow's meeting. Let me know if you have any questions.

Drupti

Drupti Chauhan, Attorney  
NC General Assembly, Research Division  
545 Legislative Office Building  
300 North Salisbury Street  
Raleigh, North Carolina 27603-5925  
(919) 733-2578  
(919) 715-5460 (fax)  
druptic@ncleg.net

House Pages

1. Name: Katherine Carlton  
County: Wake  
Sponsor: Speaker James Black
2. Name: Hattie Walter  
County: Wake  
Sponsor: Jennifer Weiss
3. Name: \_\_\_\_\_  
County: \_\_\_\_\_  
Sponsor: \_\_\_\_\_
4. Name: \_\_\_\_\_  
County: \_\_\_\_\_  
Sponsor: \_\_\_\_\_
5. Name: \_\_\_\_\_  
County: \_\_\_\_\_  
Sponsor: \_\_\_\_\_

Sgt-At-Arms

1. Name: Bill Freeman
2. Name: Linda Fulke
3. Name: \_\_\_\_\_
4. Name: \_\_\_\_\_

# VISITOR REGISTRATION SHEET

JUDICIARY II

March 1, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Juanne Ortiz	North Carolina Coalition Against Domestic Violence
Lee Hodge	KCLH
T Wireback	CSU N&N
Kathy Edwards	UNC-CH School of Gov't LRS
Hammer Stone	UNC-CH School of Law
BRAD STONE	UNC-CH School of Law
Patrick Oglesby	UNC-CH Business School
ANN WOOD	OVHS
BRIAN LEWIS	Planned Parenthood N System
Dani Martinez-Moore	NC Justice Center, Box 28068, Raleigh 27611
Chris Fitzsimin	NC Policy Watch



## VISITOR REGISTRATION SHEET

JUDICIARY II

March 1, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Andrea Bozan Manson El Pueblo

Shannon Blosser Durham, NC

May Dong U.I.F.

Jan McHugh Gov. Office

Portia Harley NCDOT

March 9, 2005

To: Members of House Judiciary II

The following is an excerpt from HR 418 which is currently in the US Senate. Title II addresses improved security for drivers licenses and personal identification cards. The excerpt is followed by a summary of Title II by the Congressional Research Service.

109th CONGRESS  
1st Session  
**H. R. 418**  
**IN THE SENATE OF THE UNITED STATES**

February 14, 2005

Received

February 17, 2005

Read twice and referred to the Committee on the Judiciary

---

**AN ACT**

To establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, and to ensure expeditious construction of the San Diego border fence.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'REAL ID Act of 2005'.

**TITLE II--IMPROVED SECURITY FOR DRIVERS' LICENSES AND PERSONAL  
IDENTIFICATION CARDS**

## SEC. 201. DEFINITIONS.

In this title, the following definitions apply:

- (1) DRIVER'S LICENSE- The term 'driver's license' means a motor vehicle operator's license, as defined in section 30301 of title 49, United States Code.
- (2) IDENTIFICATION CARD- The term 'identification card' means a personal identification card, as defined in section 1028(d) of title 18, United States Code, issued by a State.
- (3) SECRETARY- The term 'Secretary' means the Secretary of Homeland Security.
- (4) STATE- The term 'State' means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

## SEC. 202. MINIMUM DOCUMENT REQUIREMENTS AND ISSUANCE STANDARDS FOR FEDERAL RECOGNITION.

(a) Minimum Standards for Federal Use-

- (1) IN GENERAL- Beginning 3 years after the date of the enactment of this Act, a Federal agency may not accept, for any official purpose, a driver's license or identification card issued by a State to any person unless the State is meeting the requirements of this section.
- (2) STATE CERTIFICATIONS- The Secretary shall determine whether a State is meeting the requirements of this section based on certifications made by the State to the Secretary of Transportation. Such certifications shall be made at such times and in such manner as the Secretary of Transportation, in consultation with the Secretary of Homeland Security, may prescribe by regulation.

(b) Minimum Document Requirements- To meet the requirements of this section, a State shall include, at a minimum, the following information and features on each driver's license and identification card issued to a person by the State:

- (1) The person's full legal name.
- (2) The person's date of birth.
- (3) The person's gender.
- (4) The person's driver's license or identification card number.
- (5) A digital photograph of the person.
- (6) The person's address of principle residence.
- (7) The person's signature.
- (8) Physical security features designed to prevent tampering, counterfeiting, or duplication of the document for fraudulent purposes.
- (9) A common machine-readable technology, with defined minimum data elements.

(c) Minimum Issuance Standards-

(1) IN GENERAL- To meet the requirements of this section, a State shall require, at a minimum, presentation and verification of the following information before issuing a driver's license or identification card to a person:

(A) A photo identity document, except that a non-photo identity document is acceptable if it includes both the person's full legal name and date of birth.

(B) Documentation showing the person's date of birth.

(C) Proof of the person's social security account number or verification that the person is not eligible for a social security account number.

(D) Documentation showing the person's name and address of principal residence.

(2) SPECIAL REQUIREMENTS-

(A) IN GENERAL- To meet the requirements of this section, a State shall comply with the minimum standards of this paragraph.

(B) EVIDENCE OF LAWFUL STATUS- A State shall require, before issuing a driver's license or identification card to a person, valid documentary evidence that the person--

(i) is a citizen of the United States;

(ii) is an alien lawfully admitted for permanent or temporary residence in the United States;

(iii) has conditional permanent resident status in the United States;

(iv) has an approved application for asylum in the United States or has entered into the United States in refugee status;

(v) has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the United States;

(vi) has a pending application for asylum in the United States;

(vii) has a pending or approved application for temporary protected status in the United States;

(viii) has approved deferred action status; or

(ix) has a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States.

(C) TEMPORARY DRIVERS' LICENSES AND IDENTIFICATION CARDS-

(i) IN GENERAL- If a person presents evidence under any of clauses (v) through (ix) of subparagraph (B), the State may only issue a temporary driver's license or temporary identification card to the person.

(ii) EXPIRATION DATE- A temporary driver's license or temporary identification card issued pursuant to this subparagraph shall be valid only during the period of time of the applicant's authorized stay in the United States or, if there is no definite end to the period of authorized stay, a period of one year.

(iii) DISPLAY OF EXPIRATION DATE- A temporary driver's license or temporary identification card issued pursuant to this subparagraph shall clearly indicate that it is temporary and shall state the date on which it expires.

(iv) RENEWAL- A temporary driver's license or temporary identification card issued pursuant to this subparagraph may be renewed only upon presentation of valid documentary evidence that the status by which the applicant qualified for the temporary driver's license or temporary identification card has been extended by the Secretary of Homeland Security.

(3) VERIFICATION OF DOCUMENTS- To meet the requirements of this section, a State shall implement the following procedures:

(A) Before issuing a driver's license or identification card to a person, the State shall verify, with the issuing agency, the issuance, validity, and completeness of each document required to be presented by the person under paragraph (1) or (2).

(B) The State shall not accept any foreign document, other than an official passport, to satisfy a requirement of paragraph (1) or (2).

(C) Not later than September 11, 2005, the State shall enter into a memorandum of understanding with the Secretary of Homeland Security to routinely utilize the automated system known as Systematic Alien Verification for Entitlements, as provided for by section 404 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (110 Stat. 3009-664), to verify the legal presence status of a person, other than a United States citizen, applying for a driver's license or identification card.

(d) Other Requirements- To meet the requirements of this section, a State shall adopt the following practices in the issuance of drivers' licenses and identification cards:

(1) Employ technology to capture digital images of identity source documents so that the images can be retained in electronic storage in a transferable format.

(2) Retain paper copies of source documents for a minimum of 7 years or images of source documents presented for a minimum of 10 years.

(3) Subject each person applying for a driver's license or identification card to mandatory facial image capture.

(4) Establish an effective procedure to confirm or verify a renewing applicant's information.

- (5) Confirm with the Social Security Administration a social security account number presented by a person using the full social security account number. In the event that a social security account number is already registered to or associated with another person to which any State has issued a driver's license or identification card, the State shall resolve the discrepancy and take appropriate action.
- (6) Refuse to issue a driver's license or identification card to a person holding a driver's license issued by another State without confirmation that the person is terminating or has terminated the driver's license.
- (7) Ensure the physical security of locations where drivers' licenses and identification cards are produced and the security of document materials and papers from which drivers' licenses and identification cards are produced.
- (8) Subject all persons authorized to manufacture or produce drivers' licenses and identification cards to appropriate security clearance requirements.
- (9) Establish fraudulent document recognition training programs for appropriate employees engaged in the issuance of drivers' licenses and identification cards.
- (10) Limit the period of validity of all driver's licenses and identification cards that are not temporary to a period that does not exceed 8 years.

## SEC. 203. LINKING OF DATABASES.

- (a) In General- To be eligible to receive any grant or other type of financial assistance made available under this title, a State shall participate in the interstate compact regarding sharing of driver license data, known as the 'Driver License Agreement', in order to provide electronic access by a State to information contained in the motor vehicle databases of all other States.
- (b) Requirements for Information- A State motor vehicle database shall contain, at a minimum, the following information:
  - (1) All data fields printed on drivers' licenses and identification cards issued by the State.
  - (2) Motor vehicle drivers' histories, including motor vehicle violations, suspensions, and points on licenses.

## SEC. 204. TRAFFICKING IN AUTHENTICATION FEATURES FOR USE IN FALSE IDENTIFICATION DOCUMENTS.

- (a) Criminal Penalty- Section 1028(a)(8) of title 18, United States Code, is amended by striking 'false authentication features' and inserting 'false or actual authentication features'.
- (b) Use of False Driver's License at Airports-

(1) IN GENERAL- The Secretary shall enter, into the appropriate aviation security screening database, appropriate information regarding any person convicted of using a false driver's license at an airport (as such term is defined in section 40102 of title 49, United States Code).

(2) FALSE DEFINED- In this subsection, the term 'false' has the same meaning such term has under section 1028(d) of title 18, United States Code.

## **SEC. 205. GRANTS TO STATES.**

(a) In General- The Secretary may make grants to a State to assist the State in conforming to the minimum standards set forth in this title.

(b) Authorization of Appropriations- There are authorized to be appropriated to the Secretary for each of the fiscal years 2005 through 2009 such sums as may be necessary to carry out this title.

## **SEC. 206. AUTHORITY.**

(a) Participation of Secretary of Transportation and States- All authority to issue regulations, set standards, and issue grants under this title shall be carried out by the Secretary, in consultation with the Secretary of Transportation and the States.

(b) Compliance With Standards- All authority to certify compliance with standards under this title shall be carried out by the Secretary of Transportation, in consultation with the Secretary of Homeland Security and the States.

(c) Extensions of Deadlines- The Secretary may grant to a State an extension of time to meet the requirements of section 202(a)(1) if the State provides adequate justification for noncompliance.

## **SEC. 207. REPEAL.**

Section 7212 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458) is repealed.

## **SEC. 208. LIMITATION ON STATUTORY CONSTRUCTION.**

Nothing in this title shall be construed to affect the authorities or responsibilities of the Secretary of Transportation or the States under chapter 303 of title 49, United States Code.

Summary by Congressional Research Service of Title II of HR 418:

## **Title II: Improved Security for Driver's Licenses and Personal Identification Cards**

- (Sec. 202) Prohibits Federal agencies from accepting State issued driver's licenses or identification cards unless such documents are determined by the Secretary to meet minimum security requirements, including the incorporation of specified data, a common machine-readable technology, and certain anti-fraud security features.

Sets forth minimum issuance standards for such documents that require: (1) verification of presented information; (2) evidence that the applicant is lawfully present in the United States; and (3) issuance of temporary driver's licenses or identification cards to persons temporarily present that are valid only for their period of authorized stay (or for one year where the period of stay is indefinite).

(Sec. 203) Requires States, as a condition of receiving grant funds or other financial assistance under this title, to participate in the interstate compact regarding the sharing of driver's license data (the Driver License Agreement).

(Sec. 204) Amends the Federal criminal code to prohibit trafficking in actual as well as false authentication features for use in false identification documents, document-making implements, or means of identification.

Requires the Secretary to enter into the appropriate aviation security screening database information regarding persons convicted of using false driver's licenses at airports.

(Sec. 205) Authorizes the Secretary to make grants to assist States in conforming to the minimum standards set forth in this title.

(Sec. 206) Gives the Secretary all authority to issue regulations, set standards, and issue grants under this title. Gives the Secretary of Transportation all authority to certify compliance with such standards.

Authorizes the Secretary to grant States an extension of time to meet the minimum document requirements and issuance standards of this title, with adequate justification.

(Sec. 207) Repeals overlapping document provisions of the IRTPA.

(Sec. 208) States that nothing in this title shall be construed to affect the authorities and responsibilities of the Secretary of Transportation or the States under existing laws governing the establishment of a National Driver Register.



**MINUTES  
HOUSE COMMITTEE ON  
JUDICIARY II**

Thursday, March 10, 2005

The House Committee on Judiciary II met on Thursday, March 10, 2005, in Room 421 of the Legislative Office Building at 10:00 AM. The following members were present: Chairman Mickey Michaux, Vice-Chairs Alice Bordsen, James Harrell, Timothy Moore, Representatives Allen, Farmer-Butterfield, Fisher, Folwell, Gulley, Walend and Wiley. Staff Counselors Drupti Chauhan, Karen Cochrane-Brown and Jeff Hudson were also in attendance. A Visitor's Registration list is included and made part of these minutes.

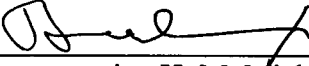
The Chairman called the meeting to order and recognized Pages, Sergeant-At-Arms, Staff and visitors. The following bill was considered:

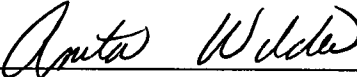
Representative Stephen LaRoque was recognized to explain **HB 12, A BILL TO BE ENTITLED AN ACT PROVIDING. THAT ON HIGHWAYS OF FOUR OR MORE LANES A VEHICLE TRAVELING AT LESS THAN THE NORMAL SPEED OF OTHER VEHICLES SHALL NOT BE DRIVEN IN THE LEFTMOST LAND.** A Proposed Committed Substitute (PCS) was submitted and upon motion made by Rep. Michaux and seconded, the PCS was adopted for discussion. Jeff Hudson, Staff Counselor was also recognized to explain the PCS. A fiscal noted was also submitted at this time.

After much discussion, the Chair made motion to move the bill to a subcommittee for further review. The following were appointed to the subcommittee: Rep. Moore-Chair, Representatives Allen, Walend and Fisher

There being no further discussion, the meeting was adjourned by the Chair at 10:40 AM.

Respectfully submitted,

  
\_\_\_\_\_  
Representative H. M. Michaux, Jr.  
Presiding Chair

  
\_\_\_\_\_  
Anita Wilder  
Committee Assistant

# **AGENDA**

## **HOUSE COMMITTEE ON JUDICIARY II**

**March 10, 2005  
Room 421  
10:00 AM**

### **OPENING REMARKS**

Representative Mickey Michaux, Chair

### **AGENDA ITEMS**

**HB 12– Left Lane For Passing Only – Rep. Stephen LaRoque**

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2005-2006 SESSION**

You are hereby notified that the Committee on **JUDICIARY II** will meet as follows:

**DAY & DATE:**     **Thursday, March 10, 2005**

**TIME:**             **10:00 a.m.**

**LOCATION:**        **Room 421**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):  
**HB 12 Left Lane For Passing Only**

Respectfully,  
Representative H. M. Michaux, Jr.  
Chair

I hereby certify this notice was filed by the committee assistant at the following offices at  
**10:00 A.M. on March 8, 2005.**

\_\_\_\_Principal Clerk  
\_\_\_\_Reading Clerk - House Chamber

Anita Wilder (Committee Assistant)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

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HOUSE BILL 12

PROPOSED COMMITTEE SUBSTITUTE H12-CSSB-3 [v.1]

3/9/2005 4:34:46 PM

Short Title: Left Lane For Passing Only.

(Public)

Sponsors:

Referred to:

January 31, 2005

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT ON HIGHWAYS OF FOUR OR MORE LANES A  
VEHICLE TRAVELING AT LESS THAN THE NORMAL SPEED OF OTHER  
VEHICLES SHALL NOT BE DRIVEN IN THE LEFTMOST LANE.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 20-146 is amended by adding two new subsections to  
read:

"(b1) Upon any highway having four or more lanes for moving traffic and  
providing for the two-way movement of traffic, no vehicle being driven slower than the  
normal speed of other vehicles at the time and place under existing conditions shall be  
driven in the leftmost travel lane unless the vehicle is:

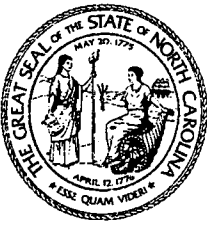
(1) Passing another vehicle;

(2) Preparing for a left turn at an intersection or into a private road or  
driveway; or

(3) Preparing to exit the highway at a left exiting interchange.

(b2) The Department of Transportation may designate locations where subsection  
(b1) of this section is most likely to be violated, including along interstate highways,  
with signs reading 'Left Lane for Passing Only.'"

**SECTION 2.** This act becomes effective December 1, 2005, and applies to  
offenses committed on or after that date.



# HOUSE BILL 12: Left Lane for Passing Only

## BILL ANALYSIS

**Committee:** House Judiciary II  
**Date:** March 10, 2005  
**Version:** 1<sup>st</sup> Edition

**Introduced by:** Representative LaRoque  
**Summary by:** Jeff Hudson and Drupti Chauhan,  
Committee Counsels

**SUMMARY:** *House Bill 12 would prohibit a vehicle from being driven in the leftmost lane of a highway of four or more lanes if the vehicle is being driven slower than the normal speed of surrounding vehicles.*

**CURRENT LAW:** Under current law, there are a number of provisions that govern which lanes slower moving traffic must use and that set minimum speed standards, including:

- G.S. 20-146(b) provides that on all highways, any vehicle that is traveling at less than the legal maximum speed limit must be driven in the rightmost lane, except when passing another vehicle or preparing for a left turn. A number of other states, including Georgia, South Carolina, Tennessee, and Virginia, have similar "keep right" provisions for any vehicle proceeding at less than the normal speed of traffic at the time and place and under the existing conditions.
- G.S. 20-146(e) provides that when a sign such as "Slower Traffic Keep Right" has been posted, it is unlawful to drive a vehicle on the inside lane next to the median of a dual-lane highway at a speed less than the posted speed limit when this impedes the flow of traffic, except when making a left turn.
- G.S. 20-141(c) provides that with certain exceptions, it is unlawful to drive a passenger vehicle on the interstate or highway system less than 40 miles per hour in a 55 miles per hour speed zone and less than 45 miles per hour in a 60 miles per hour or greater speed zone.
- G.S. 20-141(h) provides that no person may operate a motor vehicle on a highway at such a slow speed that it impedes the normal and reasonable movement of traffic unless it is necessary for safe operation or compliance with the law.

**BILL ANALYSIS:** House Bill 12 would make it unlawful to drive a vehicle in the leftmost travel lane of any highway with four or more lanes at a speed slower than the normal speed of the other vehicles traveling on the highway at the same time and place. The bill does not define the term "normal speed". A vehicle could be driven in the leftmost travel lane at a slower than normal speed if the vehicle is passing another vehicle, preparing for a left turn at an intersection or into a private road or driveway, or preparing to exit the highway at a left exiting interchange.

G.S. 20-176 provides that violation of this provision is an infraction and may subject the violator to a penalty of not more than \$100.00. Violation of this provision is not punishable with imprisonment.

House Bill 12 would also require the Department of Transportation to designate locations where this provision would most likely be violated, including interstate highways, by placing signs that read "Left Lane for Passing Only" at those locations.

**EFFECTIVE DATE:** The bill would become effective December 1, 2005 and apply to offenses committed on or after that date.

H12-SMSB-001

# GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

## Legislative Fiscal Note

**BILL NUMBER:** House Bill 12 (First Edition)

**SHORT TITLE:** Left Lane For Passing Only.

**SPONSOR(S):** Representative LaRoque

### FISCAL IMPACT

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

FY 2005-06   FY 2006-07   FY 2007-08   FY 2008-09   FY 2009-10

#### REVENUES

#### EXPENDITURES

Highway Fund      \$1,180,500

**POSITIONS (cumulative):**

**PRINCIPAL DEPARTMENT(S) &**

**PROGRAM(S) AFFECTED:** Department of Transportation, Highway Fund

**EFFECTIVE DATE:** December 1, 2005

#### BILL SUMMARY:

Provides that on highways of four or more lanes with two-way movement of traffic no vehicle being driven slower than the normal speed of other vehicles shall be driven in the leftmost lane except when passing, preparing for a left turn, or preparing to exit the highway. The Department of Transportation (DOT) shall designate and erect signs at locations where this requirement is most likely to be violated.

#### ASSUMPTIONS AND METHODOLOGY:

The Department of Transportation states that its practice is to place this type of sign every three to five miles. There are 4,541 miles of qualifying roadways (35% with full control of access and 65% other 4 lane facilities). Signs have to be placed in both directions, for a total of 9,082 miles. DOT estimates that approximately 60% of the total mileage, or 5,500 miles, would require signs. One thousand nine hundred (1,900) of these miles would be Interstate/Freeway type roads with a cost of \$1,500 per sign and the remaining 3,600 miles would have costs of \$500 per sign.

Additional signs placed at the state line for major highways would cost \$18,000. The cost figures provided by DOT are shown below. The total cost for signs with three mile spacing would be \$1,567,500 and with five mile spacing would be \$948,000. It is assumed for this fiscal note that spacing would be four miles and the total cost would be \$1,180,500 (475 signs at \$1,500 for a total of \$712,500 plus 900 signs at \$500 for a total of \$450,000 plus State Line signs at a cost of \$18,000).

Type of Roadway	Directional Miles	Number of Signs with		Cost Per Sign	Total Cost for Signs	
		3 mi. Spacing	5 mile spacing		3 mi. Spacing	5 mile spacing
Interstate/Freeway	1,900	633	380	\$1,500	\$949,500	\$570,000
Other Roadways	3,600	1,200	720	\$500	\$600,000	\$360,000
Sub Total		1,833	1,100		\$1,549,500	\$930,000
<b>State Line Signs</b>						
Interstate/Freeway		8	8	\$1,500	\$12,000	\$12,000
Other Roadways		12	12	\$500	\$6,000	\$6,000
					\$18,000	\$18,000
<b>Total Cost Estimate</b>					<b>\$1,567,500</b>	<b>\$948,000</b>

**SOURCES OF DATA:** Department of Transportation

**TECHNICAL CONSIDERATIONS:** None

**FISCAL RESEARCH DIVISION:** (919) 733-4910

**PREPARED BY:** Bob Weiss

**APPROVED BY:** James D. Johnson, Director  
Fiscal Research Division

Official  
Fiscal Research Division  
Publication

**DATE:** February 14, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

1

HOUSE BILL 12

Short Title: Left Lane For Passing Only.

(Public)

Sponsors: Representatives LaRoque; Lewis, Pate, and Walend.

Referred to: Judiciary II.

January 31, 2005

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT ON HIGHWAYS OF FOUR OR MORE LANES A  
VEHICLE TRAVELING AT LESS THAN THE NORMAL SPEED OF OTHER  
VEHICLES SHALL NOT BE DRIVEN IN THE LEFTMOST LANE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-146 is amended by adding a new subsection to read:

"(c1) Upon any highway having four or more lanes for moving traffic and providing for the two-way movement of traffic, no vehicle being driven slower than the normal speed of other vehicles at the time and place under existing conditions shall be driven in the leftmost travel lane unless the vehicle is:

(1) Passing another vehicle;

(2) Preparing for a left turn at an intersection or into a private road or Driveway; or

(3) Preparing to exit the highway at a left exiting interchange.

The Department of Transportation shall designate locations where this subsection is most likely to be violated, including along interstate highways, with signs reading 'Left Lane for Passing Only.'"

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.



House Pages

Name Of Committee: J II Date: 3/10/05

1. Name: Ashley Caudle

County: Randolph

Sponsor: Archie Culp

2. Name: Jessica Evans

County: Wake

Sponsor: Linda Coleman

3. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

4. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

5. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

Sgt-At-Arms

1. Name: Bill Freeman

2. Name: Linda Fuller

3. Name: \_\_\_\_\_

4. Name: \_\_\_\_\_

5. Name: \_\_\_\_\_

## VISITOR REGISTRATION SHEET

## JUDICIARY II

Name of Committee

March 10, 2005

Date \_\_\_\_\_

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME \_\_\_\_\_

**FIRM OR AGENCY AND ADDRESS**

KEVIN LACY

# NCDOT - TRAFFIC ENGINEERING

Reca Freije

NCGA

Jane Pinsby

AAA Carolinas

John Long

Martin Mariella

**MINUTES  
HOUSE COMMITTEE ON  
JUDICIARY II**

Tuesday, March 15, 2005

The House Committee on Judiciary II met on Tuesday, March 15, 2005, in room 421 of the Legislative Office Building at 10:00 AM. The following members were present: Chairman Mickey Michaux, Vice-Chairs Alice Bordsen, James Harrell and Timothy Moore, Representatives Allen, Farmer-Butterfield, Fisher, Folwell, Gulley, Walend and Wiley. Drupti Chauhan, Karen Cochrane-Brown and Jeff Hudson, Staff Counselors were in attendance. A Visitor's Registration list is included and made part of these minutes.

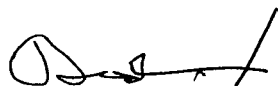
The Chairman called the meeting to order and recognized Pages, Sergeant-At-Arms, Staff and visitors. The following bill was considered


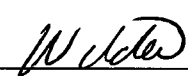
The Chair recognized Rep. Tim Moore to explain the bill **HB 97, A BILL TO BE ENTITLED AN ACT TERMINATING THE PARENTAL RIGHTS OF A PARENT WHO MURDERS THE OTHER PARENT OF THE CHILD**. Staff Counselor Drupti Chauhan was recognized to give the bill analysis. Ms. Barbara Berry, who was attending to help push for a favorable report spoke to the committee about her own personal experience involving the tragedy of her daughter.

After much discussion and all comments from visitors, Rep. Moore moved that the bill be given a favorable report and the bill was given a favorable report by the Committee.

There being no further business, the Chair adjourned the meeting at 10:30 AM.

Respectfully submitted,

  
\_\_\_\_\_  
Representative H. M. Michaux, Jr.  
Presiding Chair

   
\_\_\_\_\_  
Anita Wilder  
Committee Assistant

**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative **MICHAUX (Chair)** for the Committee on **JUDICIARY II**

---

☒ Committee Substitute for

**H.B. 0097                    A BILL TO BE ENTITLED AN ACT TERMINATING THE  
PARENTAL RIGHTS OF A PARENT WHO MURDERS THE OTHER PARENT OF  
THE CHILD.**

- ☒ 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)

03/19/03

FOR JOURNAL USE ONLY

\_\_\_\_ Pursuant to Rule 36(b), the bill/resolution 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  
\_\_\_\_ the House amendment (s).  
\_\_\_\_ the House committee substitute bill.  
\_\_\_\_ 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.

# **AGENDA**

## **HOUSE COMMITTEE ON JUDICIARY II**

**March 15, 2005  
Room 421  
10:00 AM**

### **OPENING REMARKS**

Representative Mickey Michaux, Chair

### **AGENDA ITEMS**

**HB 97– Term. Par. Rights/Murder of Parent by Parent. – Rep. Tim Moore**

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2005-2006 SESSION**

You are hereby notified that the Committee on **JUDICIARY II** will meet as follows:

**DAY & DATE:** Tuesday, March 15, 2005

**TIME:** 10:00 a.m.

**LOCATION:** Room 421

The following bills will be considered (Bill # & Short Title & Bill Sponsor):  
**HB 97 Term. Par. Rights/Murder of Parent by Parent.**

Respectfully,  
Representative H. M. Michaux, Jr.  
Chair

I hereby certify this notice was filed by the committee assistant at the following offices at  
**11:15 A.M. on March 10, 2005.**

\_\_\_\_Principal Clerk  
\_\_\_\_Reading Clerk - House Chamber

Anita Wilder (Committee Assistant)

**MINUTES  
SUBCOMMITTEE ON HOUSE BILL 12  
(LEFT LANE FOR PASSING ONLY)  
JUDICIARY II**

March 15, 2005

The Judiciary II Subcommittee on House Bill 12 met on Tuesday, March 15, 2005 in Room 424 of the Legislative Office Building at 5:00 p.m. The following members were present: Chairman Tim Moore, Representatives Allen, Fisher, and Walend. Representative LaRoque was present to speak on his bill. Jeffrey Hudson, Staff Counselor was in attendance. Mr. Kevin Lacy, State Traffic Engineer with the Department of Transportation also attended.

Mr. Willie Dixon and Mr. James Worth, Sergeant-At-Arms were present.

Chairman Moore called the meeting to order and took a motion by Representative Allen to consider the Proposed Committee Substitute for House bill 12, Left Lane for Passing Only

Jeff Hudson was called upon to explain the Proposed Committee Substitute for House Bill 12, **A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT ON HIGHWAYS A VEHICLE TRAVELING AT LESS THAN THE NORMAL SPEED OF OTHER VEHICLES SHALL BE DRIVEN IN THE RIGHT-HAND LANE.**

The Chairman took a motion from Representative Walend for the new Proposed Committee Substitute to House Bill 12 be taken up. Representative Allen seconded it.

Jeff Hudson said about 35 states have adopted the language, and the Proposed Committee Substitute will make North Carolina's law consistent with other states. He said, do we want the standard to be maximum speed limit as it is now or normal flow of surrounding traffic as provided in the proposed committee substitute.

Chairman Moore asked for debate or discussion. Mr. Kevin Lacy was called upon to speak on the bill to the subcommittee. Mr. Lacy spoke of the concern of speeding and also, the safety effects of getting people out of the left lane, and the differential in speeds. Speed differential is a recognized cause of accidents and is a hazard. Where this bill would help, it would, hopefully, encourage drivers to stay in the right lane when passing or in peak periods. Mr. Lacy does not see it at all being a problem during peak traffic especially in your urban areas. It will be an issue in your off peak traffic when people have the opportunity to move.

Chairman Moore thought it ought to be clear when there is multiple traffic on the road, if moving over for an emergency vehicle would be an exception, and if weather conditions affect the roads.



Representative Walend questioned Mr. Lacy on the road conditions due to weather----if it needs to be addressed.

Jeff Hudson said the bill only changes the standard of when one has to move over. If there was bad weather, one could be going slower in the left lane. The language should take care of most of the concerns. There has to be an available right lane for through traffic. The laws are only as good as their enforcement.

Mr. Lacy cannot tell how many people have been pulled over. The current law says maximum speed limit. Some feel it will be enforced. Marginal at best in some states and in some states it has worked very well.

Jeff Hudson said this provision basically takes the speed limit out. There are other statutes that direct drivers to obey the speed limit. Rep. Fisher had a concern about speeding.

Representative LaRoque said if someone speeds, they would probably be given a citation.

Representative Allen said North Carolina had 55 m.p.h. for a long time and it saved lives, and obviously now, we have higher than 55 mph. She asked about any studies.

Mr. Lacy said the 55 mph was done in the early '70s and was originally done for a cost savings for fuel. What happened was, they lowered the speed limit across the board, and the number of fatalities came down. North Carolina took a more cautious approach on increasing the speed limit. The speed limit has been increased to 70 mph in some cases and it has been done so safely. Yes, there is a correlation of speed and injuries. When people travel down a four lane divided highway, they do expect to travel faster. Some people are going to do what they want to do no matter what.

Representative Allen feels the whole committee needs to hear Mr. Lacy. She cannot support a favorable report out of the committee because based on the criteria, she cannot see fining people for not exceeding the legal speed limit unless they are going 30 or 40 mph.

Representative Walend asked Mr. Lacy if the Department of Transportation took a position. Mr. Lacy said their position is dealing with the signing. They would put up some signs in the areas of need but would not do all roads. The only word problem is the word, "shall", in putting up signs.

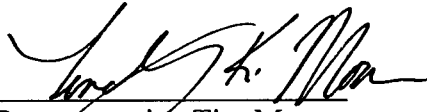
Mr. Lacy stated that accountability falls on his office to establish speed limits for state maintained highways. They can get sued personally. They look at what is reasonable, prudent, and safe. Mr. Lacy trusts the engineer's study who has looked at the situation.

Upon a motion made by Representative Allen, and seconded by Representative Walend, the proposed committee substitute received a report without prejudice back to the full committee.

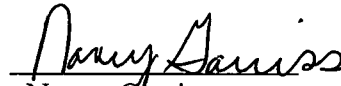
Representative Allen reiterates that Mr. Lacy should be asked to more fully address the full committee.

There being no further business, the Chair adjourned the meeting at 5:35 p.m.

Respectfully submitted,



Representative Tim Moore  
Presiding Chair



Nancy Garriss  
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

1

HOUSE BILL 97

Short Title: Term. Par. Rights/Murder of Parent by Parent.

(Public)

Sponsors: Representatives Moore; Frye and Pate.

Referred to: Judiciary II.

February 7, 2005

A BILL TO BE ENTITLED

AN ACT TERMINATING THE PARENTAL RIGHTS OF A PARENT WHO  
MURDERS THE OTHER PARENT OF THE CHILD.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 7B-1111(a)(8) reads as rewritten:

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

...

(8) The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent, or other child residing in the home; ~~or~~ has committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the ~~home~~; or has committed murder or voluntary manslaughter of the other parent of the child. The petitioner has the burden of proving any of these offenses in the termination of parental rights hearing by (i) proving the elements of the offense or (ii) offering proof that a court of competent jurisdiction has convicted the parent of the offense, whether or not the conviction was by way of a jury verdict or any kind of plea.

...."

**SECTION 2.** This act is effective when it becomes law.



**BILL ANALYSIS**

# **HOUSE BILL 97:**

## **Termination of Parental Rights/Murder of Parent by Parent**

**Committee:** House Judiciary II  
**Date:** March 15, 2005  
**Version:** 1<sup>st</sup> Edition

**Introduced by:** Representative Moore  
**Summary by:** Drupti Chauhan  
Committee Counsel

**SUMMARY:** *House Bill 97 would allow a court to terminate the parental rights of a parent if the court finds that the parent has committed the murder or voluntary manslaughter of the other parent of the child.*

**CURRENT LAW:** A termination of parental rights proceeding consists of two steps: adjudication and disposition. A court may terminate the parental rights upon a finding of one or more of the grounds set forth in G.S. 7B-1111(a), which governs the adjudication process. One of the grounds for termination includes a finding that the parent has committed murder or voluntary manslaughter of another child of the parent or other child living in the home; aided or attempted to commit murder or manslaughter of the child or of another child of the parent, or other child living in the home; or has committed a felony assault that resulted in a serious bodily injury to the child, another child of the parent, or other child living in the home. G.S. 7B-1110 provides that during the disposition stage of a termination of parental rights proceeding, a court shall issue an order terminating parental rights if it determines that any one or more of the grounds in G.S. 7B-1111 exists unless the court further determines that the best interests of the child require that the parental rights not be terminated.

**BILL ANALYSIS:** House Bill 97 would provide an additional ground upon which a court may terminate parental rights. A court could terminate parental rights if it finds that a parent has committed the murder or voluntary manslaughter of the other parent of the child and the petitioner proves the elements of the offense or offers proof that a court of competent jurisdiction has convicted the parent of the offense either by a jury verdict or some type of plea.

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

House Pages

Name Of Committee: J II Date: 3-15-05

1. Name: Elizabeth Edwards

County: Rowan

Sponsor: Rep. Fred Steen

2. Name: Shane Edwards

County: Rowan

Sponsor: Rep. Fred Steen

3. Name: Mary Lynn Edwards

County: Rowan

Sponsor: Rep. Fred Steen

4. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

5. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

Sgt-At-Arms

1. Name: BILL FREEMAN

2. Name: FRANK PREVO

3. Name: \_\_\_\_\_

4. Name: \_\_\_\_\_

5. Name: \_\_\_\_\_

# VISITOR REGISTRATION SHEET

JUDICIARY II

March 15, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

<i>Anne Davis</i>	<i>ADJ</i>
<i>Beth Froehling</i>	<i>NCCADV</i>
<i>Barry Smith</i>	<i>Freedom Newspapers</i>
<i>Nancy Davis</i>	<i>LA-Rep. Moore</i>
<i>Barbara Barry</i>	<i>Cleveland Co.</i>
<i>Jennifer Sullivan</i>	<i>NASW-NC / @2001</i>
<i>Esther J. Hegli</i>	<i>NC DSS</i>
<i>Jane Smith</i>	<i>NC DSS</i>
<i>L. Vagda</i>	<i>UNCTV</i>
<i>Brian Lewis</i>	<i>Covenant at NC's Children</i>
<i>Starla McKenry</i>	<i>NC DHHS</i>

**MINUTES  
HOUSE COMMITTEE ON  
JUDICIARY II**

Thursday, March 17, 2005

The House Committee on Judiciary II met on Thursday, March 17, 2005, in Room 421 of the Legislative Office Building at 10:00 AM. The following members were present: Chairman Mickey Michaux, Vice-Chairs Alice Bordsen, James Harrell and Timothy Moore, Representatives Allen, Farmer-Butterfield, Fisher, Folwell, Gulley, Walend and Wiley. Drupti Chauhan, Karen Cochran-Brown and Jeff Hudson, Staff Counselors were also in attendance. A Visitor Registration list is included and made part of these minutes.


The Chairman called the meeting to order and recognized Pages, Sergeant.-At-Arms, Staff and visitors. The following bill was considered:


The Chair recognized Representative Lucy Allen to give the report from the subcommittee on **HB 12, A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT ON HIGHWAYS OF FOUR OR MORE LANES A VEHICLE TRAVELING AT LESS THAN THE NORMAL SPEED OF OTHER VEHICLES SHALL NOT BE DRIVEN IN THE LEFTMOST LANE.** The subcommittee was not able to give a favorable report on the bill, but returned it back to the full committee without prejudice (See Attachment 2minutes). Rep. LaRoque was asked to explain the Propose Committee Substitute (PCS). Rep. Wiley moved that PCS be adopted for discussion-Committee voted to discuss PCS.

After much discussion the Committee was unable to give a favorable report to the bill, Rep. LaRoque then requested that the bill be moved from Judiciary II and had would have it re-referred to the Rules Committee.

There being no further business, the Chair adjourned the meeting at 10:40 AM.

Respectfully submitted,

  
\_\_\_\_\_  
Representative H. M. Michaux, Jr.  
Presiding Chair

  
\_\_\_\_\_  
Anita Wilder  
Committee Assistant

# **AGENDA**

## **HOUSE COMMITTEE ON JUDICIARY II**

**March 17, 2005  
Room 421  
10:00 AM**

### **OPENING REMARKS**

Representative Mickey Michaux, Chair

### **AGENDA ITEMS**

**HB 12– Left Lane For Passing Only – Rep. Stephen LaRoque**



**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2005-2006 SESSION**

You are hereby notified that the Committee on **JUDICIARY II** will meet as follows:

**DAY & DATE:**     **Thursday, March 17, 2005**

**TIME:**             **10:00 a.m.**

**LOCATION:**        **Room 421**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):  
**HB 12 Left Lane For Passing Only – Rep. Stephen LaRoque.**

Respectfully,  
Representative H. M. Michaux, Jr.  
Chair

I hereby certify this notice was filed by the committee assistant at the following offices at  
**12:00 A.M. on March 10, 2005.**

\_\_\_\_Principal Clerk  
\_\_\_\_Reading Clerk - House Chamber

Anita Wilder (Committee Assistant)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

1

HOUSE BILL 12

Short Title: Left Lane For Passing Only.

(Public)

Sponsors: Representatives LaRoque; Lewis, Pate, and Walend.

Referred to: Judiciary II.

January 31, 2005

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT ON HIGHWAYS OF FOUR OR MORE LANES A  
VEHICLE TRAVELING AT LESS THAN THE NORMAL SPEED OF OTHER  
VEHICLES SHALL NOT BE DRIVEN IN THE LEFTMOST LANE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-146 is amended by adding a new subsection to read:

"(c1) Upon any highway having four or more lanes for moving traffic and providing for the two-way movement of traffic, no vehicle being driven slower than the normal speed of other vehicles at the time and place under existing conditions shall be driven in the leftmost travel lane unless the vehicle is:

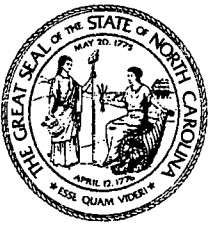
(1) Passing another vehicle;

(2) Preparing for a left turn at an intersection or into a private road or Driveway; or

(3) Preparing to exit the highway at a left exiting interchange.

The Department of Transportation shall designate locations where this subsection is most likely to be violated, including along interstate highways, with signs reading 'Left Lane for Passing Only.'"

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.



# HOUSE BILL 12: Left Lane for Passing Only

## BILL ANALYSIS

**Committee:** House Judiciary II  
**Date:** March 17, 2005  
**Version:** 1<sup>st</sup> Edition

**Introduced by:** Representative LaRoque  
**Summary by:** Jeff Hudson and Drupti Chauhan,  
Committee Counsels

**SUMMARY:** *House Bill 12 would prohibit a vehicle from being driven in the leftmost lane of a highway of four or more lanes if the vehicle is being driven slower than the normal speed of surrounding vehicles.*

**CURRENT LAW:** Under current law, there are a number of provisions that govern which lanes slower moving traffic must use and that set minimum speed standards, including:

- G.S. 20-146(b) provides that on all highways, any vehicle that is traveling at less than the legal maximum speed limit must be driven in the rightmost lane, except when passing another vehicle or preparing for a left turn. A number of other states, including Georgia, South Carolina, Tennessee, and Virginia, have similar "keep right" provisions for any vehicle proceeding at less than the normal speed of traffic at the time and place and under the existing conditions.
- G.S. 20-146(e) provides that when a sign such as "Slower Traffic Keep Right" has been posted, it is unlawful to drive a vehicle on the inside lane next to the median of a dual-lane highway at a speed less than the posted speed limit when this impedes the flow of traffic, except when making a left turn.
- G.S. 20-141(c) provides that with certain exceptions, it is unlawful to drive a passenger vehicle on the interstate or highway system less than 40 miles per hour in a 55 miles per hour speed zone and less than 45 miles per hour in a 60 miles per hour or greater speed zone.
- G.S. 20-141(h) provides that no person may operate a motor vehicle on a highway at such a slow speed that it impedes the normal and reasonable movement of traffic unless it is necessary for safe operation or compliance with the law.

**BILL ANALYSIS:** House Bill 12 would make it unlawful to drive a vehicle in the leftmost travel lane of any highway with four or more lanes at a speed slower than the normal speed of the other vehicles traveling on the highway at the same time and place. The bill does not define the term "normal speed". A vehicle could be driven in the leftmost travel lane at a slower than normal speed if the vehicle is passing another vehicle, preparing for a left turn at an intersection or into a private road or driveway, or preparing to exit the highway at a left exiting interchange.

G.S. 20-176 provides that violation of this provision is an infraction and may subject the violator to a penalty of not more than \$100.00. Violation of this provision is not punishable with imprisonment.

House Bill 12 would also require the Department of Transportation to designate locations where this provision would most likely be violated, including interstate highways, by placing signs that read "Left Lane for Passing Only" at those locations.

**EFFECTIVE DATE:** The bill would become effective December 1, 2005 and apply to offenses committed on or after that date.

H12-SMSB-001

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

D

HOUSE BILL 12  
PROPOSED COMMITTEE SUBSTITUTE H12-CSSB-4 [v.2]

3/16/2005 12:37:31 PM

Short Title: Left Lane For Passing Only.

(Public)

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Sponsors:

---

Referred to:

---

January 31, 2005

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE THAT ON HIGHWAYS A VEHICLE TRAVELING AT  
3 LESS THAN THE NORMAL SPEED OF OTHER VEHICLES SHALL BE  
4 DRIVEN IN THE RIGHT-HAND LANE.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 20-146(b) reads as rewritten:

7 "(b) Upon all highways any vehicle proceeding at less than the ~~legal maximum~~  
8 ~~speed limit~~ normal speed of traffic at the time and place and under the conditions then  
9 existing shall be driven in the right-hand lane then available for thru traffic, or as close  
10 as practicable to the right-hand curb or edge of the highway, except when overtaking  
11 and passing another vehicle proceeding in the same direction or when preparing for a  
12 left turn."

13 **SECTION 2.** G.S. 20-146 is amended by adding a new subsection to read:

14 "(b1) The Department of Transportation may designate locations where subsection  
15 (b) of this section is most likely to be violated, including along interstate highways, with  
16 signs reading 'Left Lane for Passing Only.'"

17 **SECTION 3.** This act becomes effective December 1, 2005, and applies to  
18 offenses committed on or after that date.

House Pages

Name Of Committee: J-II Date: 3-17-2005

1. Name: Kyle Hall

County: Stokes

Sponsor: Rep. Tim Harrell

2. Name: Rebecca Geist

County: Wake

Sponsor: Speaker Block

3. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

4. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

5. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

Sgt-At-Arms

1. Name: Bill Freeman

2. Name: Willie Ripon

3. Name: \_\_\_\_\_

4. Name: \_\_\_\_\_

5. Name: \_\_\_\_\_

**MINUTES  
HOUSE COMMITTEE ON  
JUDICIARY II**

March 24, 2005

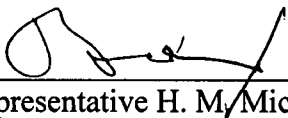
The House Committee on Judiciary II met on Thursday, March 24, 2005, in Room 421 of the Legislative Office Building at 10:00 A.M. The following members were present: Chairman Mickey Michaux, Vice-Chairs Alice Bordsen, James Harrell and Timothy Moore, Representatives Allen, Farmer-Butterfield, Fisher, Folwell, Gulley and Wiley. Drupti Chauhan, Karen Cochrane-Brown and Jeff Hudson, Staff Counselors were in attendance. A Visitor's Registration list is included and made part of these minutes.

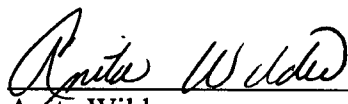
The Chairman called the meeting to order and recognized the Pages, Sergeant-At-Arms, Staff and visitors. The following was considered:

Vice-Chair Alice Bordsen recognized Chairman Michaux to explain **HB 50, A BILL TO BE ENTITLED AN ACT TO ENACT THE NORTH CAROLINA STREET GRANT PREVENTION ACT AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON STREET GANG PREVENTION**. Representative Frye was also recognized to the talk on the bill, along with Karen Cochrane-Brown, Staff Counsel, who gave the bill analysis. Jeff Ray, a representative of the Grass Roots of North Carolina spoke on the bill regarding their concern of Section 2 of HB 50 (See Attachment 3). Chairman Michaux made a motion to amend Section 1 of the bill and upon the motion made by Rep. Fisher, the Committee gave a favorable report to the Proposed Committee Substitute PCS as amended and re-referred to the Committee on Rules.

There being no further business, the Chair adjourned the meeting at 10:30 A.M.

Respectfully submitted,

  
\_\_\_\_\_  
Representative H. M. Michaux, Jr.  
Presiding Chair

  
\_\_\_\_\_  
Anita Wilder  
Committee Assistant

**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative MICHAUX (Chair) for the Committee on JUDICIARY II .

---

☐ Committee Substitute for

**H.B. 0050 A BILL TO BE ENTITLED AN ACT TO ENACT THE NORTH CAROLINA STREET GANG PREVENTION ACT AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON STREET GANG 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 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 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)

03/19/03

FOR JOURNAL USE ONLY

- \_\_\_\_ Pursuant to Rule 36(b), the bill/resolution 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  
\_\_\_\_ the House amendment (s).  
\_\_\_\_ the House committee substitute bill.  
\_\_\_\_ 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.



# **AGENDA**

## **HOUSE COMMITTEE ON JUDICIARY II**

**March 24 2005  
Room 421  
10:00 AM**

### **OPENING REMARKS**

Representative Mickey Michaux, Chair

### **AGENDA ITEMS**

**HB 50– Street Gang Prevention Act – Reps. Michaux and Frye**

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2005-2006 SESSION**

You are hereby notified that the Committee on **JUDICIARY II** will meet as follows:

**DAY & DATE:**     **Thursday, March 24 2005**

**TIME:**             **10:00 a.m.**

**LOCATION:**        **Room 421**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):  
**HB 50 – Street Gang Prevention Act – Reps. Michaux and Frye**

Respectfully,  
Representative H. M. Michaux, Jr.  
Chair

I hereby certify this notice was filed by the committee assistant at the following offices at  
**4:25 p.m. on March 22 2005.**

\_\_\_\_Principal Clerk  
\_\_\_\_Reading Clerk - House Chamber

Anita Wilder (Committee Assistant)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

3

HOUSE BILL 50

Committee Substitute Favorable 3/29/05

Third Edition Engrossed 8/22/05

Short Title: Street Gang Prevention Act.

(Public)

Sponsors:

Referred to:

February 3, 2005

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA STREET GANG PREVENTION  
ACT AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON  
STREET GANG PREVENTION.

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 13A.

"North Carolina Street Gang Prevention Act.

**"§ 14-50.15. Short title.**

This Article shall be known and may be cited as the "North Carolina Street Gang  
Prevention Act".

**"§ 14-50.16. Legislative findings and intent.**

(a) The General Assembly finds and declares that it is the right of every person to  
be secure and protected from fear, intimidation, and physical harm caused by the  
activities of violent groups and individuals. It is not the intent of this Article to interfere  
with the exercise of the constitutionally protected rights of freedom of expression and  
association. The General Assembly recognizes the constitutional right of every citizen  
to harbor and express beliefs on any lawful subject whatsoever, to associate lawfully  
with others who share similar beliefs, to petition lawfully constituted authority for a  
redress of perceived grievances, and to participate in the electoral process.

(b) The General Assembly, however, further finds that the State of North  
Carolina is in a state of crisis that has been caused by violent street gangs whose  
members threaten, terrorize, and commit a multitude of crimes against the peaceful  
citizens of their neighborhoods. These activities, both individually and collectively,  
present a clear and present danger to public order and safety and are not constitutionally  
protected.

(c) The General Assembly finds that there are criminal street gangs operating in North Carolina and that the number of gang-related murders is increasing. It is the intent of the General Assembly in enacting this Article to seek the eradication of criminal activity by street gangs by focusing upon patterns of criminal gang activity and upon the organized nature of street gangs which together are the chief source of terror created by street gangs.

(d) The General Assembly further finds that an effective means of punishing and deterring the criminal activities of street gangs is through forfeiture of the profits, proceeds, and instrumentalities acquired, accumulated, or used by street gangs.

**"§ 14-50.17. Definitions.**

The following definitions apply in this Article:

(1) "Criminal street gang" or "street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, which engages in a pattern of criminal gang activity as defined in subdivision (2) of this section. The existence of the organization, association, or group of individuals associated in fact may be established by evidence of a common name or common identifying signs, symbols, tattoos, graffiti, or attire or other distinguishing characteristics.

(2) "Pattern of criminal gang activity" means the commission, attempted commission, conspiracy to commit, or solicitation, coercion, or intimidation of another person to commit at least two of the following offenses, provided that at least one of these offenses occurred after December 1, 2005, and the last of the offenses occurred within three years, excluding any periods of imprisonment, of prior criminal gang activity:

a. Any offense under Article 5 of Chapter 90 of the General Statutes (Controlled Substances Act).

b. Any offense under Chapter 14 of the General Statutes except Articles 9, 22A, 38, 40, 43, 46, 47, 59 thereof; and further excepting G.S. 14-78.1, 14-82, 14-86, 14-145, 14-179, 14-183, 14-184, 14-186, 14-190.9, 14-195, 14-197, 14-201, 14-247, 14-248, 14-313 thereof.

**"§ 14-50.18. Participation in criminal street gang activity prohibited.**

(a) It is unlawful for any person employed by or associated with a criminal street gang to conduct or participate in the criminal street gang through a pattern of criminal gang activity.

(b) It is unlawful for any person to acquire or maintain, directly or indirectly, through a pattern of criminal gang activity or proceeds derived therefrom, any interest in or control of any real or personal property of any nature, including money.

(c) It is unlawful for any person who acts as an organizer, supervisor, or in any other position of management with regard to a criminal street gang to engage in, directly or indirectly, or conspire to engage in, a pattern of criminal gang activity.

1       (d) It is unlawful for any person to cause, encourage, solicit, or coerce another to  
2 participate in a criminal street gang.

3       (e) It is unlawful for any person to communicate, directly or indirectly, with  
4 another any threat of injury or damage to the person or property of the other person or to  
5 any associate or relative of the other person with the intent to deter the person from  
6 assisting a member or associate of a criminal street gang to withdraw from such  
7 criminal street gang.

8       (f) It is unlawful for any person to communicate, directly or indirectly, with  
9 another any threat of injury or damage to the person or property of the other person or to  
10 any associate or relative of the other person with the intent to punish or retaliate against  
11 the person for having withdrawn from a criminal street gang.

12       (g) Any person who violates this section shall be punished as follows:

13           (1) A person who violates subsection (a) or (b) of this section shall, in  
14 addition to any other penalty imposed by law, be punished as a Class  
15 H felon.

16           (2) A person who violates subsection (a), (b), (d), (e), or (f) of this section  
17 may, if the person also violates subsection (c) of this section in the  
18 same course of conduct, in addition to any other penalty provided by  
19 law, be punished by imprisonment for an additional 10 years which  
20 shall be served consecutively to any other sentence imposed on the  
21 person by law.

22           (3) A person who violates subsection (d), (e), or (f) of this section shall, in  
23 addition to any other penalty provided by law, be punished as a Class  
24 H felon.

25       (h) Any crime committed in violation of this section shall be considered a  
26 separate offense.

27 **"§ 14-50.19. Enhanced offense for criminal gang activity.**

28       Unless a different classification is expressly stated, a person who is convicted of an  
29 offense that is committed for the benefit of, at the direction of, or in association with,  
30 any criminal street gang, is guilty of an offense that is one class higher than the offense  
31 committed. A Class A1 misdemeanor shall be enhanced to a Class I felony under this  
32 section.

33       This section does not apply to the offenses set forth in G.S. 14-50.18.

34 **"§ 14-50.20. Reports of disposition; criminal street gang activity.**

35       When a defendant is found guilty of an offense, the presiding judge shall determine  
36 whether the offense was committed for the benefit of, at the direction of, or in  
37 association with, any criminal street gang. If the judge determines that the offense so  
38 qualifies, then the judge shall indicate on the form reflecting the judgment that the  
39 offense involved criminal street gang activity. The clerk of court shall ensure that the  
40 official record of the defendant's conviction includes the court's determination.

41 **"§ 14-50.21. Contraband, seizure, and forfeiture.**

42       (a) All of the following are declared to be contraband, and no person shall have a  
43 property interest in them:

(1) All property that is directly or indirectly used or intended for use in any manner to facilitate a violation of this Article.

(2) Any property constituting or derived from gross profits or other proceeds obtained from a violation of this Article.

(b) In any action under this section, the court may enter a restraining order in connection with any interest that is subject to forfeiture.

(c) Within 60 days of the date of the seizure of contraband pursuant to this section, the district attorney or the Attorney General shall initiate a forfeiture proceeding as provided in G.S. 14-2.3.

**"§ 14-50.22. Local ordinances not preempted by State law.**

Nothing in this Article shall prevent a local governing body from adopting and enforcing ordinances relating to gangs and gang violence that are consistent with this Article. Where local laws duplicate or supplement the provisions of this Article, this Article shall be construed as providing alternative remedies and not as preempting the field.

**"§ 14-50.23. Real property used by criminal street gangs declared a public nuisance; abatement.**

Any real property that is erected, established, maintained, owned, leased, or used by any criminal street gang for the purpose of conducting criminal gang activity shall constitute a public nuisance and may be abated as provided by Article 1 of Chapter 19 of the General Statutes. If the property is owned by a person who is not a member of the criminal street gang, this section shall apply only if the person has knowledge of the criminal gang activity.

**"§ 14-50.24. Matters proved in criminal trial court.**

A conviction of an offense defined as criminal gang activity shall preclude the defendant from contesting any factual matters determined in the criminal proceeding in any subsequent civil action or proceeding based on the same conduct."

**"§ 14-50.25. Applicability to juveniles under the age of twelve.**

The provisions of this Article shall not apply to juveniles under the age of twelve."

SECTION 2. Chapter 14 of the General Statutes is amended by adding a new section to read:

**"§ 14-34.9. Discharging a firearm from within an enclosure.**

Unless covered under some other provision of law providing greater punishment, any person who willfully or wantonly discharges or attempts to discharge a firearm, as a part of a pattern of criminal gang activity, from within any building, structure, motor vehicle, or other conveyance, erection, or enclosure toward a person or persons not within that enclosure shall be punished as a Class E felon."

SECTION 3. G.S. 15A-533 reads as rewritten:

**"§ 15A-533. Right to pretrial release in capital and noncapital cases.**

(a) A defendant charged with any crime, whether capital or noncapital, who is alleged to have committed this crime while still residing in or subsequent to his escape or during an unauthorized absence from involuntary commitment in a mental health facility designated or licensed by the Department of Health and Human Services, and whose commitment is determined to be still valid by the judge or judicial officer

1 authorized to determine pretrial release to be valid, has no right to pretrial release. In  
2 lieu of pretrial release, however, the individual shall be returned to the treatment facility  
3 in which he was residing at the time of the alleged crime or from which he escaped or  
4 absented himself for continuation of his treatment pending the additional proceedings  
5 on the criminal offense.

6 (b) A defendant charged with a noncapital offense must have conditions of  
7 pretrial release determined, in accordance with G.S. 15A-534.

8 (c) A judge may determine in his discretion whether a defendant charged with a  
9 capital offense may be released before trial. If he determines release is warranted, the  
10 judge must authorize release of the defendant in accordance with G.S. 15A-534.

11 ~~(d) Subject to rebuttal by the person, it shall be presumed~~ There shall be a  
12 rebuttable presumption that no condition of release will reasonably assure the  
13 appearance of the person as required and the safety of the community if a judicial  
14 official finds the following:

- 15 (1) There is reasonable cause to believe that the person committed an  
16 offense involving trafficking in a controlled substance;
- 17 (2) The drug trafficking offense was committed while the person was on  
18 pretrial release for another offense; and
- 19 (3) The person has been previously convicted of a Class A through E  
20 felony or an offense involving trafficking in a controlled substance and  
21 not more than five years has elapsed since the date of conviction or the  
22 person's release from prison for the offense, whichever is later.

23 (e) There shall be a rebuttable presumption that no condition of release will  
24 reasonably assure the appearance of the person as required and the safety of the  
25 community, if a judicial official finds the following:

- 26 (1) There is reasonable cause to believe that the person committed an  
27 offense for the benefit of, at the direction of, or in association with,  
28 any criminal street gang, as defined in G.S. 14-50.17;
- 29 (2) The offense described in subdivision (1) of this subsection was  
30 committed while the person was on pretrial release for another offense;  
31 and
- 32 (3) The person has been previously convicted of an offense described in  
33 G.S. 14-50.17, and not more than five years has elapsed since the date  
34 of conviction or the person's release for the offense, whichever is later.

35 ~~Such person~~ Persons who are considered for bond under the provisions of subsections  
36 (d) and (e) of this section may only be released by a district or superior court judge upon  
37 a finding that there is a reasonable assurance that the person will appear and release  
38 does not pose an unreasonable risk of harm to the community."

39 **SECTION 4.** G.S. 15A-1340.16(d) reads as rewritten:

40 "(d) Aggravating Factors. – The following are aggravating factors:

- 41 (1) The defendant induced others to participate in the commission of the  
42 offense or occupied a position of leadership or dominance of other  
43 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, including a domestic relationship, to commit the offense.



- 1 (16) The offense involved the sale or delivery of a controlled substance to a  
2 minor.
- 3 (16a) The offense is the manufacture of methamphetamine and was  
4 committed where a person under the age of 18 lives, was present, or  
5 was otherwise endangered by exposure to the drug, its ingredients, its  
6 by-products, or its waste.
- 7 (17) The offense for which the defendant stands convicted was committed  
8 against a victim because of the victim's race, color, religion,  
9 nationality, or country of origin.
- 10 (18) The defendant does not support the defendant's family.
- 11 (18a) The defendant has previously been adjudicated delinquent for an  
12 offense that would be a Class A, B1, B2, C, D, or E felony if  
13 committed by an adult.
- 14 (19) The serious injury inflicted upon the victim is permanent and  
15 debilitating.
- 16 (20) Any other aggravating factor reasonably related to the purposes of  
17 sentencing.

18 Evidence necessary to prove an element of the offense shall not be used to prove any  
19 factor in aggravation, and the same item of evidence shall not be used to prove more  
20 than one factor in aggravation. Evidence necessary to establish that an enhanced  
21 sentence is required under ~~G.S. 15A-1340.16A~~ G.S. 15A-1340.16A, 15A-1340.16B, or  
22 14-50.19 may not be used to prove any factor in aggravation.

23 The judge shall not consider as an aggravating factor the fact that the defendant  
24 exercised the right to a jury trial."

25 SECTION 5. Chapter 15A of the General Statutes is amended by adding a  
26 new section to read:

27 "§ 15A-1340.16E. Enhanced sentence if defendant is convicted of a Class A, B1,  
28 B2, C, D, or E felony that was committed for the benefit of, at the  
29 direction of, or in association with, any criminal street gang, and the  
30 defendant possessed, displayed, or discharged a firearm during the  
31 commission of the felony.

32 (a) Notwithstanding G.S. 15A-1340.16A, a person who is convicted of a Class A,  
33 B1, B2, C, D, or E felony that was committed for the benefit of, at the direction of, or in  
34 association with, any criminal street gang as defined in G.S. 14-50.17, and who  
35 possessed, displayed, or discharged a firearm during the commission of the felony shall  
36 be punished pursuant to one of the following subdivisions:

- 37 (1) If the person possessed a firearm during the commission of the felony,  
38 the person shall, in addition to the punishment for the underlying  
39 felony, be sentenced to a minimum term of imprisonment for 60  
40 months.
- 41 (2) If the person displayed a firearm during the commission of the felony,  
42 the person shall, in addition to the punishment for the underlying  
43 felony, be sentenced to a minimum term of imprisonment for 84  
44 months.

(3) If the person discharged 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 120 months.

(b) An indictment or information for the Class A, B1, B2, C, D, or E 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 by possessing, displaying, or discharging the firearm. 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 the issues. If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issues set out in subsection (a) of this section, then a jury shall be impaneled to determine the issues.

(d) The enhanced punishment provided by this section for the acts of possessing or displaying a firearm applies even if the firearm is incapable of firing.

(e) 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 defendant."

**SECTION 6.** The Revisor of Statutes shall recodify the existing G.S. 15A-1340.16B and subsequent statutes accordingly.

**SECTION 7.** G.S. 15A-1340.16A(c) reads as rewritten:

"(c) If Except as provided in G.S. 15A-1340.16B, 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)."

**SECTION 8.** There is appropriated to the Department of Justice the amount of one hundred fifty thousand dollars (\$150,000) to obtain an enterprise license for purchase of software that will create a statewide criminal street gang member database. The database software shall be substantially similar to the Gang Net Program that is currently being used in Durham County.

**SECTION 9.** There is appropriated to the Governor's Crime Commission, the sum of two million dollars (\$2,000,000) for the 2005-2006 fiscal year to be used to provide grants for street gang violence prevention and intervention programs.

The Governor's Crime Commission shall develop the criteria for eligibility for these funds. The criteria shall include a matching requirement of twenty-five percent (25%), one-half of which may be in in-kind contributions, and presentation of a written

1 plan for the services to be provided by the funds. Funds shall be available to public and  
2 private entities or agencies for juvenile or adult programs that meet the criteria  
3 established by the Governor's Crime Commission.

4 The Governor's Crime Commission shall report on the uses of these funds no  
5 later than April 1, 2006, to the House of Representatives Appropriations Subcommittee  
6 on Justice and Public Safety, the Senate Appropriations Subcommittee on Justice and  
7 Public Safety, and the Fiscal Research Division.

8 **SECTION 10.** Sections 8 and 9 of this act become effective July 1, 2005.  
9 The remainder of this act becomes effective December 1, 2005, and applies to offenses  
10 committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

1

HOUSE BILL 50

Short Title: Street Gang Prevention Act.

(Public)

Sponsors: Representatives Michaux, Frye (Primary Sponsors); Adams, Blackwood, Carney, Clary, Cole, Dickson, Eddins, Jones, Setzer, Walker, Alexander, B. Allen, Capps, Coleman, Crawford, Culp, Farmer-Butterfield, Gibson, Harrison, Insko, Lewis, Lucas, Luebke, McGee, Vinson, Wilkins, and Womble.

Referred to: Judiciary II.

February 3, 2005

1 A BILL TO BE ENTITLED  
2 AN ACT TO ENACT THE NORTH CAROLINA STREET GANG PREVENTION  
3 ACT AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON  
4 STREET GANG PREVENTION.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Chapter 14 of the General Statutes is amended by adding a  
7 new Article to read:

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9 "North Carolina Street Gang Prevention Act.

10 "§ 14-50.15. Short title.

11 This Article shall be known and may be cited as the "North Carolina Street Gang  
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15 be secure and protected from fear, intimidation, and physical harm caused by the  
16 activities of violent groups and individuals. It is not the intent of this Article to interfere  
17 with the exercise of the constitutionally protected rights of freedom of expression and  
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19 to harbor and express beliefs on any lawful subject whatsoever, to associate lawfully  
20 with others who share similar beliefs, to petition lawfully constituted authority for a  
21 redress of perceived grievances, and to participate in the electoral process.

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23 Carolina is in a state of crisis that has been caused by violent street gangs whose  
24 members threaten, terrorize, and commit a multitude of crimes against the peaceful  
25 citizens of their neighborhoods. These activities, both individually and collectively,

1 present a clear and present danger to public order and safety and are not constitutionally  
2 protected.

3 (c) The General Assembly finds that there are criminal street gangs operating in  
4 North Carolina and that the number of gang-related murders is increasing. It is the intent  
5 of the General Assembly in enacting this Article to seek the eradication of criminal  
6 activity by street gangs by focusing upon patterns of criminal gang activity and upon the  
7 organized nature of street gangs which together are the chief source of terror created by  
8 street gangs.

9 (d) The General Assembly further finds that an effective means of punishing and  
10 detering the criminal activities of street gangs is through forfeiture of the profits,  
11 proceeds, and instrumentalities acquired, accumulated, or used by street gangs.

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16 formal or informal, which engages in a pattern of criminal gang  
17 activity as defined in subdivision (2) of this section. The existence of  
18 the organization, association, or group of individuals associated in fact  
19 may be established by evidence of a common name or common  
20 identifying signs, symbols, tattoos, graffiti, or attire or other  
21 distinguishing characteristics.

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23 commission, conspiracy to commit, or solicitation, coercion, or  
24 intimidation of another person to commit at least two of the following  
25 offenses, provided that at least one of these offenses occurred after  
26 December 1, 2005, and the last of the offenses occurred within three  
27 years, excluding any periods of imprisonment, of prior criminal gang  
28 activity:

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30 Statutes (Controlled Substances Act).

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32 Articles 9, 22A, 38, 40, 43, 46, 47, 59 thereof; and further  
33 excepting G.S. 14-78.1, 14-82, 14-86, 14-145, 14-179, 14-183,  
34 14-184, 14-186, 14-190.9, 14-195, 14-197, 14-201, 14-247,  
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40 (b) It is unlawful for any person to acquire or maintain, directly or indirectly,  
41 through a pattern of criminal gang activity or proceeds derived therefrom, any interest in  
42 or control of any real or personal property of any nature, including money.

43 (c) It is unlawful for any person who occupies a position of organizer,  
44 supervisory position, or any other position of management with regard to a criminal

1 street gang to engage in, directly or indirectly, or conspire to engage in, a pattern of  
2 criminal gang activity.

3 (d) It is unlawful for any person to cause, encourage, solicit, or coerce another to  
4 participate in a criminal street gang.

5 (e) It is unlawful for any person to communicate, directly or indirectly, with  
6 another any threat of injury or damage to the person or property of the other person or to  
7 any associate or relative of the other person with the intent to deter the person from  
8 assisting a member or associate of a criminal street gang to withdraw from such  
9 criminal street gang.

10 (f) It is unlawful for any person to communicate, directly or indirectly, with  
11 another any threat of injury or damage to the person or property of the other person or to  
12 any associate or relative of the other person with the intent to punish or retaliate against  
13 the person for having withdrawn from a criminal street gang.

14 (g) Any person who violates this section shall be punished as follows:

15 (1) A person who violates subsection (a) or (b) of this section shall, in  
16 addition to any other penalty imposed by law, be punished as a Class E  
17 felon.

18 (2) A person who violates subsection (a), (b), (d), (e), or (f) of this section  
19 may, if the person also violates subsection (c) of this section in the  
20 same course of conduct, in addition to any other penalty provided by  
21 law, be punished by imprisonment for an additional 10 years which  
22 shall be served consecutively to any other sentence imposed on the  
23 person by law.

24 (3) A person who violates subsection (d), (e), or (f) of this section shall, in  
25 addition to any other penalty provided by law, be punished as a Class  
26 G felon.

27 (h) Any crime committed in violation of this section shall be considered a  
28 separate offense.

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34 section.

35 This section does not apply to the offenses set forth in G.S. 14-50.18.

36 **"§ 14-50.20. Reports of disposition; criminal street gang activity.**

37 When a defendant is found guilty of an offense, the presiding judge shall determine  
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40 qualifies, then the judge shall indicate on the form reflecting the judgment that the  
41 offense involved criminal street gang activity. The clerk of court shall ensure that the  
42 official record of the defendant's conviction includes the court's determination.

43 **"§ 14-50.21. Contraband, seizure, and forfeiture.**

(a) All of the following are declared to be contraband, and no person shall have a property interest in them:

(1) All property that is directly or indirectly used or intended for use in any manner to facilitate a violation of this Article.

(2) Any property constituting or derived from gross profits or other proceeds obtained from a violation of this Article.

(b) In any action under this section, the court may enter a restraining order in connection with any interest that is subject to forfeiture.

(c) Within 60 days of the date of the seizure of contraband pursuant to this section, the district attorney or the Attorney General shall initiate a forfeiture proceeding as provided in G.S. 14-2.3.

**"§ 14-50.22. Local ordinances not preempted by State law.**

Nothing in this Article shall prevent a local governing body from adopting and enforcing ordinances relating to gangs and gang violence that are consistent with this Article. Where local laws duplicate or supplement the provisions of this Article, this Article shall be construed as providing alternative remedies and not as preempting the field.

**"§ 14-50.23. Real property used by criminal street gangs declared a public nuisance; abatement; persons injured by gangs entitled to treble damages.**

Any real property that is erected, established, maintained, owned, leased, or used by any criminal street gang for the purpose of conducting criminal gang activity shall constitute a public nuisance and may be abated as provided by Article 1 of Chapter 19 of the General Statutes. If the property is owned by a person who is not a member of the criminal street gang, this section shall apply only if the person has knowledge of the criminal gang activity.

**"§ 14-50.24. Matters proved in criminal trial court.**

A conviction of an offense defined as criminal gang activity shall preclude the defendant from contesting any factual matters determined in the criminal proceeding in any subsequent civil action or proceeding based on the same conduct."

**SECTION 2.** Chapter 14 of the General Statutes is amended by adding a new section to read:

**"§ 14-34.9. Discharging a firearm from within an enclosure.**

Unless covered under some other provision of law providing greater punishment, any person who willfully or wantonly discharges or attempts to discharge a firearm from within any building, structure, motor vehicle, ~~aircraft, watercraft,~~ or other conveyance, ~~device, equipment,~~ erection, or enclosure toward a person or persons not within that enclosure shall be punished as a Class E felon."

**SECTION 3.** G.S. 15A-533 reads as rewritten:

**"§ 15A-533. Right to pretrial release in capital and noncapital cases.**

(a) A defendant charged with any crime, whether capital or noncapital, who is alleged to have committed this crime while still residing in or subsequent to his escape or during an unauthorized absence from involuntary commitment in a mental health facility designated or licensed by the Department of Health and Human Services, and

1 whose commitment is determined to be still valid by the judge or judicial officer  
2 authorized to determine pretrial release to be valid, has no right to pretrial release. In  
3 lieu of pretrial release, however, the individual shall be returned to the treatment facility  
4 in which he was residing at the time of the alleged crime or from which he escaped or  
5 absented himself for continuation of his treatment pending the additional proceedings  
6 on the criminal offense.

7 (b) A defendant charged with a noncapital offense must have conditions of  
8 pretrial release determined, in accordance with G.S. 15A-534.

9 (c) A judge may determine in his discretion whether a defendant charged with a  
10 capital offense may be released before trial. If he determines release is warranted, the  
11 judge must authorize release of the defendant in accordance with G.S. 15A-534.

12 (d) ~~Subject to rebuttal by the person, it shall be presumed~~ There shall be a  
13 rebuttable presumption that no condition of release will reasonably assure the  
14 appearance of the person as required and the safety of the community if a judicial  
15 official finds the following:

16 (1) There is reasonable cause to believe that the person committed an  
17 offense involving trafficking in a controlled substance;

18 (2) The drug trafficking offense was committed while the person was on  
19 pretrial release for another offense; and

20 (3) The person has been previously convicted of a Class A through E  
21 felony or an offense involving trafficking in a controlled substance and  
22 not more than five years has elapsed since the date of conviction or the  
23 person's release from prison for the offense, whichever is later.

24 (e) There shall be a rebuttable presumption that no condition of release will  
25 reasonably assure the appearance of the person as required and the safety of the  
26 community, if a judicial official finds the following:

27 (1) There is reasonable cause to believe that the person committed an  
28 offense for the benefit of, at the direction of, or in association with,  
29 any criminal street gang, as defined in G.S. 14-50.17;

30 (2) The offense described in subdivision (1) of this subsection was  
31 committed while the person was on pretrial release for another offense;  
32 and

33 (3) The person has been previously convicted of an offense described in  
34 G.S. 14-50.17, and not more than five years has elapsed since the date  
35 of conviction or the person's release for the offense, whichever is later.

36 ~~Such person~~ Persons who are considered for bond under the provisions of subsections  
37 (d) and (e) of this section may only be released by a district or superior court judge upon  
38 a finding that there is a reasonable assurance that the person will appear and release  
39 does not pose an unreasonable risk of harm to the community."

40 **SECTION 4.** G.S. 15A-1340.16(d) reads as rewritten:

41 "(d) Aggravating Factors. – The following are aggravating factors:

42 (1) The defendant induced others to participate in the commission of the  
43 offense or occupied a position of leadership or dominance of other  
44 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, including a domestic relationship, to commit the offense.

- 1 (16) The offense involved the sale or delivery of a controlled substance to a  
2 minor.
- 3 (16a) The offense is the manufacture of methamphetamine and was  
4 committed where a person under the age of 18 lives, was present, or  
5 was otherwise endangered by exposure to the drug, its ingredients, its  
6 by-products, or its waste.
- 7 (17) The offense for which the defendant stands convicted was committed  
8 against a victim because of the victim's race, color, religion,  
9 nationality, or country of origin.
- 10 (18) The defendant does not support the defendant's family.
- 11 (18a) The defendant has previously been adjudicated delinquent for an  
12 offense that would be a Class A, B1, B2, C, D, or E felony if  
13 committed by an adult.
- 14 (19) The serious injury inflicted upon the victim is permanent and  
15 debilitating.
- 16 (20) Any other aggravating factor reasonably related to the purposes of  
17 sentencing.

18 Evidence necessary to prove an element of the offense shall not be used to prove any  
19 factor in aggravation, and the same item of evidence shall not be used to prove more  
20 than one factor in aggravation. Evidence necessary to establish that an enhanced  
21 sentence is required under ~~G.S. 15A-1340.16A~~ G.S. 15A-1340.16A,  
22 G.S. 15A-1340.16B, or G.S. 14-50.19 may not be used to prove any factor in  
23 aggravation.

24 The judge shall not consider as an aggravating factor the fact that the defendant  
25 exercised the right to a jury trial."

26 **SECTION 5.** Chapter 15A of the General Statutes is amended by adding a  
27 new section to read:

28 **"§ 15A-1340.16B. Enhanced sentence if defendant is convicted of a Class A, B1,**  
29 **B2, C, D, or E felony that was committed for the benefit of, at the**  
30 **direction of, or in association with, any criminal street gang, and the**  
31 **defendant possessed, displayed, or discharged a firearm during the**  
32 **commission of the felony.**

33 (a) Notwithstanding G.S. 15A-1340.16A, a person who is convicted of a Class A,  
34 B1, B2, C, D, or E felony that was committed for the benefit of, at the direction of, or in  
35 association with, any criminal street gang as defined in G.S. 14-50.17, and who  
36 possessed, displayed, or discharged a firearm during the commission of the felony shall  
37 be punished pursuant to one of the following subdivisions:

- 38 (1) If the person possessed a firearm during the commission of the felony,  
39 the person shall, in addition to the punishment for the underlying  
40 felony, be sentenced to a minimum term of imprisonment for 60  
41 months.
- 42 (2) If the person displayed a firearm during the commission of the felony,  
43 the person shall, in addition to the punishment for the underlying

felony, be sentenced to a minimum term of imprisonment for 84 months.

(3) If the person discharged 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 120 months.

(b) An indictment or information for the Class A, B1, B2, C, D, or E 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 by possessing, displaying, or discharging the firearm. 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 the issues. If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issues set out in subsection (a) of this section, then a jury shall be impaneled to determine the issues.

(d) The enhanced punishment provided by this section for the acts of possessing or displaying a firearm applies even if the firearm is incapable of firing.

(e) 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 defendant."

**SECTION 6.** The Revisor of Statutes shall recodify the existing G.S. 15A-1340.16B and subsequent statutes accordingly.

**SECTION 7.** G.S. 15A-1340.16A(c) reads as rewritten:

"(c) ~~If Except~~ as provided in G.S. 15A-1340.16B, 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)."

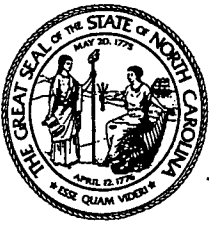
**SECTION 8.** There is appropriated to the State Bureau of Investigation the amount of one hundred fifty thousand dollars (\$150,000) to obtain an enterprise license for purchase of software that will create a statewide criminal street gang member database. The database software shall be substantially similar to the Gang Net Program that is currently being used in Durham County.

**SECTION 9.** There is appropriated to the Governor's Crime Commission, the sum of twenty million dollars (\$20,000,000) for the 2005-2006 fiscal year to be used to provide grants for street gang violence prevention and intervention programs.

1           The Governor's Crime Commission shall develop the criteria for eligibility  
2 for these funds. The criteria shall include a matching requirement of twenty-five percent  
3 (25%), one-half of which may be in in-kind contributions, and presentation of a written  
4 plan for the services to be provided by the funds. Funds shall be available to public and  
5 private entities or agencies for juvenile or adult programs that meet the criteria  
6 established by the Governor's Crime Commission.

7           The Governor's Crime Commission shall report on the uses of these funds no  
8 later than April 1, 2006, to the House of Representatives Appropriations Subcommittee  
9 on Justice and Public Safety, the Senate Appropriations Subcommittee on Justice and  
10 Public Safety, and the Fiscal Research Division.

11           **SECTION 10.** Sections 8 and 9 of this act become effective July 1, 2005.  
12 The remainder of this act becomes effective December 1, 2005, and applies to offenses  
13 committed on or after that date.



# HOUSE BILL 50: Street Gang Prevention Act.

## BILL ANALYSIS

**Committee:** House Judiciary II  
**Date:** March 24, 2005  
**Version:** First Edition

**Introduced by:** Reps. Michaux and Frye  
**Summary by:** Karen Cochrane Brown  
Committee Co-Counsel

**SUMMARY:** *House Bill 50 is a recommendation of the House Select Committee on Street Gang Prevention. The bill, (i) creates a new group of criminal offenses and sentence enhancements for participation in or aiding street gang activity, (ii) provides for seizure and forfeiture of property used to commit or obtained as a result of criminal street gang activity, (iii) creates a new crime of discharging a firearm from within an enclosure, (iv) creates a rebuttable presumption against granting pretrial release to a person charged with a street gang related offense, (v) provides that evidence used to prove an enhancement to a sentence for assisting street gang activity can not be used to prove an aggravating factor under structured sentencing, (vi) provides for enhanced sentences when the defendant commits a serious felony which benefits a street gang and possesses, displays, or discharges a firearm, (vii) appropriates \$150,000 to the SBI to purchase software to establish a statewide street gang member database, and (viii) appropriates \$20 million to the Governor's Crime Commission to provide grants for street gang prevention and intervention programs.*

## BILL ANALYSIS:

Section 1 of the bill creates a new Article 13A of Chapter 14 of the General Statutes (Criminal Law) entitled the "North Carolina Street Gang Prevention Act". The new article contains the following provisions:

**G.S. 14-50.16** – sets out legislative findings and intent concerning the problem of street gang activity.

**G.S. 14-50.17** – defines the term "criminal street gang" as "any ongoing organization, association, or group of three or more persons, whether formal or informal, which engages in a pattern of criminal gang activity." The term "pattern of criminal gang activity" means "the commission, attempted commission, conspiracy to commit, or solicitation, coercion, or intimidation of another person to commit at least two of the following offenses". The listed offenses are any violation of the Controlled Substances Act and any violation of the Criminal Law except for certain specified crimes. At least one of the offenses must have occurred after December 1, 2005, and the last offense must have occurred within three years of prior gang activity.

**G.S. 14-50.18** – prohibits participation in criminal street gang activity by creating the following offenses:

- Makes it a Class E felony to participate in a criminal street gang through a pattern of criminal gang activity or to acquire or maintain property through a pattern of criminal gang activity.
- Adds a 10-year penalty enhancement to a person's conviction if the person occupies a position of organizer, supervisor or manager of criminal gang activity or if the person conspires to engage in a pattern of criminal gang activity.
- Makes it a Class G felony to solicit or coerce another to participate in a criminal street gang, to communicate a threat of injury to a person or relative or associate of a person, or to threaten to

# HOUSE BILL 50

Page 2

damage property with the intent to deter a person from withdrawing from a criminal street gang or to punish a person for having withdrawn from a criminal street gang.

**G.S. 14-50.19** - provides that a person convicted of an offense that was committed to benefit a criminal street gang is guilty of an offense that is one class higher than the offense committed. This does not apply to offenses under G.S. 14-50.18.

**G.S. 14-50.20** – requires that the judge determine whether an offense was committed for the benefit of a criminal street gang and to reflect the determination on the judgment so that it becomes part of the official record of the conviction.

**G.S. 14-50.21** – declares property used to violate this act or derived from a violation of this act to be contraband, subject to seizure and forfeiture. The District Attorney or the Attorney General must initiate a forfeiture proceeding within 60 days of the seizure of the property.

**G.S. 14-50.22** – provides that local ordinances related to gangs and gang violence are not preempted by this act.

**G.S. 14-50.23** – declares real property used by criminal street gangs to be a public nuisance subject to abatement under Art. 1 of Chap. 19 of the General Statutes. If the owner is not a member of the street gang, this section only applies if the owner had knowledge of the criminal gang activity.

**G.S. 14-50.24** – provides that a person convicted of a criminal street gang offense may not contest any facts determined in the criminal case in any subsequent civil case based on the same conduct.

Section 2 of the bill makes it a Class E felony to willfully discharge or attempt to discharge a firearm from within any kind of enclosure towards persons not within the enclosure.

Section 3 of the bill amends the law related to pretrial release of defendants to create a rebuttable presumption against allowing pretrial release if there is reasonable cause to believe that the person committed the offense in connection with criminal street gang activity, while on pretrial release for another offense and if the person had been convicted of a gang related offense within five years.

Section 4 of the bill amends the Structured Sentencing law to provide that evidence used to prove a case under G.S. 14-50.19 may not be used to prove an aggravating factor.

Section 5 authorizes enhanced sentences if the defendant is convicted of a serious felony that was committed for the benefit of gang activity and either possessed, displayed, or discharged a firearm. The enhancement for possession is an additional 60 months, for displaying, an additional 84 months and for discharging, an additional 120 months. This section applies even if the gun is incapable of firing. Also, the court cannot suspend a sentence imposed under this section.

Sections 6 and 7 are technical and conforming changes.

# HOUSE BILL 50

Page 3

Section 8 appropriates \$150,000 to the State Bureau of Investigation to purchase software to create a statewide criminal street gang member database, which is substantially similar to the Gang Net Program currently being used in Durham County.

Section 9 appropriates \$20 million to the Governor's Crime Commission to provide grants for street gang violence prevention and intervention programs. The grants shall include a 25% matching requirement. The Governor's Crime Commission is directed to report to the Appropriations Subcommittees on Justice and Public Safety and the Fiscal Research Division on the uses of the funds by April 1, 2006.

Section 10 makes the two appropriations effective July 1, 2005 and the remainder of the act effective December 1, 2005, at which time it will only be applicable to offenses committed on or after that date.

*H50-SMRO-001*

# VISITOR REGISTRATION SHEET

JUDICIARY II

March 24, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

BILL JOHNSON	CBA/ABATE ON NC
Darick Buffkin	McGA
JAMES KLOPOTIC	GCC
Ju-Ann Coe	FAmm
Randolph Cloud	FAmm
Laura Jager	FAmm
BRIAN LEWIS	Contract w/ NC's children
CASANDRA SPINNER	NCCPS
Jo BMcCants	AOC
Johnnie Davis	NC Sentencing Commission
John Madler	NC Sentencing Commission



# VISITOR REGISTRATION SHEET

## JUDICIARY II

Name of Committee

March 24, 2005

**Date**

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME \_\_\_\_\_

**FIRM OR AGENCY AND ADDRESS**

Andy Romanoff

$$NCLM$$

Jeff Rau

GRNC

Molly Ryan

NCsBA

JANNA PERRY

DUTP

# GRNC

GRASS ROOTS NORTH CAROLINA / FORUM FOR FIREARMS EDUCATION  
P.O. BOX 10684, RALEIGH, NC 27605 (919) 664-8565, [www.grnc.org](http://www.grnc.org)

To: Members of North Carolina House Judiciary Committee II  
From: F. Paul Valone, President, Grass Roots North Carolina  
Re: HB 50: "Street Gang Prevention Act"

Although the intent of HB 50, to combat "drive-by" shootings, is laudable, an analysis of the bill by GRNC counsel suggests that its overly broad language may do little to reduce gang violence, but may instead subject individuals who use guns in self-defense to prosecutorial abuse.

Although listed in the bill, few "drive-by" shootings take place from within buildings, structures, aircraft, watercraft, or other conveyances, devices, equipment, erections, or enclosures. And while overly broad language might strike some as merely unnecessary, an excessively aggressive district attorney could use the statute against an individual defending himself from within his own house.

If the intent of the bill is to prevent drive-by shootings, limiting its scope to motor vehicles will fulfill the objective. Accordingly, GRNC will oppose HB 50 and track votes on its passage unless the scope of the bill is thus limited.

If you have questions or suggestions, please feel free to contact me at (704) 907-9206 or by e-mail at [pres@gmc.org](mailto:pres@gmc.org)

Respectfully yours,  
F. Paul Valone

Excerpts of HB 50 analysis by Edward H. Green, III, Esq.

"From its context in the 'Street Gang Prevention Act,' I presume the proposed law targets 'drive-by shootings.' The language is much more expansive than necessary to address this particular evil, in that it includes aircraft, watercraft, building, structure, erection and enclosure...

"...it is difficult to perceive why specifically criminalizing shooting toward persons from an aircraft, watercraft, building, structure, erection or enclosure is either necessary or helpful in combating street gang violence. Quite the opposite, these provisions are more likely to be used to prosecute individuals defending their homes...

"The expansive recitation of occupied vehicles and structures in § 14-34.1 is entirely reasonable - a shot fired into any occupied enclosure is a manifest hazard, and broadly defining the enclosure is justified in the interest of public safety. When shooting outwardly from a stationary enclosure (e.g., standing in the doorway of one's home), this is simply not true; such an act is far more likely to be defensive than offensive in nature, and where not justified, existing law adequately covers it. Discharging a firearm from a motor vehicle or other conveyance, device or equipment - that is, a drive-by shooting - is the targeted act; the statute should criminalize only that act. It is difficult to comprehend the threat to citizens of street gang gunfire coming from aircraft or watercraft, much less from a building, structure, erection or enclosure.

"Inclusion in the proposed law of the requirement that the act be 'willful' exempts accidental discharges and shots fired in self-defense...However, the proposed language defining 'enclosure' is not reasonably targeted to the threat to public safety that is being used to justify the law - gang violence. This expansive language presents the very real possibility of prosecutorial abuse in fact patterns not envisioned by the legislature and having nothing to do with gang violence."

**MINUTES  
HOUSE COMMITTEE ON  
JUDICIARY II**

March 29, 2005

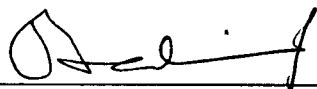
The House Committee on Judiciary II met on Tuesday, March 29, 2005, in Room 421 of the Legislative Office Building at 10:00 A.M. The following members were present: Chairman Mickey Michaux, Vice-Chairs Alice Bordsen, James Harrell, Timothy Moore, Representatives Allen, Farmer-Butterfield, Fisher, Folwell, Gulley, Walend and Wiley. Drupti Chauhan, Karen Cochrane-Brown and Jeff Hudson, Staff Counselors were in attendance. A Visitor's Registration list is included and made part of these minutes.

The Chairman called the meeting to order and recognized the Pages, Sergeant-At-Arms, Staff and visitors. The following bill was considered:

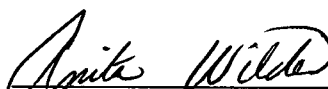
Vice-Chair Timothy Moore was recognized to explain **HB 97, A BILL TO BE ENTITLED AN ACT TERMINATING THE PARENTAL RIGHTS OF A PARENT WHO MURDERS THE OTHER PARENT OF THE CHILD**. A Proposed Committee Substitute (PCS) was submitted for discussion and upon the motion made by Rep. Wiley the Committee voted to accept the PCS for discussion. Upon motion made by Rep. Moore, the Committee voted to give the Proposed Committee Substitute for HB 97 a favorable report and an unfavorable report to the original bill.

There being no further business, the Chair adjourned the meeting at 10:30 A.M.

Respectfully submitted,



Representative H. M. Michaux, Jr.  
Presiding Chair



Anita Wilder  
Committee Assistant

**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By **Representative MICHAUX (Chair)** for the Committee on **JUDICIARY II**

---

☐ Committee Substitute for

**H.B. 0097      A BILL TO BE ENTITLED AN ACT TERMINATING THE  
PARENTAL RIGHTS OF A PARENT WHO MURDERS THE OTHER PARENT OF  
THE CHILD.**

☐ 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)

03/19/03

FOR JOURNAL USE ONLY

\_\_\_\_ Pursuant to Rule 36(b), the bill/resolution 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  
\_\_\_\_ the House amendment (s).  
\_\_\_\_ the House committee substitute bill.  
\_\_\_\_ 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.

# **AGENDA**

## **HOUSE COMMITTEE ON JUDICIARY II**

**March 29, 2005  
Room 421  
10:00 AM**

### **OPENING REMARKS**

Representative Mickey Michaux, Chair

### **AGENDA ITEMS**

**HB 97– Term. Par. Rights/Murder of Parent by Parent. – Rep. Tim Moore**

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2005-2006 SESSION**

You are hereby notified that the Committee on **JUDICIARY II** will meet as follows:

**DAY & DATE:**     **Tuesday, March 29 2005**

**TIME:**             **10:00 a.m.**

**LOCATION:**        **Room 421**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):  
**HB 97– Term. Par. Rights/Murder of Parent by Parent. – Rep. Tim Moore**

Respectfully,  
Representative H. M. Michaux, Jr.  
Chair

I hereby certify this notice was filed by the committee assistant at the following offices at  
**11:20 a.m. on March 24 2005.**

\_\_\_\_Principal Clerk  
\_\_\_\_Reading Clerk - House Chamber

Anita Wilder (Committee Assistant)

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

D

HOUSE BILL 97  
PROPOSED COMMITTEE SUBSTITUTE H97-PCS60281-RQ-5

Short Title: Term. Par. Rights/Murder of Parent by Parent.

(Public)

Sponsors:

Referred to:

February 7, 2005

A BILL TO BE ENTITLED  
AN ACT TERMINATING THE PARENTAL RIGHTS OF A PARENT WHO  
MURDERS THE OTHER PARENT OF THE CHILD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-1111(a)(8) reads as rewritten:

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

...

(8) The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent, or other child residing in the home; ~~or~~ has committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the ~~home~~ home; or has committed murder or voluntary manslaughter of the other parent of the child. The petitioner has the burden of proving any of these offenses in the termination of parental rights hearing by (i) proving the elements of the offense or (ii) offering proof that a court of competent jurisdiction has convicted the parent of the offense, whether or not the conviction was by way of a jury verdict or any kind of ~~plea~~ plea. If the parent has committed the murder or voluntary manslaughter of the other parent of the child, the court shall consider whether the murder or voluntary manslaughter was committed in self-defense or in the defense of others, or whether there was substantial evidence of other justification.

...."

SECTION 2. This act is effective when it becomes law and applies to termination of parental rights proceedings filed on or after that date.



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

1

HOUSE BILL 97

Short Title: Term. Par. Rights/Murder of Parent by Parent.

(Public)

Sponsors: Representatives Moore; Frye and Pate.

Referred to: Judiciary II.

February 7, 2005

1 A BILL TO BE ENTITLED  
2 AN ACT TERMINATING THE PARENTAL RIGHTS OF A PARENT WHO  
3 MURDERS THE OTHER PARENT OF THE CHILD.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 7B-1111(a)(8) reads as rewritten:

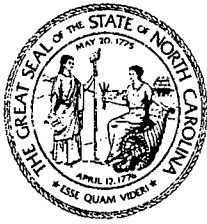
6 "(a) The court may terminate the parental rights upon a finding of one or more of  
7 the following:

8 ...

9 (8) The parent has committed murder or voluntary manslaughter of  
10 another child of the parent or other child residing in the home; has  
11 aided, abetted, attempted, conspired, or solicited to commit murder or  
12 voluntary manslaughter of the child, another child of the parent, or  
13 other child residing in the home; ~~or~~ has committed a felony assault that  
14 results in serious bodily injury to the child, another child of the parent,  
15 or other child residing in the ~~home~~ home; or has committed murder or  
16 voluntary manslaughter of the other parent of the child. The petitioner  
17 has the burden of proving any of these offenses in the termination of  
18 parental rights hearing by (i) proving the elements of the offense or (ii)  
19 offering proof that a court of competent jurisdiction has convicted the  
20 parent of the offense, whether or not the conviction was by way of a  
21 jury verdict or any kind of plea.

22 ...."

23 SECTION 2. This act is effective when it becomes law.



## BILL ANALYSIS

# HOUSE BILL 97: Termination of Parental Rights/Murder of Parent by Parent

**Committee:** House Judiciary II  
**Date:** March 29, 2005  
**Version:** PCS H97-CSRQ-5 [v.1]

**Introduced by:** Representative Moore  
**Summary by:** Drupti Chauhan  
Committee Counsel

**SUMMARY:** *House Bill 97 would allow a court to terminate the parental rights of a parent if the court finds that the parent has committed the murder or voluntary manslaughter of the other parent of the child. The PCS would require the court to take into consideration during adjudication whether the murder or manslaughter of one parent by the other was committed in self-defense or in the defense of others or if there was substantial evidence of other justification. The PCS also changes the effective date to clarify that the act would apply to termination of parental rights proceedings filed on or after the effective date.*

**CURRENT LAW:** A termination of parental rights proceeding consists of two steps: adjudication and disposition. A court may terminate the parental rights upon a finding of one or more of the grounds set forth in G.S. 7B-1111(a), which governs the adjudication process. One of the grounds for termination includes a finding that the parent has committed murder or voluntary manslaughter of another child of the parent or other child living in the home; aided or attempted to commit murder or manslaughter of the child or of another child of the parent, or other child living in the home; or has committed a felony assault that resulted in a serious bodily injury to the child, another child of the parent, or other child living in the home. G.S. 7B-1110 provides that during the disposition stage of a termination of parental rights proceeding, a court shall issue an order terminating parental rights if it determines that any one or more of the grounds in G.S. 7B-1111 exists unless the court further determines that the best interests of the child require that the parental rights not be terminated.

**BILL ANALYSIS:** House Bill 97 would provide an additional ground upon which the court may terminate parental rights. The court could terminate parental rights if it finds that a parent has committed the murder or voluntary manslaughter of the other parent of the child and the petitioner proves the elements of the offense or offers proof that a court of competent jurisdiction has convicted the parent of the offense either by a jury verdict or some type of plea. However, the court would be required to consider whether the murder or manslaughter was committed in self-defense, defense of others or if there was substantial evidence of other justification.

**EFFECTIVE DATE:** The bill would become effective when it becomes law and would apply to termination of parental rights proceedings filed on or after that date.

# VISITOR REGISTRATION SHEET

## JUDICIARY II

Name of Committee

March 29, 2005

**Date**

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME \_\_\_\_\_

**FIRM OR AGENCY AND ADDRESS**

Esther High

NC DHSS

Paige Johnson

## Planned Parenthood

House Pages

Name Of Committee: J II Date: 3-29-05

1. Name: Clarke Mann

County: Lee

Sponsor: John Sanles

2. Name: Abby Robbins

County: Pender

Sponsor: Thomas Wright

3. Name: Ashley Fox

County: McDowell

Sponsor: Phillip Frye

4. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

5. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

Sgt-At-Arms

1. Name: BILL FREEMAN

2. Name: FRANK PREVIO

3. Name: \_\_\_\_\_

4. Name: \_\_\_\_\_

5. Name: \_\_\_\_\_

**MINUTES  
HOUSE COMMITTEE ON  
JUDICIARY II**

MARCH 31, 2005

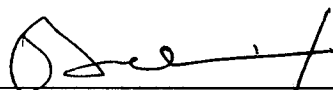
The House Committee on Judiciary II met on Thursday, March 31, 2005 in Room 421 of the Legislative Office Building at 10:00 A.M. The following members were present: Chairman Mickey Michaux, Vice-Chairs, Alice Bordsen, James Harrell and Timothy Moore, Representatives Allen, Farmer-Butterfield, Fisher, Folwell, Gulley, Walend and Wiley. Drupti Chauhan, Karen Cochrane-Brown and Jeff Hudson, Staff Counselors were in attendance. A Visitor's Registration list is included and made part of these minutes.

The Chairman called the meeting to order and recognized Pages, Sergeant-At-Arms, Staff and visitors. The following bill was considered:

The Chair recognized Rep. Stephen LaRoque to explain **HB 290, A BILL TO BE ENTITLED AN ACT TO ESTABLISH AT THE GENERAL RULE IN CIVIL ACTIONS THAT THE COURT AWARD ATTORNEYS' FEES TO THE PREVAILING PARTY.** After much discussion among the staff and the visitors, the Committee was unable to give a favorable report to the bill and Rep. LaRoque asked that the bill be removed from Judiciary II Committee's agenda.

There being no further business, the Chair adjourned the meeting at 10: 25 A.M.

Respectfully submitted,



Representative H. M. Michaux, Jr.  
Presiding Chair



Anita Wilder  
Committee Assistant

# **AGENDA**

## **HOUSE COMMITTEE ON JUDICIARY II**

**March 31, 2005  
Room 421  
10:00 AM**

### **OPENING REMARKS**

Representative Mickey Michaux, Chair

### **AGENDA ITEMS**

**HB 290-Prevailing Party Awarded Attorneys' Fees. – Rep. LaRoque**

**CORRECTED COPY HB 290  
NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2005-2006 SESSION**

You are hereby notified that the Committee on **JUDICIARY II** will meet as follows:

**DAY & DATE:**     **Thursday, March 31, 2005**

**TIME:**             **10:00 a.m.**

**LOCATION:**         **Room 421**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):  
**HB 290– Prevailing Party Awarded Attorneys’ Fees. Rep. LaRoque**

Respectfully,  
Representative H. M. Michaux, Jr.  
Chair

I hereby certify this notice was filed by the committee assistant at the following offices at  
**10:30 a.m. on March 24 2005.**

☒ Principal Clerk  
☒ Reading Clerk - House Chamber

Anita Wilder (Committee Assistant)

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

1

HOUSE BILL 290

Short Title: Prevailing Party Awarded Attorneys' Fees.

(Public)

Sponsors: Representatives LaRoque; Almond Jr., Blackwood, Starnes, and Steen.

Referred to: Judiciary II.

February 17, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH AS THE GENERAL RULE IN CIVIL ACTIONS THAT  
THE COURT AWARD ATTORNEYS' FEES TO THE PREVAILING PARTY.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 19 of Chapter 1 of the General Statutes is amended by  
adding a new section to read:

**"§ 1-186.1. Attorneys' fees awarded to prevailing party.**

(a) General Rule. – The prevailing party is entitled to receive an award of  
attorneys' fees from the nonprevailing party with respect to, and only to the extent that  
party prevails on, any claim advanced during the litigation, except that the sum of the  
attorneys' fees awarded under this section shall not exceed the attorneys' fees of the  
nonprevailing party with regard to the claim. If the nonprevailing party received  
services under a contingent fee agreement, the sum of the attorneys' fees awarded under  
this section shall not exceed the reasonable value of those services.

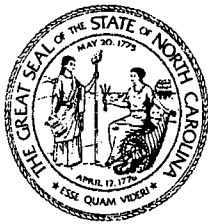
(b) Discretion. – The court may, in its discretion, limit the fees recovered under  
subsection (a) of this section if it considers payment of these fees unjust.

(c) Records. – Counsel of record in actions subject to an award of attorneys' fees  
under this section shall maintain accurate, up-to-date records of hours worked on the  
matter regardless of the fee arrangement with the client.

(d) Statutory Exceptions. – This section does not apply when a specific statute  
otherwise addresses an award of attorneys' fees."

**SECTION 3.** This act becomes effective October 1, 2005, and applies to  
actions filed on or after that date.





# HOUSE BILL 290: Prevailing Party Awarded Attorneys' Fees

## BILL ANALYSIS

**Committee:** House Judiciary II  
**Date:** March 31, 2005  
**Version:** 1<sup>st</sup> Edition

**Introduced by:** Rep. LaRoque  
**Summary by:** Drupti Chauhan  
Committee Counsel

**SUMMARY:** *House Bill 290 would provide that a prevailing party in a civil lawsuit is only entitled to receive attorneys' fees from the non-prevailing party on a claim that it prevails on and those attorneys' fee cannot exceed the attorneys' fees of the non-prevailing party with regard to that claim.*

**CURRENT LAW:** Attorneys' fees are set forth in various sections of the General Statutes for specific actions. For example, G.S. 6-21.5 provides that in any civil action or special proceeding, upon motion of the prevailing party, the court may award reasonable attorneys' fees to the prevailing party if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party in any pleading.

**BILL ANALYSIS:** House Bill 290 would establish a general rule that a prevailing party in a lawsuit is entitled to receive attorneys' fees from the non-prevailing party only to the extent the party prevails on any claim in the litigation. The bill further states that the attorneys' fees awarded cannot exceed the attorneys' fees of the non-prevailing party with respect to the claim.

If the non-prevailing party received legal services under a contingent fee agreement, the total of the attorneys' fee awarded cannot be more than the reasonable value of those services.

The bill would provide the court discretion to limit the attorneys' fees of the prevailing party if it considers the fees to be unjust. The bill would also require that counsel of record in actions subject to this new section keep accurate, up-to-date records of hours worked on the matter regardless of the fee arrangement with the client.

The provisions of the bill would not apply when a specific statute addresses an award of attorneys' fees.

**EFFECTIVE DATE:** The bill would become effective October 1, 2005 and apply to actions filed on or after that date.

HB290-SMRQ-001

# VISITOR REGISTRATION SHEET

JUDICIARY II

March 31 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Sarah Scofield

Dick Taylor

NCATL

Patrice Leeder

NCALC

David Crawford

AIA NC

Bill Wilson

NCATL

Richard S. Uhl

Richard S. Uhl & Associates

Joe Stewart

IFNE

John McHugh

GOV OFFICE

Paul Kelly

NCATL

Ben Kuhn

Holt York

Camela Rf

AOC

## VISITOR REGISTRATION SHEET

## JUDICIARY II

March 31 2005

Name of Committee

**Date**

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME \_\_\_\_\_

**FIRM OR AGENCY AND ADDRESS**

Michelle Frazier

NC Bar Ass'n

DOUG HERON

## NC BAR ASSN'

Jurek Kostyura

CM

House Pages

Rm 421

Name Of Committee: J II Date 3-31-05

1. Name: Jody Shearin  
County: Franklin  
Sponsor: Lucy Allen
2. Name: Lauren Stewart  
County: Franklin  
Sponsor: Lucy Allen
3. Name: \_\_\_\_\_  
County: \_\_\_\_\_  
Sponsor: \_\_\_\_\_
4. Name: \_\_\_\_\_  
County: \_\_\_\_\_  
Sponsor: \_\_\_\_\_
5. Name: \_\_\_\_\_  
County: \_\_\_\_\_  
Sponsor: \_\_\_\_\_

Sgt-At-Arms

1. Name: BILL FREEMAN
2. Name: FRANK PREVO
3. Name: \_\_\_\_\_
4. Name: \_\_\_\_\_
5. Name: \_\_\_\_\_

**MINUTES  
HOUSE COMMITTEE ON  
JUDICIARY II**

April 5, 2005

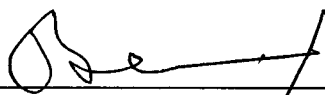
The House Committee on Judiciary II met on Tuesday, April 5, 2005, in Room 421 of the Legislative Office Building at 10:00 A.M. The following members were present: Chairman Mickey Michaux, Vice Chairs Alice Bordsen, James Harrell and Timothy Moore, Representatives Allen, Farmer-Butterfield, Fisher, Folwell, Gulley, Walend and Wiley. Drupti Chauhan, Karen Cochrane-Brown and Jeff Hudson, Staff Counselors were in attendance. A Visitor's Registration list is included and made part of these minutes.

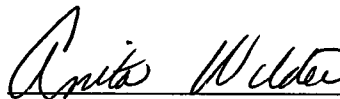
The Chairman called the meeting to order and recognized the Pages, Sergeant-At-Arms, Staff and visitors. The following bill was considered:

Chairman Michaux informed the Committee that the meeting for today was cancelled due to **HB 614, A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW REGARDING "SOLICITATION OF A CHILD BY COMPUTER TO COMMIT AN UNLAWFUL SEX ACT" BY INCREASING BY THE PENALTY AND BY ALLOWING UNDERCOVER OFFICERS TO POSE AS JUVENILES TO INVESTIGATE POSSIBLE OFFENDERS** was being considered in a Senate Committee and we would wait for their vote on this bill.

There being no further business, the Chair adjourned the meeting at 10:15 A.M.

Respectfully submitted,

  
\_\_\_\_\_  
Representative H. M. Michaux, Jr.  
Presiding Chair

  
\_\_\_\_\_  
Anita Wilder  
Committee Assistant

# **AGENDA**

## **HOUSE COMMITTEE ON JUDICIARY II**

**April 05, 2005  
Room 421  
10:00 AM**

### **OPENING REMARKS**

Representative Mickey Michaux, Chair

### **AGENDA ITEMS**

**HB 614 – Child Solicitation by Computer. – Reps. Wiley and Walend**

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2005-2006 SESSION**

You are hereby notified that the Committee on **JUDICIARY II** will meet as follows:

**DAY & DATE:** Tuesday, April 05, 2005

**TIME:** 10:00 a.m.

**LOCATION:** Room 421

The following bills will be considered (Bill # & Short Title & Bill Sponsor):  
**HB 614– Child Solicitation by Computer. Rep. Wiley and Walend.**

Respectfully,  
Representative H. M. Michaux, Jr.  
Chair

I hereby certify this notice was filed by the committee assistant at the following offices at  
**10:45a.m. on March 30, 2005.**

☒ Principal Clerk  
☒ Reading Clerk - House Chamber

Anita Wilder (Committee Assistant)

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

1

HOUSE BILL 614

Short Title: Child Solicitation by Computer.

(Public)

Sponsors: Representatives Wiley, Walend (Primary Sponsors); Adams, Almond, Blackwood, Blust, Brown, Capps, Carney, Cleveland, Coleman, Culp, Current, Daughtride, Daughtry, Dockham, Dollar, Faison, Folwell, Gillespie, Gulley, Harrison, Hollo, Holloway, Jones, Justice, Kiser, Langdon, LaRoque, Lewis, Martin, McComas, McGee, Moore, Parmon, Pate, Ray, Rhodes, Ross, Starnes, Underhill, Vinson, and Wright.

Referred to: Judiciary II.

March 14, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING "SOLICITATION OF A CHILD BY COMPUTER TO COMMIT AN UNLAWFUL SEX ACT" BY INCREASING THE PENALTY AND BY ALLOWING UNDERCOVER OFFICERS TO POSE AS JUVENILES TO INVESTIGATE POSSIBLE OFFENDERS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 14-202.3 reads as rewritten:

**"§ 14-202.3. Solicitation of child by computer to commit an unlawful sex act.**

(a) Offense. – A person is guilty of solicitation of a child by a computer if the person is 16 years of age or older and the person knowingly, with the intent to commit an unlawful sex act, entices, advises, coerces, orders, or commands, by means of a computer, a child who is less than 16 years of age and at least 3 years younger than the defendant, or someone whom the person believes to be under the age of 16 to meet with the defendant or any other person for the purpose of committing an unlawful sex act.

(b) Jurisdiction. – The offense is committed in the State for purposes of determining jurisdiction, if the transmission that constitutes the offense either originates in the State or is received in the State.

(c) Punishment. – A violation of this section is a Class I ~~felony~~ E felony."

**SECTION 2.** This act is effective when it becomes law.



House Pages

Name Of Committee:

J II

Date:

4-5-05

1. Name: IVY Hageman  
County: Dave  
Sponsor: OWENS
2. Name: Mckenzie White  
County: Dave  
Sponsor: OWENS
3. Name: \_\_\_\_\_  
County: \_\_\_\_\_  
Sponsor: \_\_\_\_\_
4. Name: \_\_\_\_\_  
County: \_\_\_\_\_  
Sponsor: \_\_\_\_\_
5. Name: \_\_\_\_\_  
County: \_\_\_\_\_  
Sponsor: \_\_\_\_\_

Sgt-At-Arms

1. Name: Bill Freeman
2. Name: FRANK Prev
3. Name: \_\_\_\_\_
4. Name: \_\_\_\_\_
5. Name: \_\_\_\_\_

# VISITOR REGISTRATION SHEET

## JUDICIARY II

Name of Committee

APRIL 5, 2005

**Date**

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME \_\_\_\_\_

**FIRM OR AGENCY AND ADDRESS**[illegible]

**MINUTES  
HOUSE COMMITTEE ON  
JUDICIARY II**

April 7, 2005

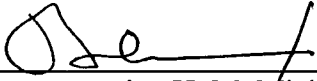
The House Committee on Judiciary II met on Thursday, April 7, 2005, in Room 421 of the Legislative Office Building at 10:00 A.M. The following members were present: Chairman Mickey Michaux, Vice-Chairs Alice Bordsen, James Harrell and Timothy Moore, Representatives Allen, Farmer-Butterfield, Fisher, Folwell, Gulley, Jones, Walend and Wiley. Drupti Chauhan, Karen Cochrane-Brown and Jeff Hudson, Staff Counselors were in attendance

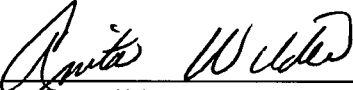
The Chairman called the meeting to order and recognized the Pages, Sergeant-At-Arms, Staff and visitors. The following bill was considered:

The Chair recognized Rep. Preston to explain HB 926, A BILL TO BE ENTITLED AN ACT TO MAKE IT A CRIMINAL OFFENSE TO CONCEAL THE DEATH OF A PERSON. Karen Cochrane-Brown, Staff Counselor was recognized to explain bill analysis. After much discussion by the Committee, Chairman Michaux stated "that this act is more serious than what the present bill states and that it needs to be readdressed (Felony). Chairman Michaux made a motion to have the bill place in a Subcommittee and the Subcommittee would report back its findings to the full Committee, the Committee vote and the motion was carried. The following members were appointed to the Subcommittee: Vice-Chair James Harrell Chairman, members Walend, Folwell, Jones and Wiley.

There being no further business, the Chair adjourned the meeting at 10:10 A.M.

Respectfully submitted,

  
\_\_\_\_\_  
Representative H. M. Michaux, Jr.  
Presiding Chair

  
\_\_\_\_\_  
Anita Wilder  
Committee Assistant

**REVISED AGENDA  
HB 935 REMOVED**

**HOUSE COMMITTEE ON JUDICIARY II**

**April 07, 2005  
Room 421  
10:00 AM**

**OPENING REMARKS**

Representative Mickey Michaux, Chair

**AGENDA ITEMS**

**HB 926– Concealing a Death/Crim. Offense – Representative Preston**

**Anita Wilder (Rep. Michaux)**

---

**From:** Anita Wilder (Rep. Michaux)

**Sent:** Wednesday, April 06, 2005 11:02 AM

**To:** Rep. Jean Preston; Rep. D. Bruce Goforth; Rep. Jim A. Harrell

**Subject:** House Committee Meeting Notice - April 07 2005

**REVISED AGENDA  
HB 935 REMOVED  
NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2005-2006 SESSION**

You are hereby notified that the Committee on **JUDICIARY II** will meet as follows:

**DAY & DATE:** Thursday, April 07, 2005

**TIME:** 10:00 a.m.

**LOCATION:** Room 421

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

**HB 926 – Concealing a Death/Crim. Offense – Rep. Preston**

**HB 935 – Construction Site Theft/Aggravate Penalty – Reps. Goforth, Harrell**

Respectfully,  
Representative H. M. Michaux, Jr.  
Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **11:10a.m. on April 05, 2005.**

☒ Principal Clerk  
☒ Reading Clerk - House Chamber

Anita Wilder (Committee Assistant)

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

1

HOUSE BILL 926

Short Title: Concealing a Death/Crim. Offense.

(Public)

Sponsors: Representative Preston.

Referred to: Judiciary II.

March 28, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A CRIMINAL OFFENSE TO CONCEAL THE DEATH OF A  
PERSON.

The General Assembly of North Carolina enacts:

SECTION 1. Article 52 of Chapter 14 of the General Statutes is amended by  
adding a new section to read:

"§ 14-401.22. Concealment of death.

(a) Any person who, with the intent to conceal the death of a person, violates  
G.S. 130A-115(e) by failing to notify the appropriate medical examiner of the death is  
guilty of a Class A1 misdemeanor.

(b) Any person who, with the intent to conceal the death of a person, transports a  
dead human body without legal authorization is guilty of a Class A1 misdemeanor.

(c) Any person who, with the intent to conceal the death of a person, buries or  
cremates a dead human body without legal authorization is guilty of a Class A1  
misdemeanor."

SECTION 2. This act becomes effective December 1, 2005, and applies to  
offenses committed on or after that date.

## House Pages

Name Of Committee: JUDICIARY II Date: 4-07-05

1. Name: Justin Gerringer

County: Randolph

Sponsor: Arlie Culp

2. Name: JAKE HUNTINGTON

County: WAKE

Sponsor: TIA

3. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

4. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

5. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

### Sgt-At-Arms

1. Name: WILLIE DIXON

2. Name: CHARLES WILLIAMS

3. Name: \_\_\_\_\_

4. Name: \_\_\_\_\_

5. Name: \_\_\_\_\_

**MINUTES  
HOUSE COMMITTEE ON  
JUDICIARY II**

April 12, 2005

The House Committee on Judiciary II met on Tuesday, April 12, 2005, in Room 421 of the Legislative Office Building at 10:00 A.M. The following members were present: Chairman Mickey Michaux, Vice-Chairs, Alice Bordsen, James Harrell and Timothy Moore, Representatives Allen, Farmer-Butterfield, Fisher, Folwell, Gulley, Jones, Walend and Wiley. Drupti Chauhan, Karen Cochrane-Brown and Jeff Hudson, Staff Counselors were in attendance. A Visitor's Registration list is included and made part of these minutes.

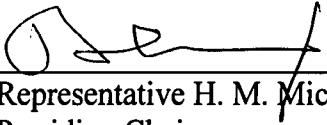
The Chairman called the meeting to order and recognized the Pages, Sergeant-At-Arms, Staff and visitors. The following bill was considered:

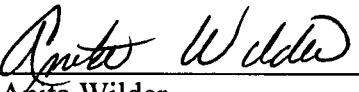
The Chair recognized Vice-Chair Alice Bordsen to explain HB1084, A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A YOUTHFUL OFFENDER'S CRIMINAL RECORD MAY BE EXPUNGED OF NONVIOLENT FELONIES. A Proposed Committee Substitute (PCS) was introduced and upon motion made by Rep. Fisher, the PCS was adopted by the Committee for discussion. There was much discussion by the committee and several visitors representing various organizations including the Pete Powell from the Administrative Office of the Clerk spoke regarding their concerns on some of the language in the bill and the cost that will incur if bill is passed.

Chairman Michaux made a motion that Staff Counsel meet with the representatives from the Administrative Office of the Clerk to work on concerns and get back with the full Committee-Committed voted in favor of motion.

There being no further business, the Chair adjourned the meeting at 10:45 A.M.

Respectfully submitted,

  
Representative H. M. Michaux, Jr.  
Presiding Chair

  
Anita Wilder  
Committee Assistant



# **HOUSE COMMITTEE ON JUDICIARY II**

**April 12 2005  
Room 421  
10:00 AM**

## **OPENING REMARKS**

Representative Mickey Michaux, Chair

## **AGENDA ITEMS**

**HB-1084 Expunge Nonviolent Felonies/Young Offenders – Reps. Bordsen, Crawford.**

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2005-2006 SESSION**

You are hereby notified that the Committee on **JUDICIARY II** will meet as follows:

**DAY & DATE:** Tuesday, April 12, 2005

**TIME:** 10:00 a.m.

**LOCATION:** Room 421

The following bills will be considered (Bill # & Short Title & Bill Sponsor):  
**HB 1084 – Expunge Nonviolent Felonies – Reps. Bordsen, Crawford**

Respectfully,  
Representative H. M. Michaux, Jr.  
Chair

I hereby certify this notice was filed by the committee assistant at the following offices at  
**11:00 a.m. on April 07 2005.**

☒ Principal Clerk  
☒ Reading Clerk - House Chamber

Anita Wilder (Committee Assistant)

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

D

HOUSE BILL 1084  
PROPOSED COMMITTEE SUBSTITUTE H1084-CSSA-5 [v.1]

4/8/2005 1:43:15 PM

Short Title: Expunge Nonviolent Felonies/Young Offenders.

(Public)

Sponsors:

Referred to:

April 4, 2005

A BILL TO BE ENTITLED  
AN ACT TO PROVIDE THAT A YOUTHFUL OFFENDER'S CRIMINAL RECORD  
MAY BE EXPUNGED OF NONVIOLENT FELONIES.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 5 of Chapter 15A of the General Statutes is amended  
by adding a new section to read:

**"§ 15A-149. Expunction of records for first offenders who are under 18 years of  
age at the time of the commission of a nonviolent felony.**

(a) For purposes of this section the term "nonviolent felony" means any felony  
except the following:

(1) A Class A through E felony.

(2) A felony that includes assault as an essential element of the offense;  
and

(3) A felony that is an offense for which the convicted offender must  
register under Article 27A of Chapter 14 of the General Statutes.

(b) Notwithstanding any other provision of law, if a person is convicted of more  
than one nonviolent felony in the same session of court, then the multiple nonviolent  
felony convictions shall be treated as one nonviolent felony conviction under this  
section, and the expunction order issued under this section shall provide that the  
multiple convictions shall be expunged from the person's record in accordance with this  
section.

(c) Whenever any person who had not yet attained the age of 18 years at the time  
of the offense and has not previously been convicted of any felony or misdemeanor  
other than a traffic violation under the laws of the United States, the laws of this State,  
or any other state pleads guilty to or is guilty of a nonviolent felony, the person may file  
a petition in the court where the person was convicted for expunction of the nonviolent  
felony from the person's criminal record. The petition cannot be filed earlier than two  
years after the date of the conviction or any period of probation, whichever occurs later.

1 The person shall also perform at least 100 hours of community service, preferably  
2 related to the conviction, before filing a petition for expunction under this section. The  
3 petition shall contain, but not be limited to, the following:

- 4       (1) An affidavit by the petitioner that he has been of good behavior for the  
5 two-year period since the date of conviction of the nonviolent felony in  
6 question and has not been convicted of any felony, or misdemeanor  
7 other than a traffic violation, under the laws of the United States or the  
8 laws of this State or any other state.
- 9       (2) Verified affidavits of two persons who are not related to the petitioner  
10 or to each other by blood or marriage that they know the character and  
11 reputation of the petitioner in the community in which he or she lives  
12 and that the petitioner's character and reputation are good.
- 13       (3) A statement that the petition is a motion in the cause in the case  
14 wherein the petitioner was convicted.
- 15       (4) Affidavits of the clerk of superior court, chief of police, where  
16 appropriate, and sheriff of the county in which the petitioner was  
17 convicted and, if different, the county of which the petitioner is a  
18 resident, showing that the petitioner has not been convicted of a felony  
19 or misdemeanor other than a traffic violation under the laws of this  
20 State at any time prior to the conviction for the nonviolent felony in  
21 question or during the two-year period following that conviction.
- 22       (5) An affidavit by the petitioner that no restitution orders or civil  
23 judgments representing amounts ordered for restitution entered against  
24 him or her are outstanding.
- 25       (6) An affidavit by the petitioner that the petitioner has performed at least  
26 100 hours of community service since the conviction for the  
27 nonviolent felony. The affidavit shall include a list of the community  
28 services performed, a list of the recipients of the services, and a  
29 detailed description of those services.

30 The petition shall be served upon the district attorney of the court wherein the case  
31 was tried resulting in conviction. The district attorney shall have 10 days thereafter in  
32 which to file any objection thereto and shall be duly notified as to the date of the  
33 hearing of the petition.

34 The judge to whom the petition is presented is authorized to call upon a probation  
35 officer for any additional investigation or verification of the petitioner's conduct during  
36 the two-year period that the judge deems desirable.

37       (d) If the court, after hearing, finds that the petitioner has remained of good  
38 behavior and been free of conviction of any felony or misdemeanor, other than a traffic  
39 violation, for two years from the date of conviction of the nonviolent felony in question,  
40 the petitioner has no outstanding restitution orders or civil judgments representing  
41 amounts ordered for restitution entered against him or her, the petitioner was less than  
42 18 years old at the time of the commission of the offense in question, and the petitioner  
43 has performed at least 100 hours of community service since the time of the conviction,  
44 then the court shall order that the person be restored, in the contemplation of the law, to

1 the status the person occupied before such arrest or indictment or information. No  
2 person as to whom such order has been entered shall be held thereafter under any  
3 provision of any laws to be guilty of perjury or otherwise giving a false statement by  
4 reason of his or her failure to recite or acknowledge such arrest, or indictment,  
5 information, or trial, or response to any inquiry made of the person for any purpose.

6 (e) The court shall also order that the nonviolent felony conviction be expunged  
7 from the records of the court and direct all law enforcement agencies bearing record of  
8 the same to expunge their records of the conviction. The clerk shall forward a certified  
9 copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff,  
10 chief, or head of any other arresting agency shall then transmit the copy of the order  
11 with a form supplied by the State Bureau of Investigation to the State Bureau of  
12 Investigation, and the State Bureau of Investigation shall forward the order to the  
13 Federal Bureau of Investigation.

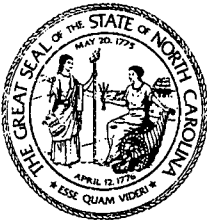
14 (f) Any person entitled to an expunction under this section may also apply to the  
15 court for an order expunging DNA records when the person's DNA record or profile has  
16 been included in the State DNA Database and the person's DNA sample is stored in the  
17 State DNA Database. A copy of the application for expunction of the DNA record or  
18 DNA sample shall be served on the district attorney for the judicial district in which the  
19 charges of the nonviolent criminal offense were brought not less than 20 days prior to  
20 the date of the hearing on the application. The order of expunction shall include the  
21 name and address of the defendant and the defendant's attorney and shall direct the SBI  
22 to send a letter documenting expunction as required by subsection (e) of this section.

23 (g) Upon receiving an order of expunction entered pursuant to subsection (e) of  
24 this section, the SBI shall purge the DNA record and all other identifying information  
25 from the State DNA Database and the DNA sample stored in the State DNA Database  
26 covered by the order, except that the order shall not apply to other offenses committed  
27 by the individual that qualify for inclusion in the State DNA Database. A letter  
28 documenting expunction of the DNA record and destruction of the DNA sample shall  
29 be sent by the SBI to the defendant and the defendant's attorney at the address specified  
30 by the court in the order of expunction.

31 (h) The clerk of superior court in each county in North Carolina shall, as soon as  
32 practicable after each term of court in the clerk's county, file with the Administrative  
33 Office of the Courts the names of those persons granted a discharge under the  
34 provisions of this section, and the Administrative Office of the Courts shall maintain a  
35 confidential file containing the names of persons granted conditional discharges. The  
36 information contained in the file shall be disclosed only to judges of the General Court  
37 of Justice of North Carolina for the purpose of ascertaining whether any person charged  
38 with an offense has been previously granted a discharge.

39 (i) A person who files a petition for expunction of a criminal record under this  
40 section must pay the clerk of superior court a fee of sixty-five dollars (\$65.00) at the  
41 time the petition is filed. Fees collected under this subsection shall be deposited in the  
42 General Fund. This subsection does not apply to petitions filed by an indigent."

43 **SECTION 2.** This act is effective when it becomes law.



# HOUSE BILL 1084: Expunge Nonviolent Felonies/Young Offenders

## BILL ANALYSIS

**Committee:** House Judiciary II  
**Date:** April 12, 2005  
**Version:** H1084-CSSA-5[v.1]

**Introduced by:** Reps. Bordsen and Crawford  
**Summary by:** Drupti Chauhan\*  
Committee Counsel

**SUMMARY:** *The PCS for House Bill 1084 would provide for the expunction of criminal records for offenders who are under the age of 18 at the time of commission of a nonviolent felony. The original bill provided that the petitioner be convicted before the age of 18. A waiting period of 2 years after the conviction or any period of probation, 100 hours of community service, no prior or subsequent felony or non-traffic misdemeanor offenses; and affidavits attesting to the petitioner's character are all required. The PCS would set the fee for filing an application for expunction at \$65.00 unless the petitioner is indigent.*

**CURRENT LAW:** Article 5 of the Criminal Procedure Act provides for the expunction of criminal records of certain criminal charges or convictions. Expunction is the process by which a record of criminal conviction is removed by order of the court, and the individual is restored to the status he or she occupied before the arrest or indictment. General Statute 15A-145 (Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors) allows a person convicted of a misdemeanor to file a petition for expunction of the misdemeanor from his or her criminal record if the person was under 18 at the time of a conviction or, in the case of a misdemeanor alcohol possession charge, the person was under 21 at the time of conviction. The petition may not be filed sooner than 2 years after the conviction or completion of probation and must include the following<sup>1</sup>:

- 1) an affidavit of good behavior for the two years following conviction, stating that the petitioner has not been convicted of any felony or non-traffic misdemeanor charge;
- 2) two affidavits of good character from persons unrelated to the petitioner;
- 3) a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted; and
- 4) affidavits of the clerk of superior court, chief of police, and sheriff of the county of the offense and where the petitioner resides showing that petitioner has not been convicted of a felony or non-traffic misdemeanor offense prior to or in the two years since the conviction in question.

If the court finds in favor of the petitioner the clerk of superior court and the appropriate law enforcement agencies must expunge the record of the conviction.

Other sections of Article 5 provide for "Expunction of records when charges are dismissed or there are finding of not guilty as a result of identity fraud"<sup>2</sup> and "Expunction of DNA records when charges are dismissed on appeal or pardon of innocence is granted."<sup>3</sup>

<sup>1</sup> G.S. 15A-145(a)(1) through (4).

<sup>2</sup> G.S. 15A-147.

<sup>3</sup> G.S. 15A-148.

# HOUSE BILL 1084

Page 2

**BILL ANALYSIS:** The bill would add a new section to Article 5 "Expunction of Records" of Chapter 15A "Criminal Procedure Act" of the General Statutes. The proposed G.S. 15A-149 would provide expunction of the criminal records of first time offenders who are under 18 years of age at the time of the commission of the nonviolent felony if there are no previous or subsequent felony or misdemeanor convictions, other than a traffic violation. "Nonviolent felony" would include any felony *except* the following:

- A Class A through E felony;
- A felony that includes assault as an essential element of the offense; and
- A felony that is an offense for which the convicted offender must register under Article 27A of Chapter 14 of the General Statutes (sex offenders).

If the person is convicted of more than one nonviolent felony in the same session of court, the bill provides that the multiple nonviolent felony convictions are to be treated as one nonviolent felony conviction under the section and the expunction order is to provide that the multiple convictions are to be expunged.

The procedure to be followed by the petitioner is modeled along the lines of the existing procedures for expunction of records. The petition cannot be filed earlier than two years after the date of conviction or any period of probation, whichever occurs later. The petitioner is also required to perform at least 100 hours of community service before filing the petition for expunction.

The petition must contain at least the following:

- 1) An affidavit of good behavior by the petitioner for the 2 years following conviction, stating that the petitioner has not been convicted of any felony or non-traffic misdemeanor charge under the laws of the United States, this State or any other state during that time;
- 2) Two affidavits of good character from persons unrelated to petitioner;
- 3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted;
- 4) Affidavits of the clerk of superior court, chief of police, and sheriff of the county in which the petitioner was convicted and if different, the county where the petitioner resides showing that petitioner has not been convicted of a felony or non-traffic misdemeanor offense prior to or in the 2 years since the conviction in question;
- 5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding; and
- 6) An affidavit by the petitioner that he or she has performed at least 100 hours of community service since the conviction with a list of the community services performed, a list of the recipients of the services, and a detailed description of the services.

The petition is to be served on the district attorney who has 10 days to file any objections. The judge is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct. If the judge finds that the petitioner has met all of the requirements, the judge shall order that the petitioner be restored to the statute he or she had before the arrest or indictment. The judge shall also order that the nonviolent felony conviction be expunged from the records of the court and direct

# HOUSE BILL 1084

Page 3

all law enforcement agencies to expunge their records, including the State Bureau of Investigation and the Federal Bureau of Investigation.

Any person who is entitled to an expunction may also apply to the court for expunction of DNA records if the person's DNA record or profile has been included in the State DNA Database and the person's DNA sample is stored in the State DNA Database. Upon receiving an order of expunction of the DNA records, the State Bureau of Investigation shall make the required purges, however the order does not apply to other offense committed by the individual that qualify for inclusion in the State DNA database.

The clerk of superior court in each North Carolina county shall file with the Administrative Offices of the Court the names of those persons granted a discharge under the provisions of this section and the Administrative Offices of the Courts must maintain a confidential file containing the names of persons granted conditional discharges. This information can only be disclosed to judges of the General Court of Justice of North Carolina for the purpose of determining if any person charged with an offense has been previously given a discharge.

The bill would set the filing fee for the expunction petition at \$65.00 unless the petitioner was indigent. Fees collected would be deposited into the General Fund.

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

HB1084-SMRQ-001

*\*Ben Popkin, Attorney, Research Division, contributed to this summary.*



House Pages

Name Of Committee: Judiciary II Date: 4-12-05

1. Name: Shelly Green

County: Guilford

Sponsor: Laura Wiley

2. Name: Helsey McDaniel

County: Davie

Sponsor: Julia Howard

3. Name: Alisha Graham

County: Rowan

Sponsor: Lorene Coates

4. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

5. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

Sgt-At-Arms

1. Name: Martha Gadison

2. Name: Frank Prevot

3. Name: \_\_\_\_\_

4. Name: \_\_\_\_\_

5. Name: \_\_\_\_\_

# VISITOR REGISTRATION SHEET

JUDICIARY II

APRIL 12, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

SA Haggerty	6313 Baywater Trl. / Raleigh.
JB Powell	AOA
Joann Haggerty	NC Child Advocacy Institute
Adelbert S. Lee	NC Academy of Trial Lawyers
Paul Kelly	PWKY L
BRIAN LEWIS	Covenant with NC's Children
Barry Smith	Freedom Newspapers
LOFARDA JONES	NC-FAMM
STEVE PETERSEN	NC Bar Assoc.
Erin Wynia	NCGA
Bill Roul	W Justice Center

<b>Category</b>	<b>Juveniles – Chapter 7B, Article 32</b>	<b>Youthful Offenders – H1084</b>
<b>AGE to apply</b>	Minimum 18 years old when application is made	Any age after completion of court supervision <u>and</u> unsupervised time
<b>AGE felony committed</b>	Under 16 (adjudged undisciplined or delinquent)	Ages 16 or 17 (not yet 18)
<b>Offenses excluded</b>	Adult felonies A – E	<ol style="list-style-type: none"> <li>1. Adult felonies A – E</li> <li>2. Any felony that includes assault as an essential element</li> <li>3. Felony requiring regulations under N.C. General Statute 14 – 27A (outline)</li> <li>4. <u>NO</u> previous felony or misdemeanor conviction</li> </ol>
<b>Other pre-requisites</b>	No subsequent felony <u>or</u> misdemeanor other than a traffic violation	No felony or misdemeanor other than a traffic violation subsequent to event
<b>Time to be unsupervised</b>	18 months	2 years
<b>Other requirements</b>	None	100 hours community service
<b>Petition requirements</b>	<ol style="list-style-type: none"> <li>1. Affadavit by petitioner</li> <li>2. Affadavits by two persons who know but are not related to petitioner by blood or marriage</li> <li>3. Statement that the petition is a motion</li> </ol>	<ol style="list-style-type: none"> <li>1. Affadavit by petitioner</li> <li>2. Affadavits by two persons who know but are not related to petitioner by blood or marriage</li> <li>3. Statement that the petition is a motion</li> <li>4. Affadavits by other parties re: petitioner's continuing good behavior</li> <li>5. Affadavit by petitioner re: civil judgments or restitution orders</li> <li>6. Affadavit by petitioner re: community service</li> </ol>

**MINUTES  
HOUSE COMMITTEE ON  
JUDICIARY II**

April 14, 2005

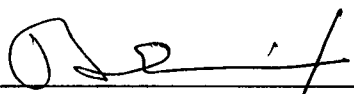
The House Committee on Judiciary II met on Thursday, April 14, 2005, in Room 421 of the Legislative Office Building at 10:00 A.M. The following members were present: Chair Mickey Michaux, Vice-Chairs Alice Bordsen, James Harrell and Timothy Moore, Representatives Allen, Farmer-Butterfield, Fisher, Folwell, Gulley, Jones, Walend and Wiley. Drupti Chauhan and Jeff Hudson, Staff Counselors were in attendance. A Visitor's Registration list is included and made part of these minutes.

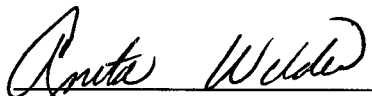
The Chairman called the meeting to order and recognized the Sergeant-At-Arms, Staff and visitors. The following bill was considered:

Chairman Michaux recognized Rep. Hilton to explain the HB 1016, A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW REGARDING THE DISPOSITION OF A FIREARM TO PROVIDE THAT UPON ORDER OF THE APPROPRIATE COURT, A LAW ENFORCEMENT AGENCY MAY USE THE FIREARM FOR OFFICIAL USE OR MAY TRADE, EXCHANGE, OR SELL THE FIREARM TO A FEDERALLY LICENSED FIREARMS DEALER AND MAY USE THE PROCEEDS FROM THE SALE OF UNCLAIMED FIREARMS FOR LAW ENFORCEMENT PURPOSES. A Proposed Committee Substitute (PCS) was submitted for discussion and upon motion made by Rep. Bordsen, the Committee voted to adopt the PCS for discussion. Staff Counselor, Jeff Hudson was recognized to explain bill analysis. Upon motion made by Rep. Moore, the PCS was given a favorable report by the Committee.

There being no further business, the Chair adjourned the meeting at 10:15 A.M.

Respectfully submitted,

  
\_\_\_\_\_  
Representative H. M. Michaux, Jr.  
Presiding Chair

  
\_\_\_\_\_  
Anita Wilder  
Committee Assistant

**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By **Representative MICHAUX (Chair)** for the Committee on **JUDICIARY II**

---

☐ Committee Substitute for

**H.B. 1016 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW REGARDING THE DISPOSITION OF A FIREARM TO PROVIDE THAT UPON ORDER OF THE APPROPRIATE COURT, A LAW ENFORCEMENT AGENCY MAY USE THE FIREARM FOR OFFICIAL USE OR MAY TRADE, EXCHANGE, OR SELL THE FIREARM TO A FEDERALLY LICENSED FIREARMS DEALER AND MAY USE THE PROCEEDS FROM THE SALE OF UNCLAIMED FIREARMS FOR LAW ENFORCEMENT 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)

03/19/03

FOR JOURNAL USE ONLY

\_\_\_\_ Pursuant to Rule 36(b), the bill/resolution 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  
\_\_\_\_ the House amendment (s).  
\_\_\_\_ the House committee substitute bill.  
\_\_\_\_ 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.

# **AGENDA**

## **HOUSE COMMITTEE ON JUDICIARY II**

**April 14 2005  
Room 421  
10:00 AM**

### **OPENING REMARKS**

Representative Mickey Michaux, Chair

### **AGENDA ITEMS**

**HB-1016 Dispose of Firearms/Benefit Law Enforcement Rep. Hilton**

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
2005-2006 SESSION  
BILL SPONSOR NOTIFICATION**

You are hereby notified that the Committee on **JUDICIARY II** will meet as follows:

**DAY & DATE:**     **Thursday, April 14 2005**

**TIME:**             **10:00 a.m.**

**LOCATION:**        **Room 421**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):  
**HB 1016 –Dispose of Firearms/Benefit Law Enforcement– Rep. Hilton**

Respectfully,  
Representative H. M. Michaux, Jr.  
Chair

I hereby certify this notice was filed by the committee assistant at the following offices at  
**12:00 a.m. on April 12, 2005.**

☒ Principal Clerk  
☒ Reading Clerk - House Chamber

Anita Wilder (Committee Assistant)



**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

**H**

**D**

**HOUSE BILL 1016  
PROPOSED COMMITTEE SUBSTITUTE H1016-CSSB-10 [v.3]**

4/14/2005 8:54:02 AM

Short Title: Dispose of Firearms/Benefit Law Enforcement.

(Public)

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Sponsors:

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Referred to:

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March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING THE DISPOSITION OF A FIREARM TO PROVIDE THAT UPON ORDER OF THE APPROPRIATE COURT, A LAW ENFORCEMENT AGENCY MAY USE THE FIREARM FOR OFFICIAL USE OR MAY TRADE, EXCHANGE, OR SELL THE FIREARM TO A FEDERALLY LICENSED FIREARMS DEALER AND MAY USE THE PROCEEDS FROM THE SALE OF UNCLAIMED FIREARMS FOR LAW ENFORCEMENT PURPOSES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 15-11.1(b1) reads as rewritten:

"(b1) Notwithstanding subsections (a) and (b) of this section or any other provision of law, if the property seized is a firearm and the district attorney determines the firearm is no longer necessary or useful as evidence in a criminal trial, the district attorney, after notice to all parties known or believed by the district attorney to have an ownership or a possessory interest in the firearm, including the defendant, shall apply to the court for an order of disposition of the firearm. The judge, after hearing, may order the disposition of the firearm in one of the following ways:

- (1) By ordering the firearm returned to its rightful owner, when the rightful owner is someone other than the defendant and upon findings by the court (i) that the person, firm, or corporation determined by the court to be the rightful owner is entitled to possession of the firearm and (ii) that the person, firm, or corporation determined by the court to be the rightful owner of the firearm was unlawfully deprived of the same or had no knowledge or reasonable belief of the defendant's intention to use the firearm unlawfully.
- (2) By ordering the firearm returned to the defendant, but only if the defendant is not convicted of any criminal offense in connection with the possession or use of the firearm, the defendant is the rightful owner

of the firearm, and the defendant is not otherwise ineligible to possess such firearm.

(3) By ordering the firearm turned over to be destroyed by the sheriff of the county in which the firearm was seized or by his duly authorized agent. The sheriff shall maintain a record of the destruction of the firearm.

(4) By ordering the firearm turned over to a law enforcement agency in the county of trial for (i) the official use of the agency or (ii) sale, trade, or exchange by the agency to a federally licensed firearm dealer in accordance with all applicable State and federal firearm laws. The court may order a disposition of the firearm pursuant to this subdivision only upon the written request of the head or chief of the law enforcement agency and only if the firearm has a legible, unique identification number. If the law enforcement agency sells the firearm, then the proceeds of the sale shall be remitted to the appropriate county finance officer as provided by G.S. 115C-452 to be used to maintain free public schools. The receiving law enforcement agency shall maintain a record and inventory of all firearms received pursuant to this subdivision.

This subsection (b1) is not applicable to seizures pursuant to G.S. 113-137 of firearms used only in connection with a violation of Article 22 of Chapter 113 of the General Statutes or any local wildlife hunting ordinance."

**SECTION 2.** Article 2 of Chapter 15 of the General Statutes is amended by adding a new section to read:

**"§ 15-11.2. Disposition of unclaimed firearms not confiscated or seized as trial evidence.**

(a) Definition. – For purposes of this section, the term "unclaimed firearm" means a firearm that is found or received by a law enforcement agency and that remains unclaimed by the person who may be entitled to it for a period of 30 days after the publication of the notice required by subsection (b) of this section. The term does not include a firearm that is seized and disposed of pursuant to G.S. 15-11.1 or a firearm that is confiscated and disposed of pursuant to G.S. 14-269.1.

(b) Published Notice of Unclaimed Firearm. – When a law enforcement agency finds or receives a firearm and the firearm remains unclaimed for a period of 180 days, the agency shall publish at least one notice in a newspaper published in the county in which the agency is located. The notice shall include all of the following:

(1) A statement that the firearm is unclaimed and is in the custody of the law enforcement agency.

(2) A statement that the firearm may be sold or otherwise disposed of unless the firearm is claimed within 30 days of the date of the publication of the notice.

(3) A brief description of the firearm and any other information that the chief or head of the law enforcement agency may consider necessary or advisable to reasonably inform the public about the firearm.

(c) If the firearm remains unclaimed for a period of 30 days after the publication of the notice, then the person who found the firearm and turned it over to the law enforcement agency may claim the firearm provided the person satisfies the custodial law enforcement agency holding the firearm that the person is qualified under State and federal law to possess the firearm and also presents a pistol permit issued in accordance with Article 52A of Chapter 14 of the General Statutes.

(d) If the firearm remains unclaimed for a period of 30 days after the publication of the notice and the person who found the firearm does not claim it as provided by subsection (c) of this section, then the head or chief of the law enforcement agency may apply to the appropriate district court for an order of disposition of the unclaimed firearm. The application shall be written.

(e) Disposition of Firearm. – The judge, after hearing, may order the disposition of the firearm in one of the following ways:

(1) By ordering the firearm turned over to be destroyed by the sheriff of the county in which the law enforcement agency applying for the order of disposition is located or by the sheriff's duly authorized agent. The sheriff shall maintain a record of the destruction of the firearm.

(2) By ordering the firearm turned over to the law enforcement agency applying for the disposition of the firearm for (i) the official use of the agency or (ii) sale, trade, or exchange by the agency to a federally licensed firearm dealer in accordance with all applicable State and federal firearm laws. The court may order a disposition of the firearm pursuant to this subsection only if the firearm has a legible, unique identification number.

(f) Disbursement of Proceeds of Sale. – If the law enforcement agency sells the firearm, then the proceeds of the sale shall be retained by the law enforcement agency and used for law enforcement purposes. The receiving law enforcement agency shall maintain a record and inventory of all firearms received pursuant to this section."

**SECTION 3. 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. 14-269, G.S. 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.

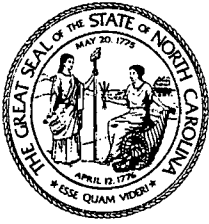
- 1 (4) By ordering such weapon turned over to the sheriff of the county in  
2 which the trial is held or his duly authorized agent to be destroyed. The  
3 sheriff shall maintain a record of the destruction thereof.
- 4 (4a) ~~By ordering the weapon, if the weapon has a legible unique~~  
5 ~~identification number, turned over to a law enforcement agency in the~~  
6 ~~county of trial for the official use of such agency, but only upon the~~  
7 ~~written request by the head or chief of such agency. The receiving law~~  
8 ~~enforcement agency shall maintain a record and inventory of all such~~  
9 ~~weapons received.~~
- 10 (4b) By ordering the weapon turned over to a law enforcement agency in  
11 the county of trial for (i) the official use of the agency or (ii) sale,  
12 trade, or exchange by the agency to a federally licensed firearm dealer  
13 in accordance with all applicable State and federal firearm laws. The  
14 court may order a disposition of the firearm pursuant to this  
15 subdivision only upon the written request of the head or chief of the  
16 law enforcement agency and only if the firearm has a legible, unique  
17 identification number. If the law enforcement agency sells the firearm,  
18 then the proceeds of the sale shall be remitted to the appropriate  
19 county finance officer as provided by G.S. 115C-452 to be used to  
20 maintain free public schools. The receiving law enforcement agency  
21 shall maintain a record and inventory of all firearms received pursuant  
22 to this subdivision.
- 23 (5) By ordering such weapon turned over to the North Carolina State  
24 Bureau of Investigation's Crime Laboratory Weapons Reference  
25 Library for official use by that agency. The State Bureau of  
26 Investigation shall maintain a record and inventory of all such  
27 weapons received.
- 28 (6) By ordering such weapons turned over to the North Carolina Justice  
29 Academy for official use by that agency. The North Carolina Justice  
30 Academy shall maintain a record and inventory of all such weapons  
31 received."

32 **SECTION 4.** G.S. 50B-3.1(h) reads as rewritten:

33 "(h) Disposal of Firearms. – If the defendant does not file a motion requesting the  
34 return of any firearms, ammunition, or permits surrendered within the time period  
35 prescribed by this section, if the court determines that the defendant is precluded from  
36 regaining possession of any firearms, ammunition, or permits surrendered, or if the  
37 defendant or third-party owner fails to remit all fees owed for the storage of the firearms  
38 or ammunition within 30 days of the entry of the order granting the return of the  
39 firearms, ammunition, or permits, the sheriff who has control of the firearms,  
40 ammunition, or permits shall give notice to the defendant, and the sheriff shall apply to  
41 the court for an order of disposition of the firearms, ammunition, or permits. The judge,  
42 after a hearing, may order the disposition of the firearms, ammunition, or permits in one  
43 or more of the ways authorized by law, including subdivision (4), (4a), (4b), (5), or (6)  
44 of G.S. 14-269.1. If a sale by the sheriff does occur, any proceeds from the sale after

1 deducting any costs associated with the sale, and in accordance with all applicable State  
2 and federal law, shall be provided to the defendant, if requested by the defendant by  
3 motion made before the hearing or at the hearing and if ordered by the judge."

4 **SECTION 5.** This act is effective when it becomes law.



# House Bill 1016: Dispose of Firearms/Benefit Law Enforcement

## BILL ANALYSIS

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<b>Committee:</b>	House Judiciary II	<b>Date:</b>	April 14, 2005
<b>Introduced by:</b>	Representative Hilton	<b>Summary by:</b>	Jeff Hudson
<b>Version:</b>	First Edition		Committee Counsel

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**SUMMARY:** *House Bill 1016 would provide that certain firearms that are seized, confiscated, or received by a law enforcement agency may be used by or sold, traded, or exchanged by the law enforcement agency.*

**CURRENT LAW:** Under current law, there are two main statutes that govern the disposition of firearms seized or confiscated by law enforcement agencies:

G.S. 15-11.1. governs the seizure and disposition by law enforcement officers of property that may be used in evidence at trial. In the case of a firearm, if the district attorney determines that the firearm is no longer necessary as evidence, the court may dispose of the firearm by:

- Returning it to its owner, if the firearm was stolen or used without the owner's knowledge.
- Returning it to the defendant if the defendant was not convicted.
- Ordering it to be destroyed by the sheriff of the county in which it was seized.

G.S. 14-269.1. governs the confiscation and disposition of the deadly weapon used by a defendant convicted of an offense involving the use of a deadly weapon. Upon conviction, the presiding judge may dispose of the weapon by:

- Returning it to its owner, if the weapon was stolen.
- Ordering it to be destroyed by the sheriff of the county in which the trial was held.
- Turning it over to a law enforcement agency in the county in which the trial was held for use by the agency.
- Turning it over to the SBI Crime Laboratory Weapons Reference Library.
- Turning it over to the North Carolina Justice Academy.

Current law also provides for the disposition of unclaimed property generally. G.S. 15-12 through G.S. 15-15 provide for the public auction of unclaimed property in possession of a sheriff or police department.

**BILL ANALYSIS:** House Bill 1016 would expand the options for disposition of seized and confiscated firearms by:

- Authorizing a court under G.S. 15-11.1 to dispose of a seized firearm by turning it over to a law enforcement agency in the county in which the trial was held for use by the agency or for sale, trade, or exchange to a federally licensed firearm dealer. If the law enforcement agency sells the firearm, the proceeds will go to the county finance officer to be used to maintain public schools.

# House Bill 1016

Page 2

- Authorizing a court under G.S. 14-269.1 to dispose of a confiscated firearm by turning it over to a law enforcement agency in the county in which the trial was held for sale, trade, or exchange to a federally licensed firearm dealer. If the law enforcement agency sells the firearm, the proceeds will go to the county finance officer to be used to maintain public schools.

House Bill 1016 would also provide a specific process for the disposition of unclaimed firearms. Under this new statute, G.S. 15-11.2, an unclaimed firearm is a firearm that is found or received by a law enforcement agency and that remains unclaimed by a person who may be entitled to it for a period of 180 days after receipt and publication of notice by the law enforcement agency. The notice will contain a brief description of the firearm and require a person who claims an interest in the firearm to establish the claim not later than 30 days after the publication of the notice. If the firearm remains unclaimed within 180 days after the publication of the notice, the person who turned the firearm over to the law enforcement agency may claim it if the person is qualified under State and federal law to possess a firearm. If the firearm still remains unclaimed, the head of the law enforcement agency may apply to the appropriate district court for disposition of the firearm. The judge may dispose of the firearm by:

- Ordering it to be destroyed by the sheriff of the county in which the law enforcement agency holding the firearm is located.
- Turning it over to a law enforcement agency in the county in which the trial was held for use by the agency or for sale, trade, or exchange to a federally licensed firearm dealer. If the law enforcement agency sells the firearm, the proceeds will be retained by the agency to be used for law enforcement purposes.

**EFFECTIVE DATE:** House Bill 1016 would become effective when it becomes law.

*H1016e1-SMSB*

House Pages

JII  
Name Of Committee: ~~EDUCATION~~ ~~REF~~ Date: 4/14/05

1. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

2. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

3. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

4. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

5. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

Sgt-At-Arms

1. Name: JAMES WORTH

2. Name: EARL COKER

3. Name: JAMES WOMACK

4. Name: \_\_\_\_\_

5. Name: \_\_\_\_\_



# VISITOR REGISTRATION SHEET

## JUDICIARY II

APRIL 14, 2005

Name of Committee

**Date**

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME

**FIRM OR AGENCY AND ADDRESS**

✓ 10M<sup>e</sup> Class

McClures Consulting

Henry Mc

11

John Phelps

NCLM

**MINUTES  
HOUSE COMMITTEE ON  
JUDICIARY II**

April 19, 2005

The House Committee on Judiciary II met Tuesday, April 19, 2005, in Room 421 of the Legislative Office Building at 10:00 A.M. The following members were present: Chairman Mickey Michaux, Vice-Chairs, Alice Bordsen, James Harrell and Timothy Moore, Representatives Allen, Farmer-Butterfield, Fisher, Folwell, Gulley, Jones, Walend and Wiley. Drupti Chauhan, Karen Cochrane-Brown and Jeff Hudson, Staff Counselors were in attendance. A Visitor's Registration list is included and made part of these minutes.

The Chairman called the meeting to order and recognized the Pages, Sgt.-At-Arms, Staff and visitors. The following bills were considered:

Vice-Chair Alice Bordsen was recognized to explain changes to HB 1084, A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A YOUTHFUL OFFENDER'S CRIMINAL RECORD MAY BE EXPUNGED OF NONVIOLENT FELONIES. A Proposed Committee Substitute (PCS) was introduced and upon motion made by Rep. Jones, the Committee voted favorably to adopt the PCS for discussion. Drupti Chauhan, Staff Counselor was recognized to explain summary to PCS, which were the concerns of the Administrative Office of the Clerk.

Rep. Bordsen made a motion to amend the bill on Page 2, Line 42 and Rep. Folwell seconded the motion. Upon motion made by Rep. Fisher, the PCS was given a favorable report and re-referred to Finance.

The next order of business was HB 1145, A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT PROBATION IS STAYED DURING AN APPEAL FOR A TRIAL DE NOVO FROM A JUDGMENT ENTERED BY A MAGISTRATE OR DISTRICT JUDGE. Vice-Chair Timothy Moore recognized Chairman Michaux to explain the bill. A Proposed Committee Substitute (PCS) was introduced for discussion and upon motion made by Vice-Chair Moore, the PCS was adopted for the discussion by the Committee.

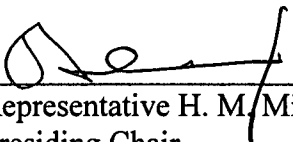
After much discussion, Rep. Michaux moved to amend the bill (Section 2) and the Committee voted to adopt the amendment into the PCS. Upon motion made by Rep. Fisher, the PCS was given a favorable report with the added amendment.

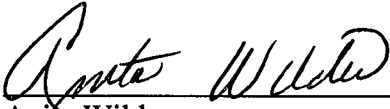
There being no further business, the Chair adjourned the meeting at 10:40 A. M.

Page 2

Minutes-Judiciary II  
April 19, 2005

Respectfully submitted,

  
\_\_\_\_\_  
Representative H. M. Michaux, Jr.  
Presiding Chair

  
\_\_\_\_\_  
Anita Wilder  
Committee Assistant

**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By **Representative MICHAUX (Chair)** for the Committee on **JUDICIARY II**

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☐ Committee Substitute for

**H.B. 1084 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A YOUTHFUL OFFENDER'S CRIMINAL RECORD MAY BE EXPUNGED OF NONVIOLENT FELONIES.**

☐ 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 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)

03/19/03

FOR JOURNAL USE ONLY

\_\_\_\_ Pursuant to Rule 36(b), the bill/resolution 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  
\_\_\_\_ the House amendment (s).  
\_\_\_\_ the House committee substitute bill.  
\_\_\_\_ 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.

# **AGENDA**

## **HOUSE COMMITTEE ON JUDICIARY II**

**April 19, 2005  
Room 421  
10:00 AM**

### **OPENING REMARKS**

Representative Mickey Michaux, Chair

### **AGENDA ITEMS**

**H 1084 –Expunge Nonviolent Felonies/Young Offenders – Reps. Bordsen, Crawford  
H 1145 – Probation Stayed/Appeal For Trial de Novo – Rep. Michaux**

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
2005-2006 SESSION  
BILL SPONSOR NOTIFICATION**

You are hereby notified that the Committee on **JUDICIARY II** will meet as follows:

**DAY & DATE:**     **Tuesday, April 19, 2005**

**TIME:**             **10:00 a.m.**

**LOCATION:**        **Room 421**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

**H 1084 –Expunge Nonviolent Felonies/Young Offenders – Reps. Bordsen, Crawford**

**H 1145 – Probation Stayed/Appeal For Trial de Novo – Rep. Michaux**

Respectfully,  
Representative H. M. Michaux, Jr.  
Chair

I hereby certify this notice was filed by the committee assistant at the following offices at  
**11:00 a.m. on April 14, 2005.**

☒   X   Principal Clerk  
☒   X   Reading Clerk - House Chamber

Anita Wilder (Committee Assistant)

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

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HOUSE BILL 1084  
PROPOSED COMMITTEE SUBSTITUTE H1084-CSRQ-10 [v.2]

4/18/2005 10:10:28 AM

Short Title: Expunge Nonviolent Felonies/Young Offenders.

(Public)

Sponsors:

Referred to:

April 4, 2005

A BILL TO BE ENTITLED  
AN ACT TO PROVIDE THAT A YOUTHFUL OFFENDER'S CRIMINAL RECORD  
MAY BE EXPUNGED OF NONVIOLENT FELONIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A of the General Statutes is amended  
by adding a new section to read:

"§ 15A-149. Expunction of records for first offenders who are under 18 years of  
age at the time of the commission of a nonviolent felony.

(a) For purposes of this section the term "nonviolent felony" means any felony  
except the following:

(1) A Class A through E felony.

(2) A felony that includes assault as an essential element of the offense;  
and

(3) A felony that is an offense for which the convicted offender must  
register under Article 27A of Chapter 14 of the General Statutes.

(b) Notwithstanding any other provision of law, if a person is convicted of more  
than one nonviolent felony in the same session of court, then the multiple nonviolent  
felony convictions shall be treated as one nonviolent felony conviction under this  
section, and the expunction order issued under this section shall provide that the  
multiple convictions shall be expunged from the person's record in accordance with this  
section.

(c) Whenever any person who had not yet attained the age of 18 years at the time  
of the offense and has not previously been convicted of any felony or misdemeanor  
other than a traffic violation under the laws of the United States, the laws of this State,  
or any other state pleads guilty to or is guilty of a nonviolent felony, the person may file  
a petition in the court where the person was convicted for expunction of the nonviolent  
felony from the person's criminal record. The petition cannot be filed earlier than two  
years after the date of the conviction or when any active sentence, period of probation,



1 and post-release supervision has been served, whichever occurs later. The person shall  
2 also perform at least 100 hours of community service, preferably related to the  
3 conviction, before filing a petition for expunction under this section. The petition shall  
4 contain, but not be limited to, the following:

5 (1) An affidavit by the petitioner that he has been of good behavior for the  
6 two-year period since the date of conviction of the nonviolent felony in  
7 question and has not been convicted of any felony, or misdemeanor  
8 other than a traffic violation, under the laws of the United States or the  
9 laws of this State or any other state.

10 (2) Verified affidavits of two persons who are not related to the petitioner  
11 or to each other by blood or marriage that they know the character and  
12 reputation of the petitioner in the community in which he or she lives  
13 and that the petitioner's character and reputation are good.

14 (3) A statement that the petition is a motion in the cause in the case  
15 wherein the petitioner was convicted.

16 (4) An application on a form approved by the Administrative Office of the  
17 Courts requesting and authorizing a State and national criminal record  
18 check by the Department of Justice using any information required by  
19 the Administrative Office of the Courts to identify the individual and a  
20 search of the confidential record of expungements maintained by the  
21 Administrative Office of the Courts. The application shall be  
22 forwarded to the Department of Justice and to the Administrative  
23 Office of the Courts to conduct the searches and report the findings to  
24 the court.

25 (5) An affidavit by the petitioner that no restitution orders or civil  
26 judgments representing amounts ordered for restitution entered against  
27 him or her are outstanding.

28 (6) An affidavit by the petitioner that the petitioner has performed at least  
29 100 hours of community service since the conviction for the  
30 nonviolent felony. The affidavit shall include a list of the community  
31 services performed, a list of the recipients of the services, and a  
32 detailed description of those services.

33 The petition shall be served upon the district attorney of the court wherein the case  
34 was tried resulting in conviction. The district attorney shall have 10 days thereafter in  
35 which to file any objection thereto and shall be duly notified as to the date of the  
36 hearing of the petition.

37 The judge to whom the petition is presented is authorized to call upon a probation  
38 officer for any additional investigation or verification of the petitioner's conduct during  
39 the two-year period that the judge deems desirable.

40 (d) If the court, after hearing, finds that the petitioner has remained of good  
41 behavior and been free of conviction of any felony or misdemeanor, other than a traffic  
42 violation, for two years from the date of conviction of the nonviolent felony in question,  
43 the petitioner has no outstanding restitution orders or civil judgments representing  
44 amounts ordered for restitution entered against him or her, the petitioner was less than

18 years old at the time of the commission of the offense in question, and the petitioner has performed at least 100 hours of community service since the time of the conviction, then the court shall order that the person be restored, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of the person for any purpose.

(e) The court shall also order that the nonviolent felony conviction be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief, or head of any other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

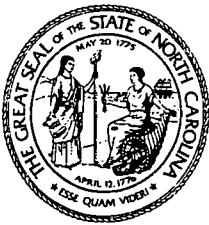
(f) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged.

(g) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in the clerk's county, file with the Administrative Office of the Courts the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge.

(h) Any person eligible for expunction of a criminal record under this section shall be notified about the provisions of this section by the probation officer assigned to that person. If no probation officer is assigned, notification of the provisions of this section shall be provided by the court at the time of the conviction of the felony which is to be expunged under this section.

(i) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred dollars (\$100.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

**SECTION 2.** This act becomes effective December 1, 2005.



# HOUSE BILL 1084: Expunge Nonviolent Felonies/Young Offenders

## BILL ANALYSIS

**Committee:** House Judiciary II  
**Date:** April 19, 2005  
**Version:** H1084-CSRQ-10[v.2]

**Introduced by:** Reps. Bordsen and Crawford  
**Summary by:** Drupti Chauhan\*  
Committee Counsel

**SUMMARY:** *House Bill 1084 would provide for the expunction of criminal records for offenders who are under the age of 18 at the time of commission of a nonviolent felony. A waiting period of 2 years after the conviction or any period of probation, 100 hours of community service, no prior or subsequent felony or non-traffic misdemeanor offenses; and affidavits attesting to the petitioner's character are all required.*

*The new PCS makes the following changes: (1) States that the petition cannot be filed until two years after the last event is over whether it be the date of conviction, or time served for an active sentence, period of probation or post-supervised release. (2) Replaces the subdivision that required affidavits from law enforcement officials to verify any criminal activity with a State and national criminal check conducted by the Department of Justice. (3) Eliminates the provision that provided for DNA records expunction. (4) Provides that any other applicable State or local government agency must expunge its records made as a result of the conviction ordered expunged. (5) Provides that the probation officer assigned to the offender must notify the offender of the expunction possibility under this section and if no probation officer is assigned, then the court hearing the felony case must provide notification of this section. (6) Changes the petition fee to \$100.00. (6) Changes the effective date to December 1, 2005.*

**CURRENT LAW:** Article 5 of the Criminal Procedure Act provides for the expunction of criminal records of certain criminal charges or convictions. Expunction is the process by which a record of criminal conviction is removed by order of the court, and the individual is restored to the status he or she occupied before the arrest or indictment. General Statute 15A-145 (Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors) allows a person convicted of a misdemeanor to file a petition for expunction of the misdemeanor from his or her criminal record if the person was under 18 at the time of a conviction or, in the case of a misdemeanor alcohol possession charge, the person was under 21 at the time of conviction. The petition may not be filed sooner than 2 years after the conviction or completion of probation and must include the following<sup>1</sup>:

- 1) an affidavit of good behavior for the two years following conviction, stating that the petitioner has not been convicted of any felony or non-traffic misdemeanor charge;
- 2) two affidavits of good character from persons unrelated to the petitioner;
- 3) a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted; and
- 4) affidavits of the clerk of superior court, chief of police, and sheriff of the county of the offense and where the petitioner resides showing that petitioner has not been convicted of a felony or non-traffic misdemeanor offense prior to or in the two years since the conviction in question.

<sup>1</sup> G.S. 15A-145(a)(1) through (4).

# HOUSE BILL 1084

Page 2

If the court finds in favor of the petitioner the clerk of superior court and the appropriate law enforcement agencies must expunge the record of the conviction.

Other sections of Article 5 provide for "Expunction of records when charges are dismissed or there are finding of not guilty as a result of identity fraud"<sup>2</sup> and "Expunction of DNA records when charges are dismissed on appeal or pardon of innocence is granted."<sup>3</sup>

**BILL ANALYSIS:** The bill would add a new section to Article 5 "Expunction of Records" of Chapter 15A "Criminal Procedure Act" of the General Statutes. The proposed G.S. 15A-149 would provide expunction of the criminal records of first time offenders who are under 18 years of age at the time of the commission of the nonviolent felony if there are no previous or subsequent felony or misdemeanor convictions, other than a traffic violation. "Nonviolent felony" would include any felony *except* the following:

- A Class A through E felony;
- A felony that includes assault as an essential element of the offense; and
- A felony that is an offense for which the convicted offender must register under Article 27A of Chapter 14 of the General Statutes (sex offenders).

If the person is convicted of more than one nonviolent felony in the same session of court, the bill provides that the multiple nonviolent felony convictions are to be treated as one nonviolent felony conviction under the section and the expunction order is to provide that the multiple convictions are to be expunged.

The procedure to be followed by the petitioner is modeled along the lines of the existing procedures for expunction of records. The petition cannot be filed earlier than two years after the date of conviction or after the time when any active sentence, period of probation, or post-release supervision has been served, whichever occurs later. The petitioner is also required to perform at least 100 hours of community service before filing the petition for expunction.

The petition must contain at least the following:

- 1) An affidavit of good behavior by the petitioner for the 2 years following conviction, stating that the petitioner has not been convicted of any felony or non-traffic misdemeanor charge under the laws of the United States, this State or any other state during that time;
- 2) Two affidavits of good character from persons unrelated to petitioner;
- 3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted;
- 4) An application authorizing a State and national criminal record check by the Department of Justice with the results reported to the court;
- 5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding; and

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<sup>2</sup> G.S. 15A-147.

<sup>3</sup> G.S. 15A-148.

# HOUSE BILL 1084

Page 3

- 6) An affidavit by the petitioner that he or she has performed at least 100 hours of community service since the conviction with a list of the community services performed, a list of the recipients of the services, and a detailed description of the services.

The petition is to be served on the district attorney who has 10 days to file any objections. The judge is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct. If the judge finds that the petitioner has met all of the requirements, the judge shall order that the petitioner be restored to the statute he or she had before the arrest or indictment. The judge shall also order that the nonviolent felony conviction be expunged from the records of the court and direct all law enforcement agencies to expunge their records, including the State Bureau of Investigation and the Federal Bureau of Investigation.

Any other applicable State or local government agency is directed to expunge from its records any entries made as a result of the conviction order expunged under this section. The agency is required to also reverse any administrative actions taken against a person whose record is expunged under this section.

The clerk of superior court in each North Carolina county shall file with the Administrative Offices of the Court the names of those persons granted a discharge under the provisions of this section and the Administrative Offices of the Courts must maintain a confidential file containing the names of persons granted conditional discharges. This information can only be disclosed to judges of the General Court of Justice of North Carolina for the purpose of determining if any person charged with an offense has been previously given a discharge.

If a probation officer is assigned to the person eligible for expunction, the probation officer must notify the person of the provisions of this section. If no probation officer is assigned, then the court which heard the felony must provide notification of the possibility of expunction under this section.

The bill would set the filing fee for the expunction petition at \$100.00 unless the petitioner was indigent. Fees collected would be deposited into the General Fund.

**EFFECTIVE DATE:** The bill would become effective December 1, 2005.

HB1084-SMRQ-002

*\*Ben Popkin, Attorney, Research Division, contributed to this summary.*

**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By **Representative MICHAUX (Chair)** for the Committee on **JUDICIARY II** .

☐ Committee Substitute for

**H.B. 1145 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT PROBATION IS STAYED DURING AN APPEAL FOR A TRIAL DE NOVO FROM A JUDGMENT ENTERED BY A MAGISTRATE OR DISTRICT COURT JUDGE.**

☐ 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)

03/19/03

FOR JOURNAL USE ONLY

- \_\_\_\_ Pursuant to Rule 36(b), the bill/resolution 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  
\_\_\_\_ the House amendment (s).  
\_\_\_\_ the House committee substitute bill.  
\_\_\_\_ 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.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

1

HOUSE BILL 1145

Short Title: Probation Stayed/Appeal for Trial de Novo.

(Public)

Sponsors: Representative Michaux.

Referred to: Judiciary II.

April 7, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT PROBATION IS STAYED DURING AN APPEAL  
FOR A TRIAL DE NOVO FROM A JUDGMENT ENTERED BY A  
MAGISTRATE OR DISTRICT COURT JUDGE.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 15A-1431 reads as rewritten:

**"§ 15A-1431. Appeals by defendants from magistrate and district court judge;  
trial de novo.**

(a) A defendant convicted before a magistrate 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 transfer the case  
to the appropriate court.

(d) A defendant convicted by a magistrate or district court judge is not barred  
from appeal because of compliance with the judgment, but notice of appeal after  
compliance must be given by the defendant in person to the magistrate or judge who  
heard the case or, if he is not available, notice must be given:

(1) Before a magistrate in the county, in the case of appeals from the  
magistrate; or

(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.



1 The magistrate or district court judge must review the case and fix conditions of pretrial  
2 release as appropriate. If a defendant has paid a fine or costs and then appeals, the  
3 amount paid must be remitted to the defendant, but the judge, clerk or magistrate to  
4 whom notice of appeal is given may order the remission delayed pending the  
5 determination of the appeal.

6 (e) Any order of pretrial release remains in effect pending appeal by the  
7 defendant unless the judge modifies the order.

8 ~~(f) Appeal pursuant to this section stays the execution of portions of the~~  
9 ~~judgment relating to fine and costs. Appeal stays portions of the judgment relating to~~  
10 ~~confinement when the defendant has complied with conditions of pretrial release. If the~~  
11 ~~defendant cannot comply with conditions of pretrial release, the judge may order~~  
12 ~~confinement in a local confinement facility pending the trial de novo in superior court.~~

13 (f1) Appeal pursuant to this section stays the execution of all portions of the  
14 judgment, including all of the following:

15 (1) Payment of costs.

16 (2) Payment of a fine.

17 (3) Probation or special probation.

18 (4) Active punishment.

19 Pursuant to subsection (e) of this section, however, the judge may order any  
20 appropriate condition of pretrial release, including confinement in a local confinement  
21 facility, pending the trial de novo in superior court.

22 (g) The defendant may withdraw his appeal at any time prior to calendaring of  
23 the case for trial de novo. The case is then automatically remanded to the court from  
24 which the appeal was taken, for execution of the judgment.

25 (h) The defendant may withdraw his appeal after the calendaring of the case for  
26 trial de novo only by consent of the court, and with the attachment of costs of that court,  
27 unless the costs or any part of the costs are remitted by the court. The case may then be  
28 remanded by order of the court to the court from which the appeal was taken for  
29 execution of the judgment with any additional court costs that attached and that have not  
30 been remitted."

31 **SECTION 2.** This act is effective when it becomes law.

House Pages

Name Of Committee: J II Date: 4-19-05

1. Name: Keith Dunn  
County: Harnett  
Sponsor: David Lewis
2. Name: Lucas Elliott  
County: Franklin  
Sponsor: Lucy Allen
3. Name: \_\_\_\_\_  
County: \_\_\_\_\_  
Sponsor: \_\_\_\_\_
4. Name: \_\_\_\_\_  
County: \_\_\_\_\_  
Sponsor: \_\_\_\_\_
5. Name: \_\_\_\_\_  
County: \_\_\_\_\_  
Sponsor: \_\_\_\_\_

Sgt-At-Arms

1. Name: BILL FREEMAN
2. Name: FRANK PREVU
3. Name: \_\_\_\_\_
4. Name: \_\_\_\_\_
5. Name: \_\_\_\_\_

# VISITOR REGISTRATION SHEET

JUDICIARY II

APRIL 19, 2005

Name of Committee

Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME

FIRM OR AGENCY AND ADDRESS

Doug Lastra	NCSTA
BRIAN LEWIS	Covenant w NC's Children
Jim Drinnan	A.O.G.
Peri Powell	ADC
Robert Lee Gray	DOC, DCC
Mildred Spearman	NCDOC
Sherry Pilkington	NCDOC/DCC
Peg Doer	Conference of D.A.s
Erin Wynia	NCGA
Annell S. Clark	Perkins! Clark & Associates
Mecca Trumb	NCAAC

# VISITOR REGISTRATION SHEET

## JUDICIARY II

Name of Committee

APRIL 19, 2005

**Date**

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME \_\_\_\_\_

**FIRM OR AGENCY AND ADDRESS**[illegible]

**MINUTES  
HOUSE COMMITTEE ON  
JUDICIARY II**

April 21, 2005

The House Committee on Judiciary II met on Thursday, April 21, 2005, in Room 421 of the Legislative Office Building at 9:00 A.M. The following members were present: Chairman Mickey Michaux, Vice-Chair Timothy Moore, Representatives Farmer-Butterfield, Fisher, Folwell, Gulley, Jones, Walend and Wiley. Drupti Chauhan, Karen Cochrane-Brown and Jeff Hudson, Staff Counselors were in attendance. A Visitor's Registration list is included and made part of these minutes.

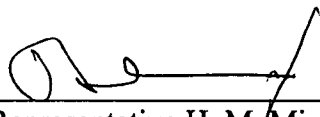
The Chairman called the meeting to order and recognized the Pages, Sergeant-At-Arms, Staff and visitors. The following bills were considered:

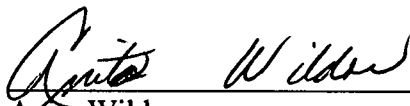
The Chair recognized Rep. Moore to explain HB 1090, A BILL TO BE ENTITLED AN ACT PROVIDING THAT DOCUMENTS PREPARED FOR RECORDATION OR FILING SHALL NOT INCLUDE SOCIAL SECURITY NUMBERS AND THAT REGISTERS OF DEEDS AND CLERKS OF COURT MAY DECLINE ACCEPTANCE OF A DOCUMENT FOR RECORDATION OR FILING WHEN A PREPARER UNLAWFULLY INCLUDES A SOCIAL SECURITY NUMBER. The bill was re-referred to Rules with recommendations for it to be put in a study commission.

The next order of business was HB 423, A BILL TO BE ENTITLED AN ACT TO CREATE THE OFFENSE OF HABITUAL MISDEMEANOR LARCENY. Rep. Moore was recognized to explain the bill. A Proposed Committee Substitute (PCS) was submitted for discussion along with an amendment and upon motion made by Rep. Folwell the PCS was adopted for discussion by the Committee. The Committee also voted to roll the amendment into the PCS. Upon motion made by Rep Folwell, the PCS was given favorable report by the Committee.

There being no further business, the Chair adjourned the meeting at 9:40 A.M.

Respectfully submitted,

  
\_\_\_\_\_  
Representative H. M. Michaux, Jr.  
Presiding Chair

  
\_\_\_\_\_  
Anita Wilder  
Committee Assistant

**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative **Michaux** (Chair) for the Committee on **Judiciary II**.

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☐ Committee Substitute for

**H.B. 423 A BILL TO BE ENTITLED AN ACT TO CREATE THE OFFENSE OF  
HABITUAL MISDEMEANOR LARCENY.**

☐ 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 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)

03/19/03

FOR JOURNAL USE ONLY

- \_\_\_\_ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of \_\_\_\_\_.
- \_\_\_\_ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on \_\_\_\_\_.
- \_\_\_\_ (Pursuant to Rule 32(a),) (Rule 38(a)(b)) 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  
\_\_\_\_ the House amendment (s).  
\_\_\_\_ the House committee substitute bill.  
\_\_\_\_ 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.

# **AGENDA**

## **HOUSE COMMITTEE ON JUDICIARY II**

**April 21, 2005  
Room 421  
10:00 AM**

### **OPENING REMARKS**

Representative Mickey Michaux, Chair

### **AGENDA ITEMS**

**H 1090—No SSNs in Recorded/Filed Documents – Reps. Langdon, Moore  
H 423 – Habitual Misdemeanor Larceny/Felony – Rep. Moore**



**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
2005-2006 SESSION  
BILL SPONSOR NOTIFICATION**

You are hereby notified that the Committee on **JUDICIARY II** will meet as follows:

**DAY & DATE:**     **Thursday, April 21, 2005**

**TIME:**             **10:00 a.m.**

**LOCATION:**        **Room 421**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):  
**H 1090–No SSNs in Recorded/Filed Documents– Reps. Langdon, Moore**  
**H 423– Habitual Misdemeanor Larceny/Felony– Rep. Moore**

Respectfully,  
Representative H. M. Michaux, Jr.  
Chair

I hereby certify this notice was filed by the committee assistant at the following offices at  
**12:15 a.m. on April 19, 2005.**

☒ Principal Clerk  
☒ Reading Clerk - House Chamber

Anita Wilder (Committee Assistant)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

1

HOUSE BILL 423

Short Title: Habitual Misdemeanor Larceny/Felony.

(Public)

Sponsors: Representatives Moore; Daughtridge, LaRoque, Setzer, and Steen.

Referred to: Judiciary II.

March 1, 2005

A BILL TO BE ENTITLED

AN ACT TO CREATE THE OFFENSE OF HABITUAL MISDEMEANOR LARCENY.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 16 of Chapter 14 of the General Statutes is amended by adding a new section to read:

**"§ 14-86.2. Habitual misdemeanor larceny.**

(a) The following definitions apply in this section:

(1) 'Convicted' means the person has been adjudged guilty of or has entered a plea of guilty or no contest to the misdemeanor larceny charge, and judgment has been entered thereon when the action occurred.

(2) 'Misdemeanor larceny' includes the following offenses:

a. Misdemeanor larceny pursuant to G.S. 14-72(a).

b. Any repealed or superseded offense substantially equivalent to misdemeanor larceny under G.S. 14-72(a).

c. Any offense committed in another jurisdiction substantially similar to misdemeanor larceny under G.S. 14-72(a).

(b) A person commits the offense of habitual misdemeanor larceny if that person is 18 years of age or older, commits misdemeanor larceny under G.S. 14-72(a), and has been convicted of five or more prior misdemeanor larceny convictions. A person convicted of violating this section is guilty of a Class H felony.

(c) For purposes of this section, if an offender is convicted of more than one offense of misdemeanor larceny in a single session of district court, or in a single week of superior court or of a court in another jurisdiction, only one of the convictions may be used to establish the offense of habitual misdemeanor larceny.

(d) A violation of this section shall not constitute commission of a felony for purposes of G.S. 14-7.6."

1           **SECTION 2.** This act becomes effective December 1, 2005, and applies to  
2 offenses committed on or after that date.



# HOUSE BILL 423: Habitual Misdemeanor Larceny/Felony

## BILL ANALYSIS

**Committee:** House Judiciary II  
**Introduced by:** Rep. Moore  
**Version:** First Edition

**Date:** April 20, 2005  
**Summary by:** Karen Cochrane-Brown  
Committee Counsel

**SUMMARY:** *House Bill 423 creates the offense of habitual misdemeanor larceny. A person commits this offense if the person is 18 or older, commits misdemeanor larceny and has been convicted of five or more prior misdemeanor larceny convictions. This offense is punishable as a Class H felony. The bill also excludes this offense from the felonies that would qualify a person for habitual felon status.*

## CURRENT LAW:

Larceny has been defined in case law as "the wrongful taking and carrying away of the personal property of another without his consent, and this must be done with intent to deprive the owner of his property and to appropriate it to the taker's use fraudulently". Under current law, (G.S. 14-72) if the value of the property is less than \$1,000., the taker is guilty of a Class 1 misdemeanor. If the value of the property is more than \$1,000., or in certain cases, without regard to the value of the property, the taker is guilty of a Class H felony.

## BILL ANALYSIS:

This bill creates a new substantive offense of habitual misdemeanor larceny. For purposes of this offense, misdemeanor larceny includes:

- Misdemeanor larceny under the current criminal statute,
- Any repealed or superseded offense which is substantially equivalent to misdemeanor larceny, and
- Any offense committed in another jurisdiction substantially similar to misdemeanor larceny.

A person commits habitual misdemeanor larceny if that person is 18 years old or older, commits misdemeanor larceny under (G.S. 14-72(a)), and has been convicted of five or more prior misdemeanor larceny convictions. This offense is punishable as a Class H felony. The bill also provides that if the person is convicted of more than one offense of misdemeanor larceny in a single session of district court, or in a single week of superior court or a court of another jurisdiction, only one conviction may be used to establish this offense.

Finally, this bill provides that conviction of habitual misdemeanor larceny may not be used as a felony to determine habitual felon status.

## BACKGROUND:

The habitual felon statute (G.S. 14-7.6) provides for enhancement of the punishment after a person is convicted of a fourth felony. It is not a separate offense. By contrast, this bill creates a separate felony offense, one of the elements of which is five prior convictions of the same crime.

# House Bill 423

*Page 2*

The offense created by this bill is similar to several existing statutes. Habitual misdemeanor assault (G.S. 14-33.2) makes it a Class H felony if a person commits aggravated assault or assault by pointing a gun and the person has been convicted of five or more misdemeanors, two of which were assault. Habitual impaired driving (G.S. 20-138.5) makes it a Class F felony if a person drives while impaired and has been convicted of three or more offenses involving impaired driving within seven years.

**EFFECTIVE DATE:** This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

*H0423e1-SMRO*

## **§ 14-72. Larceny of property; receiving stolen goods or possessing stolen goods.**

(a) Larceny of goods of the value of more than one thousand dollars (\$1,000) is a Class H felony. The receiving or possessing of stolen goods of the value of more than one thousand dollars (\$1,000) while knowing or having reasonable grounds to believe that the goods are stolen is a Class H felony. Larceny as provided in subsection (b) of this section is a Class H felony. Receiving or possession of stolen goods as provided in subsection (c) of this section is a Class H felony. Except as provided in subsections (b) and (c) of this section, larceny of property, or the receiving or possession of stolen goods knowing or having reasonable grounds to believe them to be stolen, where the value of the property or goods is not more than one thousand dollars (\$1,000), is a Class 1 misdemeanor. In all cases of doubt, the jury shall, in the verdict, fix the value of the property stolen.

(b) The crime of larceny is a felony, without regard to the value of the property in question, if the larceny is:

- (1) From the person; or
- (2) Committed pursuant to a violation of G.S. 14-51, 14-53, 14-54 or 14-57; or
- (3) Of any explosive or incendiary device or substance. As used in this section, the phrase "explosive or incendiary device or substance" shall include any explosive or incendiary grenade or bomb; any dynamite, blasting powder, nitroglycerin, TNT, or other high explosive; or any device, ingredient for such device, or type or quantity of substance primarily useful for large-scale destruction of property by explosive or incendiary action or lethal injury to persons by explosive or incendiary action. This definition shall not include fireworks; or any form, type, or quantity of gasoline, butane gas, natural gas, or any other substance having explosive or incendiary properties but serving a legitimate nondestructive or nonlethal use in the form, type, or quantity stolen.
- (4) Of any firearm. As used in this section, the term "firearm" shall include any instrument used in the propulsion of a shot, shell or bullet by the action of gunpowder or any other explosive substance within it. A "firearm," which at the time of theft is not capable of being fired, shall be included within this definition if it can be made to work. This definition shall not include air rifles or air pistols.
- (5) Of any record or paper in the custody of the North Carolina State Archives as defined by G.S. 121-2(7) and 121-2(8).

(c) The crime of possessing stolen goods knowing or having reasonable grounds to believe them to be stolen in the circumstances described in subsection (b) is a felony or the crime of receiving stolen goods knowing or having reasonable grounds to believe them to be stolen in the circumstances described in subsection (b) is a felony, without regard to the value of the property in question.

(d) Where the larceny or receiving or possession of stolen goods as described in subsection (a) of this section involves the merchandise of any store, a merchant, a merchant's agent, a merchant's employee, or a peace officer who detains or causes the arrest of any person shall not be held civilly liable for detention, malicious prosecution, false imprisonment, or false arrest of the person detained or arrested, when such detention is upon the premises of the store or in a reasonable proximity thereto, is in a reasonable manner for a reasonable length of time, and, if in detaining or in causing the arrest of such

# House Bill 423

*Page 4*

person, the merchant, the merchant's agent, the merchant's employee, or the peace officer had, at the time of the detention or arrest, probable cause to believe that the person committed an offense under subsection (a) of this section. If the person being detained by the merchant, the merchant's agent, or the merchant's employee, is a minor under the age of 18 years, the merchant, the merchant's agent, or the merchant's employee, shall call or notify, or make a reasonable effort to call or notify the parent or guardian of the minor, during the period of detention. A merchant, a merchant's agent, or a merchant's employee, who makes a reasonable effort to call or notify the parent or guardian of the minor shall not be held civilly liable for failing to notify the parent or guardian of the minor.

House Pages

Name Of Committee: J II Date: 4-21-05

1. Name: Christi Thompson

County: Wake

Sponsor: Russell Capps

2. Name: Blair Belk

County: Mecklenburg

Sponsor: Speaker James Black

3. Name: Brandon Broome

County: Mecklenburg

Sponsor: Speaker James Black

4. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

5. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

Sgt-At-Arms

1. Name: BILL FREEMAN

2. Name: FRANK PREVOT

3. Name: Fred HINES

4. Name: \_\_\_\_\_

5. Name: \_\_\_\_\_



# VISITOR REGISTRATION SHEET

W. II

4-21-05

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

John Phelps

NCLM

Rep J. A. Langdon

**MINUTES  
HOUSE COMMITTEE ON  
JUDICIARY II**

April 26, 2005

The House Committee on Judiciary II met on Tuesday, April 26, 2005, in Room 421 of the Legislative Office Building at 10:00 A.M. The following members were present: Chairman Mickey Michaux, Vice-Chairs Alice Bordsen, James Harrell, Timothy Moore, Representatives Allen, Farmer-Butterfield, Fisher, Folwell, Gulley, Jones, Walend and Wiley. Drupti Chauhan, Karen Cochrane-Brown and Jeff Hudson were in attendance. A Visitor's Registration is included and made part of these minutes.

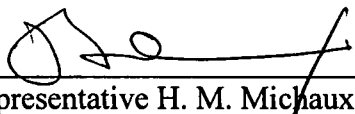
The Chairman called the meeting to order and recognized the Pages, Sergeant-At-Arms, Staff and visitors. The following bill was considered:

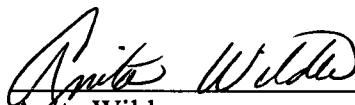
The Chair recognized Rep. Fisher to explain HB 1243, A BILL TO BE ENTITLED AN ACT REQUIRING GOOD FAITH CAUSE FOR THE EVICTION OF TENANTS RENTING SPACE FOR RESIDENTIAL MANUFACTURED HOMES. Rep. Fisher moves to amend the bill on page 1, line 14. Upon motion made by Rep. Folwell, the Committee adopted the amendment to be added to the bill. Rep. Bordsen also made a motion to add another amendment to the bill and the Committee adopted that amendment also. Drupti Chauhan, Staff Counselor was also recognized to explain the bill's analysis.

After much discussion, Rep. Michaux moved that a Proposed Committee Substitute (PCS) be done and all of the amendments be added. No action was taken on the bill at this time by the Committee.

There being no further business, the Chair adjourned the meeting at 10:25 A.M.

Respectfully submitted,

  
\_\_\_\_\_  
Representative H. M. Michaux, Jr.  
Presiding Chair

  
\_\_\_\_\_  
Anita Wilder  
Committee Assistant

# **AGENDA**

## **HOUSE COMMITTEE ON JUDICIARY II**

**April 26, 2005  
Room 421  
10:00 AM**

### **OPENING REMARKS**

Representative Mickey Michaux, Chair

### **AGENDA ITEMS**

**H 1146–Foreclosure Reform– Rep. Michaux**

**H 1243– Manufactured Homes/Good Faith Evictions – Reps. Fisher, Bordsen**

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
2005-2006 SESSION  
BILL SPONSOR NOTIFICATION**

You are hereby notified that the Committee on **JUDICIARY II** will meet as follows:

**DAY & DATE:**     **Tuesday, April 26, 2005**

**TIME:**             **10:00 a.m.**

**LOCATION:**        **Room 421**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

**H 1146 – Foreclosure Reform – Rep. Michaux**

**H 1243 – Manufactured Homes/Good Faith Evictions – Reps. Fisher, Bordsen**

Respectfully,  
Representative H. M. Michaux, Jr.  
Chair

I hereby certify this notice was filed by the committee assistant at the following offices at  
**11:30 a.m. on April 21, 2005.**

☒ Principal Clerk  
☒ Reading Clerk - House Chamber

Anita Wilder (Committee Assistant)

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

1

HOUSE BILL 1243

Short Title: Manufactured Homes/Good Faith Evictions.

(Public)

Sponsors: Representatives Fisher, Bordsen (Primary Sponsors); Brown, Dickson, England, Harrison, Insko, Luebke, McAllister, and Weiss.

Referred to: Judiciary II.

April 18, 2005

A BILL TO BE ENTITLED  
AN ACT REQUIRING GOOD FAITH CAUSE FOR THE EVICTION OF TENANTS  
RENTING SPACE FOR RESIDENTIAL MANUFACTURED HOMES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 42-14 reads as rewritten:

**"§ 42-14. Notice to quit in certain tenancies.**

A tenancy from year to year may be terminated by a notice to quit given one month or more before the end of the current year of the tenancy; a tenancy from month to month by a like notice of seven days; a tenancy from week to week, of two days. Provided, however, where the tenancy involves only the rental of a space for a manufactured home as defined in G.S. 143-143.9(6), home, as defined in G.S. 143-143.9(6), for residential use, a notice to quit must be given at least 30 days before the end of the current rental period, regardless of the term of the tenancy the tenancy may be terminated only for the reasons provided in G.S. 42-26(c)."

**SECTION 2.** G.S. 42-26 is amended by adding the following new subsection to read:

**"§ 42-26. Tenant holding over may be dispossessed in certain cases.**

...

(c) Notwithstanding the provisions of subsection (a) of this section, the termination of a lease where the tenancy involves only the rental of a space for a manufactured home, as defined in G.S. 143-143.9(6), for residential use shall be for one or more of the following reasons:

(1) When the tenant or lessee, or other person under him, has done or omitted any act by which, according to the stipulations of the lease, his estate has ceased.

(2) When the tenant or lessee, or other person under him, has failed to pay rent as provided in G.S. 42-3.

- 1           (3)   When the tenant or lessee, or other person under him, has committed  
2           an act that is the basis for eviction under Article 7 of this Chapter.  
3           (4)   When there is a condemnation or change of use of the land as provided  
4           in G.S. 42-14.3, if the landlord complies with the provisions of that  
5           section."

6           **SECTION 3.** This act is effective when it becomes law.

## VISITOR REGISTRATION SHEET

JUDICIARY II

APRIL 26, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Jorie Schmidt	NC Justice Center
Lisa Martin	NC Home Builders Assoc.
Ken Leonard	WESR
James Andrews	NC State AFL-CIO
Chris Parnish	Parnish Manor
Frank Gray	N.C. Man. Housing Assoc.
Angie Whitener	Speaker's office
Rob Schifield	NC Justice Center

**MINUTES  
HOUSE COMMITTEE ON  
JUDICIARY II**

May 3, 2005

The House Committee on Judiciary II met on Tuesday, May 3, 2005, in Room 421 of the Legislative Office Building at 10:00 A.M. The following members were present: Chairman Mickey Michaux, Vice-Chairs Alice Bordsen, James Harrell and Timothy Moore, Representatives Allen, Farmer-Butterfield, Fisher, Folwell, Gulley, Jones Walend and Wiley. Drupti Chauhan, Karen Cochrane-Brown and Jeff Hudson, Staff Counselors were in attendance. A Visitor's Registration list is included and made part of these minutes.

The Chairman called the meeting to order and recognized the Pages, Sgt.-At-Arms, Staff and visitors. The following bills were considered:

Representative Howard was recognized to explain HB 768, A BILL TO BE ENTITLED AN ACT TO MAKE TECHNICAL AND OTHER CHANGES TO THE UNIFORM BOILER AND PRESSURE VESSEL ACT OF NORTH CAROLINA AND THE WAGE AND HOUR ACT OF NORTH CAROLINA. A Proposed Committee Substitute (PCS) was introduced at this time for discuss and upon the motion made by Rep. Farmer-Butterfield PCS was adopted for discussion. Drupti Chauhan, Staff Counselor gave explanation of changes in the PCS. Upon motion made by Rep. Allen, the Committee gave a favorable report to the PCS and an unfavorable to the original bill.

The next order of business was HB 935, A BILL TO BE ENTITLED AN ACT TO MAKE LARCENY FROM A CONSTRUCTION SITE A FELONY. Rep. Harrell was recognized to explain the bill. The Proposed Committee Substitute (PCS) was entered for discussion by the Committee and upon a motion made by Rep. Harrell the PCS was adopted by the Committee for discussion. Jeff Hudson, Staff Counselor was also recognized to explain the changes the PCS would make to the original bill. Rep Goforth, one of the sponsors of HB 935 was also recognized to speak on the bill's behalf. After much debate, Chairman Michaux tabled action on the bill until a fiscal note could be presented to the full Committee and after voting, it would be sent to Appropriations.

Chairman Michaux announced that HB 614, A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW REGARDING "SOLICITATION OF A CHILD BY COMPUTER TO COMMIT AN UNLAWFUL SEX ACT" BY INCREASING THE PENALTY AND BY ALLOWING UNDERCOVER OFFICERS TO POSE AS JUVENILES TO INVESTIGATE POSSIBLE OFFENDERS had passed in the Senate and was now in Judiciary IV's Committee and that he will request that it be placed back in Judiciary II Committee.

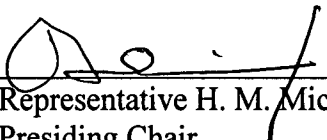
There being no further business, the Chair adjourned the meeting at 10:45 A.M.



Page 2

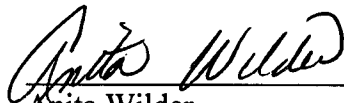
Minutes Judiciary II  
May 3, 2005

Respectfully submitted,



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Representative H. M. Michaux, Jr.  
Presiding Chair



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Anita Wilder  
Committee Assistant

**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative Michaux (Chair) for the Committee on JUDICIARY II.

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☐ Committee Substitute for

**HB 768** A BILL TO BE ENTITLED AN ACT TO MAKE TECHNICAL AND OTHER CHANGES TO THE UNIFORM BOILER AND PRESSURE VESSEL ACT OF NORTH CAROLINA AND THE WAGE AND HOUR ACT OF NORTH CAROLINA.

☒ 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

**(FOR JOURNAL USE ONLY)**

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\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on \_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is placed on the Calendar of \_\_\_\_\_. (The original bill resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

\_\_\_\_\_ The (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is re-referred to the Committee on \_\_\_\_\_. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

# **AGENDA**

## **HOUSE COMMITTEE ON JUDICIARY II**

**May 03 2005  
Room 421  
10:00 AM**

### **OPENING REMARKS**

Representative Mickey Michaux, Chair

### **AGENDA ITEMS**

**H 768 – 2005 Omnibus Labor Law Changes.-AB – Rep. Howard  
H 1324 – Unborn Victims of Violence – Reps. Walend and Folwell  
H 614 – Child Solicitation by Computer – Reps. Wiley and Walend  
H 935 – Construction Site Theft/Aggravate Penalty – Reps. Goforth and Harrell**

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

D

HOUSE BILL 768  
PROPOSED COMMITTEE SUBSTITUTE H768-CSRQ-16 [v.1]

5/2/2005 4:48:02 PM

Short Title: 2005 Omnibus Labor Law Changes.-AB

(Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND OTHER CHANGES TO THE UNIFORM  
BOILER AND PRESSURE VESSEL ACT OF NORTH CAROLINA AND THE  
WAGE AND HOUR ACT OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-69.9 reads as rewritten:

"§ 95-69.9. Definitions.

(a) The term "board" shall mean the North Carolina Board of Boiler and Pressure  
Vessel Rules; Rules.

(b) The term "boiler" shall mean a closed vessel in which water is heated, steam  
is generated, steam is superheated, or any combination thereof, under pressure or  
vacuum for use externally to itself by the direct or indirect application of heat from the  
~~combustion of fuels, or from electricity or nuclear energy. This heat.~~ The term "boiler"  
shall also include fired units for heating or vaporizing liquids other than water where  
these units are separate from processing systems and are complete within  
themselves; themselves.

(c) The term "Commissioner" shall mean the North Carolina Commissioner of  
Labor; Labor.

(d) ~~The term "Director" shall mean the individual appointed by the  
Commissioner to hold the office of Director of the Boiler and Pressure Vessel Division  
within the Department of Labor;~~

(e) The term "inspection certificate" or "certificate of inspection" shall mean  
certification by the ~~Director~~ Chief Inspector that a boiler or pressure vessel is in  
compliance with the rules and regulations adopted under this Article; Article.

(f) The term "inspector's commission" shall mean a written authorization by the  
Commissioner for a person who has met the qualifications set out in this Article to  
conduct inspections of boilers and pressure vessels; vessels.

(g) The term "pressure vessel" shall mean a vessel in which the pressure is obtained from an indirect source or by the application of heat from an indirect source or a direct source, other than those included within the term "boiler".

(h) The term "Chief Inspector" shall mean the individual appointed by the Commissioner to hold the office of Chief of the Boiler Safety Bureau within the Department of Labor. The Chief Inspector serves as the North Carolina member on the National Board of Boiler and Pressure Vessel Inspectors.

(i) The term "Deputy Inspector" shall mean any Boiler and Pressure Vessel Inspector who is employed by the Department of Labor and is subordinate to the Chief Inspector.

(j) The term "National Board" shall mean the National Board of Boiler and Pressure Vessel Inspectors.

(k) The term "person" shall mean any individual, association, partnership, firm, corporation, private organization, or the State of North Carolina or any political subdivision of the State or any unit of local government."

**SECTION 2.** G.S. 95-69.10 reads as rewritten:

**"§ 95-69.10. Application of Article; exemptions.**

(a) This Article shall apply to all boilers and pressure vessels constructed, used, or designed for operation in this State including all new and existing installations which are operated in connection with business buildings, institutional buildings, industrial buildings, assembly buildings, educational buildings, public residential buildings, recreation buildings, other public buildings, and water supplies. This Article shall also apply to boilers and hot water supply tanks, and heaters located in hotels, motels, tourist courts, camps, cottages, resort lodges, and similar places whenever the owner or operator advertises in any manner for transit patronage, or solicits such business for temporary abode by transit patrons.

(b) This Article shall not apply to:

- (1) Boilers and pressure vessels owned ~~and/or~~ or operated by the federal ~~government~~ government, unless the agency in question has asked for coverage by this Article.
- (2) Pressure vessels used for transportation or storage of compressed gases when constructed in compliance with the specifications of the United States Department of Transportation and when charged with gas marked, maintained, and periodically requalified for use, as required by appropriate regulations of the United States Department of Transportation.
- (3) Portable pressure vessels used for agricultural purposes only or for pumping or drilling in an open field for water, gas or coal, gold, talc, or other minerals and metals.
- (4) Boilers and pressure vessels which are located in private residences or in apartment houses of less than six families.
- (5) Pressure vessels used for transportation or storage of liquified petroleum gas.

- (6) Air tanks located on vehicles licensed under the rules and regulations of other state authorities operating under rules and regulations substantially similar to those of this State and used for carrying passengers or freight within interstate commerce.
- (7) Air tanks installed on right-of-way of railroads and used directly in the operation of trains.
- (8) ~~Pressure vessels that do not exceed five cubic feet in volume and 250 PSIG pressure; or one and one-half cubic feet in volume and 600 PSIG pressure; or an inside diameter of six inches with no limitations on pressure.~~ Any of the following pressure vessels that do not exceed the listed limitations if the vessel is not equipped with a quick actuating closure:
- a. Five cubic feet in volume and 250 psig.
  - b. Three cubic feet in volume and 350 psig.
  - c. One and one-half cubic feet in volume and 600 psig.
  - d. An inside diameter of six inches with no limitation on pressure.
- (9) Pressure vessels operating at a working pressure not exceeding 15 PSIG ~~pressure.~~
- (10) Pressure vessels with a nominal water capacity ~~of not exceeding~~ 120 gallons ~~or less~~ and containing water under pressure at ~~ambient temperature,~~ temperatures not exceeding 120°F, including those containing air, the compression of which serves as a cushion.
- (11) Boilers and pressure vessels on railroad steam locomotives that are subject to federal safety regulations.
- (12) Repealed by Session Laws 1985, c. 620, s. 2.
- (13) Coil-type hot water supply boilers, generally referred to as steam jennies, where the water can flash into steam when released directly to the atmosphere through a manually operated nozzle and where adequate safety relief valves and controls are installed on them, provided none of the following limitations are exceeded:
- a. There is no drum, header, or other steam space.
  - b. No steam is generated within the coil.
  - c. Maximum 1 inch tube size.
  - d. Maximum 3/4 inch nominal pipe size.
  - e. Maximum 6 gallon nominal water storage capacity.
  - f. ~~Water temperature of 350 degrees fahrenheit.~~ 350°F.
- (14) Pressure vessels containing water at a temperature not exceeding 110 degrees fahrenheit except that this provision shall not exclude hydropneumatic pressure vessels from regulation.
- (15) An air tank that does not exceed eight cubic feet in volume that is installed on a service vehicle.
- (16) Autoclaves in medical offices and hospitals that are less than five cubic feet in volume, even if they are equipped with a quick actuating closure.

(17) Coil-type hot water supply boilers of the instantaneous type where adequate safety relief valves and controls are installed if none of the following limitations are exceeded:

- a. There is no drum, header, or other steam space.
- b. No steam is generated within the coil.
- c. Maximum one inch tube size.
- d. Maximum three-quarter inch nominal pipe size.
- e. Maximum six gallon nominal water storage capacity.
- f. Water temperature not to exceed 250°F.
- g. Maximum heat input does not exceed 400,000 Btu/hr or 110 kW.
- h. Maximum pressure of 260 psig.

(18) Toy boilers, if all of the following apply:

- a. The water containing volume of the boiler is less than one quart.
- b. The operating pressure does not exceed 15 psig.
- c. The maximum outside diameter of the shell is no greater than six inches.
- d. The boiler is manually fired by solid fuels.

(19) Pressure vessels associated with electrical apparatus in electrical switchyards if the pressure vessels have proper pressure relief devices.

(20) Carbon dioxide tanks used in beverage dispensing service.

(c) The construction and inspection requirements established by the Department of Labor shall not apply to hot water supply boilers which are directly fired with oil, gas or electricity, or hot water supply tanks heated by steam or any other indirect means, which do not exceed any of the following limitations:

- (1) Heat input of 200,000 BTU HR; Btu/hr or 58.6 kW.
- (2) Water temperature of 200 degrees F;
- (3) Nominal water capacity of 120 gallons; gallons.

provided that they are equipped with ASME Code and National Board certified safety relief valves.

(d) The construction requirements established by the Department of Labor shall not apply to pressure vessels installed in this State prior to December 31, 1981, that:

- (1) Are of one-piece, forged—construction—and—have—no weldments; unwelded, forged construction;
- (2) Are constructed before January 1, 1981, and operating or could be operated, under the laws of any state or Canadian Province that has adopted one or more sections of the ASME Code;
- (3) Are transferred into this State without a change of ownership; and
- (4) Are determined by the Director—Chief Inspector to be constructed under standards substantially equivalent to those established by the department at the time of transfer;

provided that they are equipped with ASME Code and National Board certified safety relief valves.

1 (e) The construction requirements established by the Department of Labor shall  
2 not apply to pressure vessels installed in this State prior to December 31, 1984, that:

- 3 (1) Are manufactured from gray iron casting material, as specified by the  
4 American Society for Testing and Materials, (ASTM) 48-60T/30;  
5 (2) Are constructed before December 31, 1967, and operating or could be  
6 operated, under the laws of any state or Canadian Province that has  
7 adopted one or more sections of the ASME Boiler and Pressure Vessel  
8 Code;  
9 (3) Are transferred into this State without a change of ownership; and  
10 (4) Are determined by the ~~Director~~ Chief Inspector to be constructed  
11 under standards substantially equivalent to those established by the  
12 department at the time of transfer;

13 provided that they are equipped with ASME Code and National Board certified safety  
14 relief valves.

15 (f) The construction requirements established by the Department of Labor shall  
16 not apply to hydropneumatic tanks installed or operated by a community water system  
17 prior to January 1, 1986."

18 **SECTION 3. G.S. 95-69.11 reads as rewritten:**

19 **"§ 95-69.11. Powers and duties of Commissioner.**

20 The Commissioner of Labor is hereby charged, directed, and empowered:

- 21 (1) To adopt, modify, or revoke rules governing the construction,  
22 operation, and use of boilers and pressure vessels, including, where  
23 necessary, requirements for fencing to prevent unauthorized persons  
24 from coming in contact with boilers and pressure vessels or the  
25 systems they are connected to.  
26 (2) ~~To supervise the office of the Director of Boiler and Pressure Vessel~~  
27 ~~Division.~~ To delegate to the Chief Inspector any powers, duties, and  
28 responsibilities that the Commissioner determines will best serve the  
29 public interest in the safe operation of boilers and pressure vessels, and  
30 to supervise the Chief Inspector in the performance of those duties.  
31 (3) To enforce rules adopted under authority of this Article.  
32 (4) To inspect boilers and pressure vessels covered under this Article.  
33 (5) To issue inspection certificates to those boilers and pressure vessels  
34 found in compliance with this Article.  
35 (6) To enjoin violations of this Article in the civil and criminal courts of  
36 this State.  
37 (7) To keep adequate records of the type, dimensions, age, conditions,  
38 pressure allowed upon, location, and date of the last inspection of all  
39 boilers and pressure vessels to which this Article applies.  
40 (8) To require such periodic reports from inspectors, owners, and  
41 operators of boilers and pressure vessels as he deems appropriate in  
42 carrying out the purposes of this Article.  
43 (9) To have free access, without notice, to any location in this State,  
44 during reasonable hours, where a boiler or pressure vessel is being



- 1 built, installed, or operated for the purpose of ascertaining whether  
2 such boiler or pressure vessel is built, installed, or operated in  
3 accordance with the provisions of this Article.
- 4 (10) To investigate serious accidents involving boilers and pressure vessels  
5 to determine the causes of the accidents, and to have full subpoena  
6 powers in conducting the investigation.
- 7 (11) To establish reasonable fees for the inspection and issuance of  
8 inspection certificates for boilers and pressure vessels that are in use.
- 9 (12) To establish reasonable fees for the examination and certification of  
10 inspectors.
- 11 (13) To appoint qualified individuals to the Board of Boiler and Pressure  
12 Vessel Rules.
- 13 (14) To perform inspections and audits relating to the construction and  
14 repair of boilers and pressure vessels and to establish and collect fees  
15 for these activities.
- 16 (15) To order the payment of civil penalties provided by this section.
- 17 (16) To require that before any boiler or pressure vessel that is subject to  
18 this Article is transferred into the State, or is moved from one location  
19 to another within the State, the owner or the owner's authorized agent  
20 shall file with the Commissioner a written notice of intent to do so and  
21 the type of device involved and provide a copy of the specifications,  
22 previous inspection documents, or other information that the  
23 Commissioner deems necessary to determine whether the boiler or  
24 pressure vessel is in compliance with the provisions of this Article and  
25 the rules adopted under this Article."

26 SECTION 4. G.S. 95-69.12 reads as rewritten:

27 ~~"§ 95-69.12. Office of Director of Boilers and Pressure Vessels Division created;~~  
28 ~~powers and duties.~~Boiler Safety Bureau established.

29 ~~There is hereby created the office of Director of the Boiler and Pressure Vessel~~  
30 ~~Division within the North Carolina Department of Labor. The person holding this office~~  
31 ~~shall assist the Commissioner in carrying out the provisions of this Article in~~  
32 ~~accordance with the provisions of Chapter 126 of the General Statutes. The Director is~~  
33 ~~charged with the responsibility for the administration of this Article on a day-to-day~~  
34 ~~basis.~~

35 ~~The Director shall be primarily responsible for the inspection of boilers and~~  
36 ~~pressure vessels subject to this Article and for the issuance of inspection certificates for~~  
37 ~~those boilers and pressure vessels found suitable. He shall also be responsible for the~~  
38 ~~collection of fees for the inspection of boilers and pressure vessels and transmitting the~~  
39 ~~same to the State Treasurer, where they shall be held in a special account to cover the~~  
40 ~~operating expenses of the Division.~~

41 There is established a Boiler Safety Bureau within the Department of Labor. The  
42 Commissioner shall appoint a Chief Inspector of the Boiler Safety Bureau and any other  
43 employees that the Commissioner deems necessary to assist the Chief Inspector in  
44 administering the provisions of this Article and the rules adopted under this Article."

SECTION 5. G.S. 95-69.13 reads as rewritten:

"§ 95-69.13. Board of Boiler and Pressure Vessels Rules created; appointment, terms, compensation and duties.

(a) There is hereby created the North Carolina Board of Boiler and Pressure Vessels Rules consisting of nine members appointed by the Commissioner, of which ~~three shall be appointed for a term of one year, three for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years. At the expiration of their respective terms of office, their successors shall be appointed for terms of five years each.~~ Commissioner for a term of five years each. Of these nine appointed members, one shall be a representative of the owners and users of steam boilers within this State, one a representative of boiler manufacturers within this State, one a representative of boilermakers within this State who has had not less than five years' practical experience as a boilermaker, one shall be a representative of the owners or users of pressure vessels within the State, one shall be a representative of the pressure vessel manufacturers within the State, one a representative of a boiler inspection and insurance ~~company~~ companies authorized to insure boilers and pressure vessels within the State, one a representative of the ~~operating steam engineers~~ antique boiler owners and operators in this State, one a contractor holding a Group I North Carolina Heating License, and one a mechanical engineer on the faculty of a recognized engineering college or a licensed professional engineer having boiler and pressure vessel experience. The Commissioner of Labor shall serve as ~~chairman~~ chair. The Chief Inspector shall serve on the Board and in the absence of the Commissioner shall serve as chair.

(b) The Board shall meet at least twice annually and shall be responsible for:

- (1) Studying and proposing rules and regulations, for adoption, modification or revocation by the Commissioner, governing the construction, installation, inspection, repair, alteration, use and operation of boilers and pressure vessels in this State. The rules and regulations so formulated shall conform as nearly as possible to the standards of the American Society of Mechanical Engineers ~~and amendments and interpretations thereto made and approved by the council of the Society Engineers.~~
- (2) Devise and ~~administer~~ proctor examinations covering this Article and the rules adopted under this Article to applicants seeking a ~~certificate of competency as commission as~~ inspectors of boilers and pressure vessels in this State.
- (2a) Act as proctors during the administration of the National Board commissioning examination.
- (3) Issue, suspend, or revoke inspector's ~~commission to commissions as~~ inspectors of boilers and pressure vessels within this State. Whenever action is taken under this section to suspend or revoke a commission, the affected party shall be given notice of the availability of an administrative hearing and of judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act.

(c) The members of the Board shall serve without salary but shall be paid a subsistence and travel allowance as established in accordance with Chapter 138 of the General Statutes."

SECTION 6. G.S. 95-69.14 reads as rewritten:

"§ 95-69.14. Rules and regulations governing the construction, operation and use of boilers and pressure vessels.

The Commissioner, after consultation with the Board, may adopt, ~~modify~~ modify, or revoke ~~such any~~ rules and regulations governing the construction, installation, repair, alteration, inspection, ~~use~~ use, and operation of boilers and pressure vessels as ~~he the~~ Commissioner deems appropriate to insure the safe operation and avoidance of injury to person or property from boilers and pressure vessels. The rules and regulations will conform as nearly as possible to the standards of the American Society of Mechanical Engineers and the amendments and interpretations thereto, ~~but to avoid unnecessary hardships that would result from requiring replacement of existing non-code tanks that meet minimum safety requirements where there is no danger to persons, such rules and regulations shall vary for hydropneumatic pressure vessels installed or operated by a community water system prior to January 1, 1986 of those engineering standards.~~

The procedure for the adoption, ~~modification~~ modification, or revocation of ~~such the~~ rules and regulations shall be ~~the same as that contained within in accordance with the Administrative Procedure Act of North Carolina as the same appears in Chapter 150B of the General Statutes~~ Statutes, the Administrative Procedure Act."

SECTION 7. G.S. 95-69.15 reads as rewritten:

"§ 95-69.15. Classification of inspectors; qualifications; examinations; certificates of competency; inspector's commission.

(a) There shall be three types of inspectors authorized to conduct inspections and report their findings to the ~~Director~~ Chief Inspector under this Article:

- (1) ~~Boiler and Pressure Vessel Inspector. Inspector or Deputy Inspector. -~~  
Shall be a qualified ~~individual~~ individual, employed by the Department of Labor and appointed by the Commissioner, to assist in conducting inspections under this Article and report on the suitability of boilers and pressure vessels so ~~inspected~~ inspected.
- (2) ~~Special Inspector. Inspector or Insurance Inspector. -~~ Shall be a qualified individual regularly employed by an insurance company authorized to insure in this State against injury to person ~~and/or or~~ property or both from explosions and accidents involving boilers and pressure ~~vessels; vessels.~~ Special Inspectors shall not include employees of private contract inspection agencies.
- (3) Owner-User Inspectors. - Shall be a qualified individual employed on a full-time basis by a company operating ~~boilers or~~ pressure vessels for its own use and not for resale, and maintains an established inspection program for periodic inspection of ~~boilers and~~ pressure vessels owned or used by that company and where such inspection program is under the supervision of one or more engineers having qualifications satisfactory to the Commissioner.

(b) Inspector's Commission. – Any company authorized to insure in this State against loss to person or property as a result of an explosion or accident involving boilers and pressure vessels or operating boilers ~~and/or or~~ pressure vessels or both for its own use and not for resale, may apply for the issuance of an inspector's commission for an individual within its employ who has a ~~certificate of competency commission from~~ the National Board.

A North Carolina commission authorizes an inspector to make inspections on boilers and pressure vessels and report on the suitability of said boilers and pressure vessels to the ~~Director~~ Chief Inspector. Those inspectors holding commissions as special inspectors shall be limited to making inspections on boilers and pressure vessels insured by their employer. Owner-user inspectors shall be limited to conducting inspections on boilers and pressure vessels operated by their respective employers.

A person seeking a commission from this State to conduct in-service inspections of boilers and pressure vessels must take and pass an examination on this Article and the rules adopted pursuant to this Article prior to receiving the commission. Any person who has had a commission in this State but who has been inactive for more than one year must take or retake and pass the State examination before conducting further in-service inspections of boilers and pressure vessels.

(c) ~~Qualifications for~~ Certificates of Competency. – Certificates of competency may be issued by the Chief Inspector to those persons who take and pass a National Board commissioning examination administered by the Board. To be entitled to a certificate of competency, as one of the above type inspectors, an individual must:

- ~~(1) Have passed an examination provided and administered by the Board;~~  
or
- ~~(2) Have passed an examination and been certified in a state having rules and regulations substantially similar to those effective within North Carolina; or~~
- ~~(3) Hold a certificate of competency of the National Board of Boiler and Pressure Vessel Inspectors; and~~
- ~~(4) Continue in the employ of the company requesting the certificate of competency from the Board."~~

**SECTION 8.** G.S. 95-69.16 reads as rewritten:

**"§ 95-69.16. Inspection certificate required.**

All boilers and pressure vessels subject to the provisions of this Article shall be inspected by ~~an authorized~~ a commissioned inspector. The Commissioner may determine both the frequency and the method of inspection. In determining the frequency of inspection, the Commissioner shall give due consideration to the hazard involved and the need for the protection of the public. The method of inspection must provide an adequate procedure to insure the safety of individuals likely to be injured by an explosion or accident involving a boiler or pressure vessel.

No boiler or pressure vessel may be operated without an inspection certificate, except pressure vessels being operated under an owner-user provision where administrative procedures of equal safety and competency have been approved by the

Board and Commissioner. No more than ~~60~~ 90 days grace period may be granted beyond the certificate expiration date."

SECTION 9. G.S. 95-69.17 reads as rewritten:

"§ 95-69.17. ~~Administrative and judicial review of decisions.~~ Noncomplying devices; appeal.

(a) ~~A final decision to suspend or revoke an inspector's commission or inspection certificate shall be made in accordance with Chapter 150B of the General Statutes.~~

(b) ~~A final decision to deny an application for a certificate of competency or to refuse to issue or renew an inspection certificate shall be made in accordance with Chapter 150B of the General Statutes. In a contested case under this subsection, the decision of the Director shall not be stayed pending administrative review.~~

(c) ~~Article 4 of Chapter 150B of the General Statutes governs judicial review of a final decision in a contested case.~~

(a) If the Commissioner determines that a boiler or pressure vessel is subject to the provisions of this Article and that the operation of the boiler or pressure vessel is exposing the public to an unsafe condition likely to result in serious personal injury or property damage, the Commissioner may immediately order in writing that the use of the boiler or pressure vessel be stopped or limited until the Commissioner determines that the boiler or pressure vessel has been made safe for operation.

(b) If the Commissioner determines that the provisions of this Article or the rules adopted pursuant to this Article have not been complied with, the Commissioner may refuse to issue or renew or may revoke, suspend, or amend an inspection certificate.

(c) Whenever action is taken under this section, the affected party shall be given notice of the availability of an administrative hearing and of judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act."

SECTION 10. G.S. 95-69.18 reads as rewritten:

"§ 95-69.18. ~~Inspection certificates required; misrepresentation as inspector.~~ Operation without inspection certificate; operation not in compliance with this Article; operation after nonissuance or revocation of certificate.

~~It shall be unlawful for any person, firm, partnership, association or corporation to operate or use any boiler or pressure vessel in this State, and to which this Article applies, without a valid inspection certificate issued by the North Carolina Department of Labor. Any person, firm, partnership, association or corporation found to be operating or using a boiler or pressure vessel without a valid inspection certificate shall be guilty of a Class 3 misdemeanor which may include a fine of one thousand dollars (\$1,000).~~

~~Any person who knowingly and willfully misrepresents himself as an authorized inspector in North Carolina, shall be guilty of a Class 2 misdemeanor.~~

(a) No person may operate or permit to be operated any boiler or pressure vessel subject to the provisions of this Article without a valid inspection certificate unless the absence of a valid inspection certificate is the result of the Commissioner's failure to inspect the device.

1       (b) No person may operate or permit to be operated any boiler or pressure vessel  
2 subject to the provisions of this Article other than in accordance with this Article and  
3 the rules adopted pursuant to this Article.

4       (c) No person may operate or permit to be operated any boiler or pressure vessel  
5 subject to the provisions of this Article after the Commissioner has refused to issue or  
6 has revoked the inspection certificate for the boiler or pressure vessel."

7       **SECTION 11.** Article 7A of Chapter 95 of the General Statutes is amended  
8 by adding a new section to read:

9       **"§ 95-69.19. Violations; civil penalties; appeals.**

10       (a) Any person who violates G.S. 95-69-18(a) or (b) (Operation without  
11 inspection certificate; operation not in accordance with Article or rules and regulations)  
12 shall be subject to a civil penalty not to exceed two hundred fifty dollars (\$250.00) for  
13 each day each boiler or pressure vessel is so operated or used.

14       (b) Any person who violates G.S. 95-69-18(c) (Operation after refusal to issue or  
15 after revocation of inspection certificate) shall be subject to a civil penalty not to exceed  
16 five hundred dollars (\$500.00) for each day any such boiler or pressure vessel is so  
17 operated or used.

18       (c) In determining the amount of any penalty ordered under authority of this  
19 section, the Commissioner shall give due consideration to the appropriateness of the  
20 penalty with respect to the size of the business of the person being charged, the gravity  
21 of the violation, the good faith of the person, and the record of previous violations.

22       (d) The determination of the amount of the penalty by the Commissioner shall be  
23 final, unless within 15 days after receipt of notice thereof by certified mail the person  
24 charged with the violation takes exception to the determination in which event the final  
25 determination of the penalty shall be made in an administrative proceeding and in a  
26 judicial proceeding pursuant to Chapter 150B of the General Statutes, the  
27 Administrative Procedure Act.

28       (e) The Commissioner may file in the office of the clerk of the superior court of  
29 the county where the violation occurred or where the person against whom a civil  
30 penalty has been ordered resides, or if a corporation is involved in the county where the  
31 corporation maintains its principal place of business, a certified copy of a final order of  
32 the Commissioner unappealed from, or of a final order of the Commissioner affirmed  
33 upon appeal. Upon filing of the final order, the clerk of superior court shall enter  
34 judgment in accordance with the order and notify the parties. The judgment shall have  
35 the same force and effect as a judgment by the superior court of the General Court of  
36 Justice."

37       **SECTION 12.** Article 7A of Chapter 95 of the General Statutes is amended  
38 by adding a new section to read:

39       **"§ 95-69.20. Violations; criminal penalties.**

40       (a) Any person who knowingly and willfully misrepresents himself as an  
41 authorized inspector administering or enforcing the provisions of this Article or the  
42 rules adopted pursuant to this Article shall be guilty of a Class 2 misdemeanor.

43       (b) Any person knowingly making a material and false statement, representation  
44 or certification in any application, record, report, plan, or any other document filed or

1 required to be maintained pursuant to this Article or the rules adopted pursuant to this  
2 Article shall be guilty of a Class 2 misdemeanor."

3 **SECTION 13.** G.S. 95-107 reads as rewritten:

4 **"§ 95-107. Assessment and collection of fees; certificates of safe operation.**

5 The assessment of the fees adopted by the Commissioner pursuant to ~~G.S. 95-110.5~~  
6 ~~and G.S. 95-111.4~~ G.S. 95-69.11, 95-110.5, 95-111.4, and 95-118 shall be made against  
7 the owner or operator of the equipment and may be collected at the time of inspection.  
8 If the fees are not collected at the time of inspection, the Department must bill the  
9 owner or operator of the equipment for the amount of the fee assessed for the inspection  
10 of the equipment and the amount assessed is payable by the owner or operator of the  
11 equipment upon receipt of the bill. Certificates of safe operation may be withheld by the  
12 Department of Labor until such time as the assessed fees are collected."

13 **SECTION 14.** G.S. 95-108 reads as rewritten:

14 **"§ 95-108. Disposition of fees.**

15 All fees collected by the Department of Labor pursuant to ~~G.S. 95-110.5 and~~  
16 ~~G.S. 95-111.4~~ G.S. 95-69.11, 95-110.5, 95-111.4, and 95-118 shall be deposited with  
17 the State Treasurer and shall be used exclusively for inspection and certification  
18 purposes."

19 **SECTION 15.** G.S. 95-25.5(i) reads as rewritten:

20 "(i) ~~Youths~~ Youth under 18 years of age employed by their ~~parents~~ parent,  
21 guardian, or other person standing in loco parentis are exempt from all provisions of this  
22 section, except for all of the following:

- 23 (1) The certificate requirements of subsection (a) of this section.
- 24 (2) The prohibition from hazardous or detrimental occupations of  
25 subsection (b) of this section.
- 26 (3) The prohibitions of subsection (j)(2) of this section if the youths only  
27 work at the establishment when another employee at least 21 years of  
28 age is in charge of and present at the licensed premises."

29 **SECTION 16.** G.S. 95-25.8 reads as rewritten:

30 **"§ 95-25.8. Withholding of wages.**

31 ~~An employer may withhold or divert any portion of an employee's wages when:~~

- 32 (1) ~~The employer is required or empowered to do so by State or federal~~  
33 ~~law, or~~
- 34 (2) ~~The employer has a written authorization from the employee which is~~  
35 ~~signed on or before the payday for the pay period from which the~~  
36 ~~deduction is to be made indicating the reason for the deduction. Two~~  
37 ~~types of authorization are permitted:~~
  - 38 a. ~~When the amount or rate of the proposed deduction is known~~  
39 ~~and agreed upon in advance, the authorization shall specify the~~  
40 ~~dollar amount or percentage of wages which shall be deducted~~  
41 ~~from one or more paychecks, provided that if the deduction is~~  
42 ~~for the convenience of the employee, the employee shall be~~  
43 ~~given a reasonable opportunity to withdraw the authorization;~~

b. ~~When the amount of the proposed deduction is not known and agreed upon in advance, the authorization need not specify a dollar amount which can be deducted from one or more paychecks, provided that the employee receives advance notice of the specific amount of any proposed deduction and is given a reasonable opportunity to withdraw the authorization before the deduction is made.~~

(a) An employer may withhold or divert any portion of an employee's wages when required or empowered by State or federal law.

(b) Withholding or diversion of wages owed, for the employer's benefit, must be made in accordance with the employer's written policies, and the employer must comply with the following requirements:

(1) In non-overtime workweeks, an employer may reduce wages to the minimum wage level.

(2) In overtime workweeks, employers may reduce wages to the minimum wage level for non-overtime hours.

(3) No reductions may be made during overtime work hours.

(c) Withholding or diversion of wages owed, for the convenience of employees, must be made in accordance with the employer's written policy and are not limited in the amounts to be withheld."

SECTION 17. G.S. 95-25.9 is repealed.

SECTION 18. G.S. 95-25.10 is repealed.

SECTION 19. G.S. 95-25.11 reads as rewritten:

"§ 95-25.11. Employers' remedies preserved.

(a) ~~The provisions of G.S. 95-25.8, G.S. 95-25.9, and G.S. 95-25.10 do not apply if criminal process has issued against the employee, if the employee has been indicted, or if the employee has been arrested pursuant to Articles 17, 20, and 32 of Chapter 15A of the General Statutes for a charge incident to a cash shortage, inventory shortage, or damage to an employer's property.~~

~~If the employee is not found guilty, then the amount deducted shall be reimbursed to the employee by the employer.~~

(b) ~~Nothing in this Article shall preclude an employer from bringing a civil action in the General Court of Justice to collect any amounts due the employer from the employee."~~

SECTION 20. G.S. 95-25.12 reads as rewritten:

"§ 95-25.12. Vacation pay-pay plans.

No employer is required to provide vacation time off with pay, vacation, or paid time off plans for employees. However, if an employer provides vacation these promised benefits for employees, the employer shall give all vacation paid time off or payment in lieu of time off in accordance with the company policy or practice. Employees shall be notified in accordance with G.S. 95-25.13 of any policy or practice which requires or results in loss or forfeiture of vacation time or pay. paid time off. Employees not so notified are not subject to such loss or forfeiture."

SECTION 21. G.S. 95-25.13(3) reads as rewritten:



1           "(3) Notify its employees, in writing or through a posted notice maintained  
2           in a place accessible to its employees, ~~of at least 24 hours prior to any~~  
3           changes in promised wages prior to the time of such changes except  
4           that wages-wages. Wages may be retroactively increased without the  
5           prior notice required by this subsection; and".

6           **SECTION 22.** G.S. 95-25.15(a) reads as rewritten:

7           "(a) The Commissioner or his designated representative shall have the power and  
8           authority to enter any place of employment and gather such facts as are essential to  
9           determine whether or not the employer is covered by any provision of this Article.

10          With respect to any provision of this Article under which the employer is covered,  
11          the Commissioner or ~~his~~ the Commissioner's designated representative may inspect  
12          such places and such records, make transcriptions of any and all such records, question  
13          employees and investigate such facts, conditions, practices, or matters as are necessary  
14          to determine whether the employer has violated said provision of this Article.

15          With respect to the provisions of G.S. 95 25.6 through 95 25.12 (Wage Payment) as  
16          those provisions apply to persons covered by the Fair Labor Standards Act, the  
17          Commissioner or his designated representative shall have no authority under this  
18          subsection unless the Commissioner or his designated representative has received a  
19          complaint from an employee of the covered establishment. ~~establishment, and then shall~~  
20          investigate that specific complaint only."

21          **SECTION 23.** G.S. 95-25.17 reads as rewritten:

22          "**§ 95-25.17. Wage and Hour Division established.**

23          ~~The State Employment Standards Division within the North Carolina Department of~~  
24          ~~Labor is renamed the Wage and Hour Division. The Commissioner shall reappoint the~~  
25          ~~Director of the State Employment Standards Division as the Director of the Wage and~~  
26          ~~Hour Division and shall reappoint such other employees as he deems necessary to assist~~  
27          ~~him in administering the provisions of this Article. The Commissioner of Labor is~~  
28          ~~charged with enforcement of this Article. The Commissioner shall appoint a Wage and~~  
29          ~~Hour Director and any other employees the Commissioner deems necessary for~~  
30          ~~enforcement of this Article.~~ The Commissioner shall continue to prescribe the powers,  
31          duties, and responsibilities of the Director and employees engaged in the administration  
32          of this Article."

33          **SECTION 24.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

1

HOUSE BILL 768

Short Title: 2005 Omnibus Labor Law Changes.-AB

(Public)

Sponsors: Representative Howard.

Referred to: Judiciary II.

March 17, 2005

A BILL TO BE ENTITLED  
AN ACT TO MAKE TECHNICAL AND OTHER CHANGES TO THE UNIFORM  
BOILER AND PRESSURE VESSEL ACT OF NORTH CAROLINA AND THE  
WAGE AND HOUR ACT OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 95-69.9 reads as rewritten:

**"§ 95-69.9. Definitions.**

(a) The term "board" shall mean the North Carolina Board of Boiler and Pressure Vessel ~~Rules;~~Rules.

(b) The term "boiler" shall mean a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum ~~for use externally to itself by the direct or indirect application of heat from the combustion of fuels, or from electricity or nuclear energy. This heat.~~ The term "boiler" shall also include fired units for heating or vaporizing liquids other than water where these units ~~are separate from processing systems and are complete within themselves;~~themselves.

(c) The term "Commissioner" shall mean the North Carolina Commissioner of ~~Labor;~~Labor.

~~(d) The term "Director" shall mean the individual appointed by the Commissioner to hold the office of Director of the Boiler and Pressure Vessel Division within the Department of Labor;~~

(e) The term "inspection certificate" or "certificate of inspection" shall mean certification by the ~~Director~~Chief Inspector that a boiler or pressure vessel is in compliance with the rules and regulations adopted under this ~~Article;~~Article.

(f) The term "inspector's commission" shall mean a written authorization by the Commissioner for a person who has met the qualifications set out in this Article to conduct inspections of boilers and pressure ~~vessels;~~vessels.

(g) The term "pressure vessel" shall mean a vessel in which the pressure is obtained from an indirect source or by the application of heat from an indirect source or a direct source, other than those included within the term "boiler".

(h) The term "Chief Inspector" shall mean the individual appointed by the Commissioner to hold the office of Chief of the Boiler Safety Bureau within the Department of Labor. The Chief Inspector serves as the North Carolina member on the National Board of Boiler and Pressure Vessel Inspectors.

(i) The term "Deputy Inspector" shall mean any Boiler and Pressure Vessel Inspector who is employed by the Department of Labor and is subordinate to the Chief Inspector.

(j) The term "National Board" shall mean the National Board of Boiler and Pressure Vessel Inspectors.

(k) The term "person" shall mean any individual, association, partnership, firm, corporation, private organization, or the State of North Carolina or any political subdivision of the State or any unit of local government."

SECTION 2. G.S. 95-69.10 reads as rewritten:

**"§ 95-69.10. Application of Article; exemptions.**

(a) This Article shall apply to all boilers and pressure vessels constructed, used, or designed for operation in this State including all new and existing installations which are operated in connection with business buildings, institutional buildings, industrial buildings, assembly buildings, educational buildings, public residential buildings, recreation buildings, other public buildings, and water supplies. This Article shall also apply to boilers and hot water supply tanks, and heaters located in hotels, motels, tourist courts, camps, cottages, resort lodges, and similar places whenever the owner or operator advertises in any manner for transit patronage, or solicits such business for temporary abode by transit patrons.

(b) This Article shall not apply to:

- (1) Boilers and pressure vessels owned ~~and/or~~ operated by the federal government, unless the agency in question has asked for coverage by this Article.
- (2) Pressure vessels used for transportation or storage of compressed gases when constructed in compliance with the specifications of the United States Department of Transportation and when charged with gas marked, maintained, and periodically requalified for use, as required by appropriate regulations of the United States Department of Transportation.
- (3) Portable pressure vessels used for agricultural purposes only or for pumping or drilling in an open field for water, gas or coal, gold, talc, or other minerals and metals.
- (4) Boilers and pressure vessels which are located in private residences or in apartment houses of less than six families.
- (5) Pressure vessels used for transportation or storage of liquified petroleum gas.

- (6) Air tanks located on vehicles licensed under the rules and regulations of other state authorities operating under rules and regulations substantially similar to those of this State and used for carrying passengers or freight within interstate commerce.
- (7) Air tanks installed on right-of-way of railroads and used directly in the operation of trains.
- (8) ~~Pressure vessels that do not exceed five cubic feet in volume and 250 PSIG pressure; or one and one half cubic feet in volume and 600 PSIG pressure; or an inside diameter of six inches with no limitations on pressure.~~ Any of the following pressure vessels that do not exceed the listed limitations if the vessel is not equipped with a quick actuating closure:
- a. Five cubic feet in volume and 250 psig.
  - b. Three cubic feet in volume and 350 psig.
  - c. One and one-half cubic feet in volume and 600 psig.
  - d. An inside diameter of six inches with no limitation on pressure.
- (9) Pressure vessels operating at a working pressure not exceeding 15 ~~PSIG pressure.~~ psig.
- (10) Pressure vessels with a nominal water capacity ~~of not exceeding 120 gallons or less~~ and containing water under pressure at ~~ambient temperature,~~ temperatures not exceeding 120°F, including those containing air, the compression of which serves as a cushion.
- (11) Boilers and pressure vessels on railroad steam locomotives that are subject to federal safety regulations.
- (12) Repealed by Session Laws 1985, c. 620, s. 2.
- (13) Coil-type hot water supply boilers, generally referred to as steam jennies, where the water can flash into steam when released directly to the atmosphere through a manually operated nozzle and where adequate safety relief valves and controls are installed on them, provided none of the following limitations are exceeded:
- a. There is no drum, header, or other steam space.
  - b. No steam is generated within the coil.
  - c. Maximum 1 inch tube size.
  - d. Maximum 3/4 inch nominal pipe size.
  - e. Maximum 6 gallon nominal water storage capacity.
  - f. ~~Water temperature of 350 degrees fahrenheit.~~ 350°F.
- (14) Pressure vessels containing water at a temperature not exceeding 110 degrees fahrenheit except that this provision shall not exclude hydropneumatic pressure vessels from regulation.
- (15) An air tank that does not exceed eight cubic feet in volume that is installed on a service vehicle.
- (16) Autoclaves in medical offices and hospitals that are less than five cubic feet in volume, even if they are equipped with a quick actuating closure.

(17) Coil-type hot water supply boilers of the instantaneous type where adequate safety relief valves and controls are installed if none of the following limitations are exceeded:

- a. There is no drum, header, or other steam space.
- b. No steam is generated within the coil.
- c. Maximum one inch tube size.
- d. Maximum three-quarter inch nominal pipe size.
- e. Maximum six gallon nominal water storage capacity.
- f. Water temperature not to exceed 250°F.
- g. Maximum heat input does not exceed 400,000 Btu/hr or 110 kW.
- h. Maximum pressure of 260 psig.

(18) Toy boilers, if all of the following apply:

- a. The water containing volume of the boiler is less than one quart.
- b. The operating pressure does not exceed 15 psig.
- c. The maximum outside diameter of the shell is no greater than six inches.
- d. The boiler is manually fired by solid fuels.

(19) Pressure vessels associated with electrical apparatus in electrical switchyards if the pressure vessels have proper relief devices.

(20) Carbon dioxide tanks used in beverage dispensing service.

(c) The construction and inspection requirements established by the Department of Labor shall not apply to hot water supply boilers which are directly fired with oil, gas or electricity, or hot water supply tanks heated by steam or any other indirect means, which do not exceed any of the following limitations:

- (1) Heat input of 200,000 BTU HR; Btu/hr or 58.6 kW.
- (2) ~~Water temperature of 200 degrees F;~~
- (3) Nominal water capacity of 120 gallons;gallons.

provided that they are equipped with ASME Code and National Board certified safety relief valves.

(d) The construction requirements established by the Department of Labor shall not apply to pressure vessels installed in this State prior to December 31, 1981, that:

- (1) ~~Are of one-piece, forged construction and have no weldments;unwelded, forged construction;~~
- (2) Are constructed before January 1, 1981, and operating or could be operated, under the laws of any state or Canadian Province that has adopted one or more sections of the ASME Code;
- (3) Are transferred into this State without a change of ownership; and
- (4) Are determined by the ~~Director~~ Chief Inspector to be constructed under standards substantially equivalent to those established by the department at the time of transfer;

provided that they are equipped with ASME Code and National Board certified safety relief valves.

1 (e) The construction requirements established by the Department of Labor shall  
2 not apply to pressure vessels installed in this State prior to December 31, 1984, that:

- 3 (1) Are manufactured from gray iron casting material, as specified by the  
4 American Society for Testing and Materials, (ASTM) 48-60T/30;  
5 (2) Are constructed before December 31, 1967, and operating or could be  
6 operated, under the laws of any state or Canadian Province that has  
7 adopted one or more sections of the ASME Boiler and Pressure Vessel  
8 Code;  
9 (3) Are transferred into this State without a change of ownership; and  
10 (4) Are determined by the ~~Director~~ Chief Inspector to be constructed  
11 under standards substantially equivalent to those established by the  
12 department at the time of transfer;

13 provided that they are equipped with ASME Code and National Board certified safety  
14 relief valves.

15 (f) The construction requirements established by the Department of Labor shall  
16 not apply to hydropneumatic tanks installed or operated by a community water system  
17 prior to January 1, 1986."

18 **SECTION 3.** G.S. 95-69.11 reads as rewritten:

19 **"§ 95-69.11. Powers and duties of Commissioner.**

20 The Commissioner of Labor is hereby charged, directed, and empowered:

- 21 (1) To adopt, modify, or revoke rules governing the construction,  
22 operation, and use of boilers and pressure vessels, including, where  
23 necessary, requirements for fencing to prevent unauthorized persons  
24 from coming in contact with boilers and pressure vessels or the  
25 systems they are connected to.  
26 (2) ~~To supervise the office of the Director of Boiler and Pressure Vessel~~  
27 ~~Division.~~ To delegate to the Chief Inspector any powers, duties, and  
28 responsibilities that the Commissioner determines will best serve the  
29 public interest in the safe operation of boilers and pressure vessels, and  
30 to supervise the Chief Inspector in the performance of those duties.  
31 (3) To enforce rules adopted under authority of this Article.  
32 (4) To inspect boilers and pressure vessels covered under this Article.  
33 (5) To issue inspection certificates to those boilers and pressure vessels  
34 found in compliance with this Article.  
35 (6). To enjoin violations of this Article in the civil and criminal courts of  
36 this State.  
37 (7) To keep adequate records of the type, dimensions, age, conditions,  
38 pressure allowed upon, location, and date of the last inspection of all  
39 boilers and pressure vessels to which this Article applies.  
40 (8) To require such periodic reports from inspectors, owners, and  
41 operators of boilers and pressure vessels as he deems appropriate in  
42 carrying out the purposes of this Article.  
43 (9) To have free access, without notice, to any location in this State,  
44 during reasonable hours, where a boiler or pressure vessel is being

built, installed, or operated for the purpose of ascertaining whether such boiler or pressure vessel is built, installed, or operated in accordance with the provisions of this Article.

(10) To investigate serious accidents involving boilers and pressure vessels to determine the causes of the accidents, and to have full subpoena powers in conducting the investigation.

(11) To establish reasonable fees for the inspection and issuance of inspection certificates for boilers and pressure vessels that are in use.

(12) To establish reasonable fees for the examination and certification of inspectors.

(13) To appoint qualified individuals to the Board of Boiler and Pressure Vessel Rules.

(14) To perform inspections and audits relating to the construction and repair of boilers and pressure vessels and to establish and collect fees for these activities.

(15) To order the payment of civil penalties provided by this section.

(16) To require that before any boiler or pressure vessel that is subject to this Article is transferred into the State, or is moved from one location to another within the State, the owner or the owner's authorized agent shall file with the Commissioner a written notice of intent to do so and the type of device involved and provide a copy of the specifications, previous inspection documents, or other information that the Commissioner deems necessary to determine whether the boiler or pressure vessel is in compliance with the provisions of this Article and the rules adopted under this Article."

SECTION 4. G.S. 95-69.12 reads as rewritten:

**~~"§ 95-69.12. Office of Director of Boilers and Pressure Vessels Division created; powers and duties.~~Boiler Safety Bureau established.**

~~There is hereby created the office of Director of the Boiler and Pressure Vessel Division within the North Carolina Department of Labor. The person holding this office shall assist the Commissioner in carrying out the provisions of this Article in accordance with the provisions of Chapter 126 of the General Statutes. The Director is charged with the responsibility for the administration of this Article on a day to day basis.~~

~~The Director shall be primarily responsible for the inspection of boilers and pressure vessels subject to this Article and for the issuance of inspection certificates for those boilers and pressure vessels found suitable. He shall also be responsible for the collection of fees for the inspection of boilers and pressure vessels and transmitting the same to the State Treasurer, where they shall be held in a special account to cover the operating expenses of the Division.~~

There is established a Boiler Safety Bureau within the Department of Labor. The Commissioner shall appoint a Chief Inspector of the Boiler Safety Bureau and any other employees that the Commissioner deems necessary to assist the Chief Inspector in administering the provisions of this Article and the rules adopted under this Article."

SECTION 5. G.S. 95-69.13 reads as rewritten:

"§ 95-69.13. Board of Boiler and Pressure Vessels Rules created; appointment, terms, compensation and duties.

(a) There is hereby created the North Carolina Board of Boiler and Pressure Vessels Rules consisting of nine members appointed by the Commissioner, of which ~~three shall be appointed for a term of one year, three for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years. At the expiration of their respective terms of office, their successors shall be appointed for terms of five years each.~~ Commissioner for a term of five years each. Of these nine appointed members, one shall be a representative of the owners and users of steam boilers within this State, one a representative of boiler manufacturers within this State, one a representative of boilermakers within this State who has had not less than five years' practical experience as a boilermaker, one shall be a representative of the owners or users of pressure vessels within the State, one shall be a representative of the pressure vessel manufacturers within the State, one a representative of a boiler inspection and insurance ~~company~~ companies authorized to insure boilers and pressure vessels within the State, one a representative of the ~~operating steam engineers~~ antique boiler owners and operators in this State, one a contractor holding a Group I North Carolina Heating License, and one a mechanical engineer on the faculty of a recognized engineering college or a licensed professional engineer having boiler and pressure vessel experience. The Commissioner of Labor shall serve as ~~chairman~~ chair. The Chief Inspector shall serve on the Board and in the absence of the Commissioner shall serve as chair.

(b) The Board shall meet at least twice annually and shall be responsible for:

(1) Studying and proposing rules and regulations, for adoption, modification or revocation by the Commissioner, governing the construction, installation, inspection, repair, alteration, use and operation of boilers and pressure vessels in this State. The rules and regulations so formulated shall conform as nearly as possible to the standards of the American Society of Mechanical Engineers ~~and amendments and interpretations thereto made and approved by the council of the Society Engineers.~~

(2) Devise and ~~administer~~ proctor examinations covering this Article and the rules adopted under this Article to applicants seeking a ~~certificate of competency as~~ commission as inspectors of boilers and pressure vessels in this State.

(2a) Act as proctors during the administration of the National Board commissioning examination.

(3) Issue, suspend, or revoke inspector's ~~commission to~~ commissions as inspectors of boilers and pressure vessels within this State. Whenever action is taken under this section to suspend or revoke a commission, the affected party shall be given notice of the availability of an administrative hearing and of judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act.



(c) The members of the Board shall serve without salary but shall be paid a subsistence and travel allowance as established in accordance with Chapter 138 of the General Statutes."

**SECTION 6.** G.S. 95-69.14 reads as rewritten:

**"§ 95-69.14. Rules and regulations governing the construction, operation and use of boilers and pressure vessels.**

The Commissioner, after consultation with the Board, may adopt, ~~modify~~ modify, or revoke ~~such any~~ rules and regulations governing the construction, installation, repair, alteration, inspection, ~~use~~ use, and operation of boilers and pressure vessels as ~~he the~~ the Commissioner deems appropriate to insure the safe operation and avoidance of injury to person or property from boilers and pressure vessels. The rules and regulations will conform as nearly as possible to the standards of the American Society of Mechanical Engineers and the amendments and interpretations thereto, ~~but to avoid unnecessary hardships that would result from requiring replacement of existing non-code tanks that meet minimum safety requirements where there is no danger to persons, such rules and regulations shall vary for hydropneumatic pressure vessels installed or operated by a community water system prior to January 1, 1986 of those engineering standards.~~

The procedure for the adoption, ~~modification~~ modification, or revocation of ~~such the~~ rules and regulations shall be ~~the same as that contained within in~~ in accordance with the Administrative Procedure Act of North Carolina as the same appears in Chapter 150B of the General Statutes. Statutes, the Administrative Procedure Act."

**SECTION 7.** G.S. 95-69.15 reads as rewritten:

**"§ 95-69.15. Classification of inspectors; qualifications; examinations; certificates of competency; inspector's commission.**

(a) There shall be three types of inspectors authorized to conduct inspections and report their findings to the ~~Director~~ Chief Inspector under this Article:

(1) Boiler and Pressure Vessel ~~Inspector~~ Inspector or Deputy Inspector. – Shall be a qualified ~~individual~~ individual, employed by the Department of Labor and appointed by the Commissioner, to assist in conducting inspections under this Article and report on the suitability of boilers and pressure vessels so ~~inspected~~ inspected.

(2) Special ~~Inspector~~ Inspector or Insurance Inspector. – Shall be a qualified individual regularly employed by an insurance company authorized to insure in this State against injury to person ~~and/or~~ or property or both from explosions and accidents involving boilers and pressure ~~vessels~~ vessels. Special Inspectors shall not include employees of private contract inspection agencies.

(3) Owner-User Inspectors. – Shall be a qualified individual employed on a full-time basis by a company operating ~~boilers or~~ pressure vessels for its own use and not for resale, and maintains an established inspection program for periodic inspection of ~~boilers and~~ pressure vessels owned or used by that company and where such inspection program is under the supervision of one or more engineers having qualifications satisfactory to the Commissioner.

(b) Inspector's Commission. – Any company authorized to insure in this State against loss to person or property as a result of an explosion or accident involving boilers and pressure vessels or operating boilers ~~and/or or~~ pressure vessels or both for its own use and not for resale, may apply for the issuance of an inspector's commission for an individual within its employ who has a ~~certificate of competency~~ commission from the National Board.

A North Carolina commission authorizes an inspector to make inspections on boilers and pressure vessels and report on the suitability of said boilers and pressure vessels to the ~~Director~~ Chief Inspector. Those inspectors holding commissions as special inspectors shall be limited to making inspections on boilers and pressure vessels insured by their employer. Owner-user inspectors shall be limited to conducting inspections on boilers and pressure vessels operated by their respective employers.

A person seeking a commission from this State to conduct in-service inspections of boilers and pressure vessels must take and pass an examination on this Article and the rules adopted pursuant to this Article prior to receiving the commission. Any person who has had a commission in this State but who has been inactive for more than one year must take or retake and pass the State examination before conducting further in-service inspections of boilers and pressure vessels.

(c) ~~Qualifications for~~ Certificates of Competency. – Certificates of competency may be issued by the Chief Inspector to those persons who take and pass a National Board commissioning examination administered by the Board. To be entitled to a certificate of competency, as one of the above type inspectors, an individual must:

- ~~(1) Have passed an examination provided and administered by the Board;~~  
~~or~~
- ~~(2) Have passed an examination and been certified in a state having rules and regulations substantially similar to those effective within North Carolina; or~~
- ~~(3) Hold a certificate of competency of the National Board of Boiler and Pressure Vessel Inspectors; and~~
- ~~(4) Continue in the employ of the company requesting the certificate of competency from the Board."~~

SECTION 8. G.S. 95-69.16 reads as rewritten:

**"§ 95-69.16. Inspection certificate required.**

All boilers and pressure vessels subject to the provisions of this Article shall be inspected by ~~an authorized~~ a commissioned inspector. The Commissioner may determine both the frequency and the method of inspection. In determining the frequency of inspection, the Commissioner shall give due consideration to the hazard involved and the need for the protection of the public. The method of inspection must provide an adequate procedure to insure the safety of individuals likely to be injured by an explosion or accident involving a boiler or pressure vessel.

No boiler or pressure vessel may be operated without an inspection certificate, except pressure vessels being operated under an owner-user provision where administrative procedures of equal safety and competency have been approved by the

1 Board and Commissioner. No more than 60-90 days grace period may be granted  
2 beyond the certificate expiration date."

3 SECTION 9. G.S. 95-69.17 reads as rewritten:

4 "**§ 95-69.17. Administrative and judicial review of decisions. Noncomplying**  
5 **devices; appeal.**

6 (a) ~~A final decision to suspend or revoke an inspector's commission or inspection~~  
7 ~~certificate shall be made in accordance with Chapter 150B of the General Statutes.~~

8 (b) ~~A final decision to deny an application for a certificate of competency or to~~  
9 ~~refuse to issue or renew an inspection certificate shall be made in accordance with~~  
10 ~~Chapter 150B of the General Statutes. In a contested case under this subsection, the~~  
11 ~~decision of the Director shall not be stayed pending administrative review.~~

12 (c) ~~Article 4 of Chapter 150B of the General Statutes governs judicial review of a~~  
13 ~~final decision in a contested case.~~

14 (a) If the Commissioner determines that a boiler or pressure vessel is subject to  
15 the provisions of this Article and that the operation of the boiler or pressure vehicle is  
16 exposing the public to an unsafe condition likely to result in serious personal injury or  
17 property damage, the Commissioner may immediately order in writing that the use of  
18 the boiler or pressure vehicle be stopped or limited until the Commissioner determines  
19 that the boiler or pressure vehicle has been made safe for operation.

20 (b) If the Commissioner determines that the provisions of this Article or the rules  
21 adopted pursuant to this Article have not been complied with, the Commissioner may  
22 refuse to issue or renew or may revoke, suspend, or amend an inspection certificate.

23 (c) Whenever action is taken under this section, the affected party shall be given  
24 notice of the availability of an administrative hearing and of judicial review in  
25 accordance with Chapter 150B of the General Statutes, the Administrative Procedure  
26 Act."

27 SECTION 10. G.S. 95-69.18 reads as rewritten:

28 "**§ 95-69.18. Inspection certificates required; misrepresentation as**  
29 **inspector. Operation without inspection certificate; operation not in**  
30 **compliance with this Article; operation after nonissuance or revocation**  
31 **of certificate.**

32 ~~It shall be unlawful for any person, firm, partnership, association or corporation to~~  
33 ~~operate or use any boiler or pressure vessel in this State, and to which this Article~~  
34 ~~applies, without a valid inspection certificate issued by the North Carolina Department~~  
35 ~~of Labor. Any person, firm, partnership, association or corporation found to be~~  
36 ~~operating or using a boiler or pressure vessel without a valid inspection certificate shall~~  
37 ~~be guilty of a Class 3 misdemeanor which may include a fine of one thousand dollars~~  
38 ~~(\$1,000).~~

39 ~~Any person who knowingly and willfully misrepresents himself as an authorized~~  
40 ~~inspector in North Carolina, shall be guilty of a Class 2 misdemeanor.~~

41 (a) No person may operate or permit to be operated any boiler or pressure vessel  
42 subject to the provisions of this Article without a valid inspection certificate unless the  
43 absence of a valid inspection certificate is the result of the Commissioner's failure to  
44 inspect the device.

1       (b) No person may operate or permit to be operated any boiler or pressure vessel  
2 subject to the provisions of this Article other than in accordance with this Article and  
3 the rules adopted pursuant to this Article.

4       (c) No person may operate or permit to be operated any boiler or pressure vessel  
5 subject to the provisions of this Article after the Commissioner has refused to issue or  
6 has revoked the inspection certificate for the boiler or pressure vehicle."

7       **SECTION 11.** Article 7A of Chapter 95 of the General Statutes is amended  
8 by adding a new section to read:

9       **"§ 95-69.19. Violations; civil penalties; appeals.**

10       (a) Any person who violates G.S. 95-69-18(a) or (b) (Operation without  
11 inspection certificate; operation not in accordance with Article or rules and regulations)  
12 shall be subject to a civil penalty not to exceed two hundred fifty dollars (\$250.00) for  
13 each day each boiler or pressure vessel is so operated or used.

14       (b) Any person who violates G.S. 95-69-18(c) (Operation after refusal to issue or  
15 after revocation of inspection certificate) shall be subject to a civil penalty not to exceed  
16 five hundred dollars (\$500.00) for each day any such boiler or pressure vessel is so  
17 operated or used.

18       (c) In determining the amount of any penalty ordered under authority of this  
19 section, the Commissioner shall give due consideration to the appropriateness of the  
20 penalty with respect to the size of the business of the person being charged, the gravity  
21 of the violation, the good faith of the person, and the record of previous violations.

22       (d) The determination of the amount of the penalty by the Commissioner shall be  
23 final, unless within 15 days after receipt of notice thereof by certified mail the person  
24 charged with the violation takes exception to the determination in which event the final  
25 determination of the penalty shall be made in an administrative proceeding and in a  
26 judicial proceeding pursuant to Chapter 150B of the General Statutes, the  
27 Administrative Procedure Act.

28       (e) The Commissioner may file in the office of the clerk of the superior court of  
29 the county where the violation occurred or where the person against whom a civil  
30 penalty has been ordered resides, or if a corporation is involved in the county where the  
31 corporation maintains its principal place of business, a certified copy of a final order of  
32 the Commissioner unappealed from, or of a final order of the Commissioner affirmed  
33 upon appeal. Upon filing of the final order, the clerk of superior court shall enter  
34 judgment in accordance with the order and notify the parties. The judgment shall have  
35 the same force and effect as a judgment by the superior court of the General Court of  
36 Justice."

37       **SECTION 12.** Article 7A of Chapter 95 of the General Statutes is amended  
38 by adding a new section to read:

39       **"§ 95-69.20. Violations; criminal penalties.**

40       (a) Any person who knowingly and willfully misrepresents himself as an  
41 authorized inspector administering or enforcing the provisions of this Article or the  
42 rules adopted pursuant to this Article shall be guilty of a Class 2 misdemeanor.

43       (b) Any person knowingly making a material and false statement, representation  
44 or certification in any application, record, report, plan, or any other document filed or

1 required to be maintained pursuant to this Article or the rules adopted pursuant to this  
2 Article shall be guilty of a Class 2 misdemeanor."

3 **SECTION 13.** G.S. 95-107 reads as rewritten:

4 **"§ 95-107. Assessment and collection of fees; certificates of safe operation.**

5 The assessment of the fees adopted by the Commissioner pursuant to ~~G.S. 95-110.5~~  
6 ~~and G.S. 95-111.4~~ G.S. 95-69.11, 95-110.5 95-111.4, and 95-118 shall be made against  
7 the owner or operator of the equipment and may be collected at the time of inspection.  
8 If the fees are not collected at the time of inspection, the Department must bill the  
9 owner or operator of the equipment for the amount of the fee assessed for the inspection  
10 of the equipment and the amount assessed is payable by the owner or operator of the  
11 equipment upon receipt of the bill. Certificates of safe operation may be withheld by the  
12 Department of Labor until such time as the assessed fees are collected."

13 **SECTION 14.** G.S. 95-108 reads as rewritten:

14 **"§ 95-108. Disposition of fees.**

15 All fees collected by the Department of Labor pursuant to ~~G.S. 95-110.5 and~~  
16 ~~G.S. 95-111.4~~ G.S. 95-69.11, 95-110.5, 95-111.4, and 95-118 shall be deposited with  
17 the State Treasurer and shall be used exclusively for inspection and certification  
18 purposes."

19 **SECTION 15.** G.S. 95-25.5(i) reads as rewritten:

20 "(i) ~~Youths~~ Youth under 18 years of age employed by their ~~parents~~ parent,  
21 guardian, or other person standing in loco parentis are exempt from all provisions of this  
22 section, except for all of the following:

- 23 (1) The certificate requirements of subsection (a) of this section.
- 24 (2) The prohibition from hazardous or detrimental occupations of  
25 subsection (b) of this section.
- 26 (3) The prohibitions of subsection (j)(2) of this section if the youths only  
27 work at the establishment when another employee at least 21 years of  
28 age is in charge of and present at the licensed premises."

29 **SECTION 16.** G.S. 95-25.8 reads as rewritten:

30 **"§ 95-25.8. Withholding of wages.**

31 ~~An employer may withhold or divert any portion of an employee's wages when:~~

- 32 (1) ~~The employer is required or empowered to do so by State or federal~~  
33 ~~law, or~~
- 34 (2) ~~The employer has a written authorization from the employee which is~~  
35 ~~signed on or before the payday for the pay period from which the~~  
36 ~~deduction is to be made indicating the reason for the deduction. Two~~  
37 ~~types of authorization are permitted:~~
  - 38 a. ~~When the amount or rate of the proposed deduction is known~~  
39 ~~and agreed upon in advance, the authorization shall specify the~~  
40 ~~dollar amount or percentage of wages which shall be deducted~~  
41 ~~from one or more paychecks, provided that if the deduction is~~  
42 ~~for the convenience of the employee, the employee shall be~~  
43 ~~given a reasonable opportunity to withdraw the authorization;~~

b. ~~When the amount of the proposed deduction is not known and agreed upon in advance, the authorization need not specify a dollar amount which can be deducted from one or more paychecks, provided that the employee receives advance notice of the specific amount of any proposed deduction and is given a reasonable opportunity to withdraw the authorization before the deduction is made.~~

(a) An employer may withhold or divert any portion of an employee's wages when required or empowered by State or federal law.

(b) Withholding or diversion of wages owed, for the employer's benefit, must be made in accordance with the employer's written policies, and the employer must comply with the following requirements:

(1) In non-overtime workweeks, an employer may reduce wages to the minimum wage level.

(2) In overtime workweeks, employers may reduce wages to the minimum wage level for non-overtime hours.

(3) No reductions may be made during overtime work hours.

(c) Withholding or diversion of wages owed, for the convenience of employees, must be made in accordance with the employer's written policy and are not limited in the amounts to be withheld."

SECTION 17. G.S. 95-25.9 is repealed.

SECTION 18. G.S. 95-25.10 is repealed.

SECTION 19. G.S. 95-25.11 is repealed.

SECTION 20. G.S. 95-25.12 reads as rewritten:

"§ 95-25.12. Vacation pay-pay plans.

No employer is required to provide ~~vacation~~ time off with pay, vacation, or paid time off plans for employees. However, if an employer provides ~~vacation~~ these promised benefits for employees, the employer shall give all ~~vacation~~ paid time off or payment in lieu of time off in accordance with the company policy or practice. Employees shall be notified in accordance with G.S. 95-25.13 of any policy or practice which requires or results in loss or forfeiture of ~~vacation time or pay~~ paid time off. Employees not so notified are not subject to such loss or forfeiture."

SECTION 21. G.S. 95-25.13(3) reads as rewritten:

"(3) Notify ~~its~~ employees, in writing or through a posted notice maintained in a place accessible to its employees, ~~of at least 24 hours prior to any changes in promised wages prior to the time of such changes except that wages~~ Wages may be retroactively increased without the prior notice required by this subsection; and".

SECTION 22. G.S. 95-25.15(a) reads as rewritten:

"(a) The Commissioner or his designated representative shall have the power and authority to enter any place of employment and gather such facts as are essential to determine whether or not the employer is covered by any provision of this Article.

With respect to any provision of this Article under which the employer is covered, the Commissioner or ~~his~~ the Commissioner's designated representative may inspect

1 such places and such records, make transcriptions of any and all such records, question  
2 employees and investigate such facts, conditions, practices, or matters as are necessary  
3 to determine whether the employer has violated said provision of this Article.

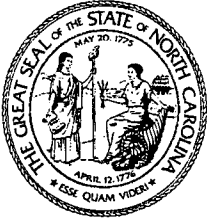
4 ~~With respect to the provisions of G.S. 95-25.6 through 95-25.12 (Wage Payment) as~~  
5 ~~those provisions apply to persons covered by the Fair Labor Standards Act, the~~  
6 ~~Commissioner or his designated representative shall have no authority under this~~  
7 ~~subsection unless the Commissioner or his designated representative has received a~~  
8 ~~complaint from an employee of the covered establishment, and then shall investigate~~  
9 ~~that specific complaint only."~~

10 **SECTION 23.** G.S. 95-25.17 reads as rewritten:

11 **"§ 95-25.17. Wage and Hour Division established.**

12 ~~The State Employment Standards Division within the North Carolina Department of~~  
13 ~~Labor is renamed the Wage and Hour Division. The Commissioner shall reappoint the~~  
14 ~~Director of the State Employment Standards Division as the Director of the Wage and~~  
15 ~~Hour Division and shall reappoint such other employees as he deems necessary to assist~~  
16 ~~him in administering the provisions of this Article. The Commissioner of Labor is~~  
17 charged with enforcement of this Article. The Commissioner shall appoint a Wage and  
18 Hour Director and any other employees the Commissioner deems necessary for  
19 enforcement of this Article. The Commissioner shall continue to prescribe the powers,  
20 duties, and responsibilities of the Director and employees engaged in the administration  
21 of this Article."

22 **SECTION 24.** This act is effective when it becomes law.



# HOUSE BILL 768: 2005 Omnibus Labor Law Changes.-AB

## BILL ANALYSIS

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<b>Committee:</b>	House Judiciary II	<b>Date:</b>	May 2, 2005
<b>Introduced by:</b>	Rep. Howard	<b>Summary by:</b>	Drupti Chauhan
<b>Version:</b>	PCS to First Edition		Committee Counsel
	H768-CSRQ-16 [v.1]		

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**SUMMARY:** *House Bill 768 makes changes to the Uniform Boiler and Pressure Vessel Act and the Wage and Hour Act.*

*The PCS makes technical changes and changes in Sections 19 and 21.*

**CURRENT LAW:** The Uniform Boiler and Pressure Vessel Act of North Carolina (Boiler Act) regulates all boilers and pressure vessels constructed, used, or designed for operation in NC. The Wage and Hour Act of North Carolina addresses issues such as minimum wages, overtime, wage payment, youth employment, and wage disputes.

**BILL ANALYSIS:** Sections 1-14 of the bill make changes to the Boiler Act and other conforming changes. Sections 15-24 make changes to the Wage and Hour Act.

### Boiler Act Changes

**Section 1:** This section amends definitions in the Boiler Act including defining Chief Inspector and Deputy Inspector. The Chief Inspector is the individual appointed by the Commissioner of Labor to hold the office of the Chief of the Boiler Safety Bureau at the NC Department of Labor (NC DOL). The term "Deputy Inspector" means any Boiler or Pressure Vessel Inspector employed by the NC DOL.

**Section 2:** This section makes technical and other changes to the applications and exemptions section of the Boiler Act.

- Include coverage for boilers and pressure vessels owned or operated by the federal government if the agency in question asks for coverage under the Boiler Act
- Exempt pressure vessels that do not exceed certain listed limitations if the vessel is not equipped with a quick actuating closure
- Add exemptions from the Boiler Act for the following:
  - Air tanks that do not exceed eight cubic feet in volume and installed on a service vehicle;
  - Autoclaves in medical offices and hospitals that are less than five cubic feet in volume;
  - Coil-type hot water supply boilers of the instantaneous type with adequate safety relief valves and controls if specified limitations are not exceeded;
  - Toy boilers if specified requirements are met;
  - Pressure vessels associated with electrical apparatus;
  - Carbon dioxide tanks used in beverage dispensing service.



# House Bill 768

Page 2

- Amends the applicability of the construction and inspection requirements established by the NC DOL for hot water supply boilers and for pressure vessels that were installed in the State prior to December 31, 1981
- Adds an exemption from the construction requirements established by the NC DOL for hydropneumatic tanks installed or operated by a community water system prior to January 1, 1986

**Section 3:** This section modifies the powers and duties of the Commissioner of Labor (Commissioner) by allowing the Commissioner to determine and delegate to the Chief Inspector any powers, duties, and responsibilities concerning the operation of boilers and pressure vessels. The Commissioner would be required to supervise the Chief Inspector.

The Commissioner would also be given the power to:

- Order the payment of civil penalties for violations; and
- Require that before any boiler or pressure vessel subject to the Boiler is brought into the State or moved within the State, the owner of the device files an intent of such a move and provides a copy of the specifications, previous inspection documents or other information the Commissioner deems necessary to determine compliance with the Boiler Act and the rules adopted under the Boiler Act.

**Section 4:** This section eliminates the office of the Director of the Boiler and Pressure Vessel Division at the NC DOL and creates the Boiler Safety Bureau (Bureau) within the NC DOL. The Commissioner would appoint the Chief Inspector of the Bureau and any other employees that the Commissioner deems necessary to administer the statutes and rules of the Boiler Act.

The section would eliminate the current requirement that the fees collected from the inspection of boilers and pressure vessels be transmitted to the State Treasurer where they are held in a special account to cover the operating expenses of the Boiler and Pressure Vessel Division.

**Section 5:** This section makes changes to the North Carolina Board of Boiler and Pressure Vessel Rules (Board). It replaces the requirement that one member be a representative of the operating steam engineers and replaces it with a representative of antique boiler owners and operators. It further provides that the Chief Inspector of the Bureau shall serve on the Board and in the absence of the Commissioner, the Chief Inspector shall serve as the chair of the Board.

The section adds that the Board members are to serve as proctors during the administration of the National Board commissioning examination. Moreover, language is added that whenever action is taken by the Board to suspend or revoke a commission of an inspector of boilers and pressure vessels, the affected party is to be given notice of the availability of an administrative hearing and judicial review under Chapter 150B of the General Statute (the Administrative Procedure Act).

**Section 6:** This section eliminates discretionary language in the requirement that the rules and regulation conform as closely as possible to the standards of the American Society of Mechanical Engineers and make other technical changes in the statute.

**Section 7:** This section specifies that a boiler pressure inspector or deputy inspector must be a person employed by the NC DOL. Moreover, the section provides although a special inspector or insurance inspector must be a qualified individual regularly employed by an insurance company, a special inspector may not be an employee of private contract inspection agencies.

# House Bill 768

Page 3

This section would add the requirement that a person seeking a NC commission to conduct in-service inspections of boilers and pressure vessels must pass an examination on the Boiler Act and rules adopted under it before receiving a commission. Any person who has had a NC commission but has been inactive for more than one year must take or retake the State examination before conducting further in-service inspections of boiler and pressure vessels.

**Section 8:** No boiler or pressure vessel may be operated without a valid inspection certificate except for certain pressure vessels being operated under an owner-user provision that have been approved by the Board and Commissioner. This section would extend the grace period for operating a boiler or pressure vessel beyond the certificate expiration date from 60 to 90 days.

**Section 9:** This section rewrites the provisions governing administrative and judicial review of decisions. The current law allows for decisions to be made in accordance with the APA and decisions of the Director of the Boiler and Pressure Vessel Division are not stayed during the pending administrative review. Under the proposed modification, if the Commissioner determines that a boiler or pressure vessel subject to regulation is exposing the public to unsafe condition that is likely to result in serious personal injury or property damage, the Commissioner may order that its use be stopped or limited until the Commissioner determines that it has been made safe for operation. The Commissioner would have the authority to refuse to issue or to renew or may revoke, suspend, or amend inspection certificates. Judicial review would be available in accordance with the APA.

**Section 10:** This section rewrites the violations provisions of the Boiler Act. No person can operate a boiler or pressure vessel subject to the Boiler Act without a valid inspection certificate unless the absence of such a valid certificate is because the Commissioner has not inspected the device. In addition, no person can operate or permit to be operated any boiler or pressure vessel subject to the Boiler Act if the Commissioner has refused to issue or has revoked the inspection certificate for the boiler or pressure vehicle.

**Section 11:** This section adds a new civil penalties section to the Boiler Act with the following penalties:

- No more than \$250.00 per day fine for each boiler or pressure vessel operated without an inspection certificate or not in accordance with the rules of the Boiler Act;
- No more than \$500.00 per day fine for operating a boiler or pressure vessel after the refusal to issue or revocation of a an inspection certificate;

In determining the amount of the penalty, the Commissioner is to consider the appropriateness of the penalty with respect to the size of business, the gravity of the violation, good faith and record of previous violations.

The decision of the Commissioner is final unless the person charged with the violation files an appeal in accordance with the APA within 15 days of the Commissioner's decision.

The Commissioner may file the copy of the final order in the office of the clerk of superior court in the county where the violation occurred, the person lives, or the corporation maintains its principal place of office. The clerk of superior court is to enter judgment in accordance with the order and notify the parties.

**Section 12:** This section changes the criminal penalties for violation of the Boiler Act. Any person who knowingly and willfully misrepresents himself as an authorized inspector administering or enforcing the provisions of the Act is guilty of a Class 2 misdemeanor. Any person that knowingly makes a material

# House Bill 768

Page 4

and false statement, representation or certification in application, record, report, plan, or any other document filed or required to be maintained is guilty of a Class 2 misdemeanor.

**Sections 13-14:** These sections amend the statutes related to the assessment, collections and disposition of fees to include the new civil fees provided for above.

## Wage and Hour Act Changes

**Section 15:** This section expands the exemption from the Wage and Hour Act for youth under the age of 18 that are employed by their parents to include guardians or other persons standing in loco parentis.

## **Sections 16-19: Withholding of Wages**

*Current Law:* An employer has the ability to withhold or divert any portion of a employee's wages when the employer is required to do so by State or federal law or the employer has written authorization from the employee. Two types of authorization from the employee are permitted:

- A specified dollar amount when the amount or rate of the proposed deduction is known
- Blanket authorization when the amount of the proposed deduction is not known

An employer cannot deduct cash shortages, inventory shortages, or loss or damage to an employer's property from an employee's wages unless the employee is given notice of the amount to be deducted.

Cash shortages, inventory shortages, loss or damage to an employer's property and deposits by the employee for the user of the employer can be deducted from the employee's paycheck or recouped by other methods, however, the deductions or recoupments may not reduce wages below the following amounts:

- 85% of the minimum and overtime wages if wages determined under the Wage and Hour Act;
- The minimum and overtime wages required under the Fair Labor Standards Act when wages are determined under that Act; or
- An amount equivalent to the amount of minimum and overtime wages which would be required under the Wage and Hour Act when the wages are not determined either by the Wage and Hour Act nor the Fair Labor Standards Act

These wage withholding provisions do not apply if criminal charges have been brought against the employee for cash shortages, inventory shortages, or damages to the employer's property. Civil actions may also be brought against the employee.

*Analysis of Sections 16-19:* These sections rewrite the withholding provisions in the following manner. An employer may withhold or divert any portion of an employee's wages when required to do so by State or federal law.

If wages are withheld for the employer's benefit, the withholding must be made in accordance with the employer's written policies and the employer must comply with the following:

- Wages may be reduced to minimum wage level during non-overtime workweeks;
- Wages may be reduced to the minimum wage level for non-overtime hours during overtime workweeks;
- No reductions may be made during overtime work hours.

# House Bill 768

Page 5

If wages are withheld for the employee's benefit, then the withholding must be in accordance with the employer's written policies and are not limited in the amounts to be withheld.

*The PCS retains the provision that an employer may bring a civil action to collect amount due to the employer.*

**Section 20:** This section makes technical changes to the vacation pay statute by including the terms "time off with pay" and "paid time off".

**Section 21:** This section modifies the notice requirement that employers must give employees before changing promised wages. The section requires that employees be given at least 24 hours prior notice.

**Section 22:** This section deletes the current limitation on the Commissioner's authority to investigate wage issues for persons covered by the Fair Labor Standards Act unless the Commissioner has received a complaint from an employee. The law currently allows the Commissioner to only investigate that specific complaint.

*The PCS retains the limitation on the Commissioner's authority to investigate wage issues for persons covered by the Fair Labor Standards Act unless the Commissioner has received a complaint from an employee, however, the Commissioner would not be limited to investigating only that specific complaint.*

**Section 23:** This section clarifies that the Commissioner of Labor is charged with the enforcement of the Wage and Hour Act.

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

H0768e1-SMRQ-CSRQ-16 v1

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

1

HOUSE BILL 935\*

Short Title: Construction Site Theft/Aggravate Penalty.

(Public)

Sponsors: Representatives Goforth, Harrell (Primary Sponsors); Barnhart, Church, Daughtridge, Dollar, Hill, Hilton, Holliman, Justice, Kiser, LaRoque, Pate, Rapp, Ray, Sauls, Saunders, Setzer, Steen, Stiller, Williams, and Wilson.

Referred to: Judiciary II.

March 28, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE LARCENY FROM A CONSTRUCTION SITE A FELONY.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 14-72 reads as rewritten:

**"§ 14-72. Larceny of property; receiving stolen goods or possessing stolen goods.**

(a) ~~Larceny of goods of the value of more than one thousand dollars (\$1,000) is a Class H felony. The receiving or possessing of stolen goods of the value of more than one thousand dollars (\$1,000) while knowing or having reasonable grounds to believe that the goods are stolen is a Class H felony. Larceny as provided in subsection (b) of this section is a Class H felony. Receiving or possession of stolen goods as provided in subsection (c) of this section is a Class H felony. Except as provided in subsections (b) and (c) of this section, larceny of property, or the receiving or possession of stolen goods knowing or having reasonable grounds to believe them to be stolen, where the value of the property or goods is not more than one thousand dollars (\$1,000), is a Class 1 misdemeanor. In all cases of doubt, the jury shall, in the verdict, fix the value of the property stolen.~~

(a) The following offenses are Class H felonies:

(1) Larceny of goods of the value of more than one thousand dollars (\$1,000).

(2) The receiving or possessing of stolen goods of the value of more than one thousand dollars (\$1,000), while knowing or having reasonable grounds to believe that the goods are stolen.

(a1) If the value of the goods described in (a)(1) or (a)(2) is not more than one thousand dollars (\$1,000), then the offense is a Class 1 misdemeanor.

(a2) In all cases of doubt, the jury shall fix the value of the stolen property in the verdict.

(b) Larceny ~~The crime of larceny is a~~ Class H felony, without regard to the value of the property in question, if the larceny is:

(1) From the person; or

(2) Committed pursuant to a violation of G.S. 14-51, 14-53, 14-54 or 14-57; or

(3) Of any explosive or incendiary device or substance. As used in this section, the phrase "explosive or incendiary device or substance" shall include any explosive or incendiary grenade or bomb; any dynamite, blasting powder, nitroglycerin, TNT, or other high explosive; or any device, ingredient for such device, or type or quantity of substance primarily useful for large-scale destruction of property by explosive or incendiary action or lethal injury to persons by explosive or incendiary action. This definition shall not include fireworks; or any form, type, or quantity of gasoline, butane gas, natural gas, or any other substance having explosive or incendiary properties but serving a legitimate nondestructive or nonlethal use in the form, type, or quantity stolen.

(4) Of any firearm. As used in this section, the term "firearm" shall include any instrument used in the propulsion of a shot, shell or bullet by the action of gunpowder or any other explosive substance within it. A "firearm," which at the time of theft is not capable of being fired, shall be included within this definition if it can be made to work. This definition shall not include air rifles or air pistols.

(5) Of any record or paper in the custody of the North Carolina State Archives as defined by G.S. 121-2(7) and 121-2(8).

(6) From a permitted construction site. For the purposes of this subdivision only:

a. Larceny of goods with a value of less than three hundred dollars (\$300.00) shall be a Class 1 misdemeanor.

b. A 'permitted construction site' is a site where a permit, license, or other authorization has been issued by a State or local governmental entity for the placement of new construction or improvements to real property.

~~(e) The crime of possessing stolen goods knowing or having reasonable grounds to believe them to be stolen in the circumstances described in subsection (b) is a felony or the crime of receiving stolen goods knowing or having reasonable grounds to believe them to be stolen in the circumstances described in subsection (b) is a felony, without regard to the value of the property in question.~~

(c) The following offenses are Class H felonies, without regard to the value of the goods:

(1) Possessing stolen goods with actual knowledge, or having reasonable grounds to believe, that the goods were stolen in one of the circumstances set forth in subsection (b) of this section.

1           (2)   Receiving stolen goods with actual knowledge, or having reasonable  
2               grounds to believe, that the goods were stolen in one of the  
3               circumstances set forth in subsection (b) of this section.

4           (d)   Where the larceny or receiving or possession of stolen goods as described in  
5 subsection (a) of this section involves the merchandise of any store, a merchant, a  
6 merchant's agent, a merchant's employee, or a peace officer who detains or causes the  
7 arrest of any person shall not be held civilly liable for detention, malicious prosecution,  
8 false imprisonment, or false arrest of the person detained or arrested, when such  
9 detention is upon the premises of the store or in a reasonable proximity thereto, is in a  
10 reasonable manner for a reasonable length of time, and, if in detaining or in causing the  
11 arrest of such person, the merchant, the merchant's agent, the merchant's employee, or  
12 the peace officer had, at the time of the detention or arrest, probable cause to believe  
13 that the person committed an offense under subsection (a) of this section. If the person  
14 being detained by the merchant, the merchant's agent, or the merchant's employee, is a  
15 minor under the age of 18 years, the merchant, the merchant's agent, or the merchant's  
16 employee, shall call or notify, or make a reasonable effort to call or notify the parent or  
17 guardian of the minor, during the period of detention. A merchant, a merchant's agent,  
18 or a merchant's employee, who makes a reasonable effort to call or notify the parent or  
19 guardian of the minor shall not be held civilly liable for failing to notify the parent or  
20 guardian of the minor."

21           **SECTION 2.** This act becomes effective December 1, 2005, and applies to  
22 offenses committed on or after that date. Prosecutions for offenses committed before  
23 the effective date of this act are not abated or affected by this act, and the statutes that  
24 would be applicable but for this act remain applicable to those prosecutions.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

1

HOUSE BILL 614

Short Title: Child Solicitation by Computer.

(Public)

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Sponsors: Representatives Wiley, Walend (Primary Sponsors); Adams, Almond, Blackwood, Blust, Brown, Capps, Carney, Cleveland, Coleman, Culp, Current, Daughtride, Daughtry, Dockham, Dollar, Faison, Folwell, Gillespie, Gulley, Harrison, Hollo, Holloway, Jones, Justice, Kiser, Langdon, LaRoque, Lewis, Martin, McComas, McGee, Moore, Parmon, Pate, Ray, Rhodes, Ross, Starnes, Underhill, Vinson, and Wright.

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Referred to: Judiciary II.

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March 14, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING "SOLICITATION OF A CHILD BY COMPUTER TO COMMIT AN UNLAWFUL SEX ACT" BY INCREASING THE PENALTY AND BY ALLOWING UNDERCOVER OFFICERS TO POSE AS JUVENILES TO INVESTIGATE POSSIBLE OFFENDERS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 14-202.3 reads as rewritten:

**"§ 14-202.3. Solicitation of child by computer to commit an unlawful sex act.**

(a) Offense. – A person is guilty of solicitation of a child by a computer if the person is 16 years of age or older and the person knowingly, with the intent to commit an unlawful sex act, entices, advises, coerces, orders, or commands, by means of a computer, a child who is less than 16 years of age and at least 3 years younger than the defendant, or someone whom the person believes to be under the age of 16 to meet with the defendant or any other person for the purpose of committing an unlawful sex act.

(b) Jurisdiction. – The offense is committed in the State for purposes of determining jurisdiction, if the transmission that constitutes the offense either originates in the State or is received in the State.

(c) Punishment. – A violation of this section is a Class I ~~felony~~. E felony."

**SECTION 2.** This act is effective when it becomes law.



House Pages

Name Of Committee: JII Date: 5/3/05

1. Name: Zack Joyner

County: Gaston

Sponsor: Susan Fisher

2. Name: Christian Leonard

County: Franklin

Sponsor: Jim Crawford

3. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

4. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

5. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

Sgt-At-Arms

1. Name: BILL FREEMAN

2. Name: FRANK PREVO

3. Name: JAMES WORTH

4. Name: \_\_\_\_\_

5. Name: \_\_\_\_\_

# VISITOR REGISTRATION SHEET

JUDICIARY II

MAY 03, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

BERRY JENKINS

CAROLINAS AGC

Don Schmidt

NC Justice

Melissa Reed

NARAL

Stephani Sampson

NCAR

Lisa Martin

NC HBA

Brian Lewis

Covenant w/ NC's Children

Barbara Hest

NCRTZ

Dave Simpson

CAROLINAS AGC

Bill Ruel

NC Justice Ctr

Janet Mason

Institute of Government

# VISITOR REGISTRATION SHEET

JUDICIARY II

MAY 03, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

R. Paul Wilms	NCHBA
John Hoamani	NCDOL
Art Britt	NCDOL
Jack M. Given	NCDOL
Jim Taylor	NCDOL
Greg Lundberg	NCDOL
Henry Sasser	NCDOL
Rose McCree	GABRIEL PROJECT
ELIZABETH WICKHAM	LIFETREE
Jeff Whiston	Youth Advocate
Paige Johnson	Planned Parenthood

# VISITOR REGISTRATION SHEET

Judiciary II

Name of Committee

May 3, 2005

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Paula A. Wolf

Planned Parenthood Health Systems

Jim Blackburn

NC Association of  
County Commissioners

Ornela Dineen

Ally

Steve Cooke

NC Med Soc.

Chad Hinton

Civitas Institute

**MINUTES  
HOUSE COMMITTEE ON  
JUDICIARY II**

May 5, 2005

The House Committee on Judiciary II met on Thursday, May 5, 2005, in Room 421 of the Legislative Office Building at 10:00 A.M. The following members were present: Chairman Mickey Michaux, Vice-Chairs Alice Bordsen, James Harrell and Timothy Moore, Representatives Allen, Farmer-Butterfield, Fisher, Folwell, Gulley, Jones and Wiley. Drupti Chauhan, Karen Cochrane-Brown and Jeff Hudson, Staff Counselors were in attendance. A Visitor's Registration list is included and made part of these minutes

The Chairman called the meeting to order and recognized the Pages, Sergeant-At-Arms, Staff and visitors. The following bills were considered:

The Chair recognized Rep. Goforth to explain **HB 935, A BILL TO BE ENTITLED AN ACT TO MAKE LARCENY OF GOODS VALUED AT MORE THAN THREE HUNDRED DOLLARS FROM A PERMITTED CONSTRUCTION SITE A CLASS H FELONY AND TO MAKE RECEIVING OR POSSESSING STOLEN GOODS VALUED AT MORE THAN THREE HUNDRED DOLLARS THAT WERE STOLEN FROM A PERMITTED CONSTRUCTION SITE A CLASS H FELONY.** Jeff Hudson, Staff Counselor was recognized to explain the Proposed Committee Substitute (PCS). Upon a motion made by Rep. Folwell, the Committee voted to give the PCS favorable report and re-referred to Appropriations.

Rep. Bordsen was recognized to explain **HB 1299, A BILL TO BE ENTITLED AN ACT TO CLARIFY WHAT THE COST OF REPAIR WORK CONSISTS OF WHEN DETERMINING WHETHER THE COST OF REPAIR WORK IS SUFFICIENT TO REQUIRE A MOTOR VEHICLE REPAIR SHOP TO PREPARE A WRITTEN REPAIR ESTIMATE.** Upon motion made by Rep. Gulley the Proposed Committee Substitute bill (PCS) was adopted for discussion by the Committee. Jeff Hudson, Staff Counselor was recognized to explain the PCS. Upon motion made by Rep. Moore the Committee voted to give the PCS a favorable report.

The next order of business was **HB 1298, A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE ADVISABILITY OF ENACTING A YOUTHFUL OFFENDER CODE.** Rep. Bordsen was recognized to explain the bill and a Proposed Committee Substitute bill was introduced for discussion. Rep. Folwell made motion to adopt the Proposed Committee Substitute (PCS) for discussion and the Committee voted to adopt the PCS for discussion. Two amendments were added to the PCS and Staff Counselor, Drupti Chauhan explained the changes that the amendments would make to the PCS. Upon motion to give the PCS

May 5, 2005

a favorable report by Rep. Bordsen to include the amendments, the Committee voted for a favorable report.

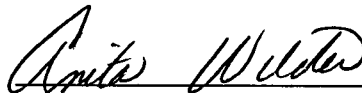
The Chair recognized Rep. Moore to explain **HB 1213, A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A PERSON CHARGED WITH MULTIPLE OFFENSES MAY HAVE THOSE CHARGES EXPUNGED IF THE ALLEGED OFFENSES OCCURRED WITH THE SAME TWELVE-MONTH PERIOD OF TIME AND THE CHARGES ARE SUBSEQUENTLY DISMISSED OR FINDINGS OF NOT GUILTY OR NOT RESPONSIBLE ARE ENTERED AT THE SAME TERM OF COURT.** Drupti Chauhan, Staff Counselor was also recognized to explain the bill analysis. Upon motion made by Rep. Allen the Committee voted to give the bill a favorable report.

There being not further business, the Chair adjourned the meeting at 10:40 a.m.

Respectfully submitted,



Representative H. M. Michaux, Jr.  
Presiding Chair



Anita Wilder  
Committee Assistant

**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative Michaux (Chair) for the Committee on JUDICIARY II.

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☐ Committee Substitute for

**HB 935**      A BILL TO BE ENTITLED AN ACT TO MAKE LARCENY FROM A  
CONSTRUCTION SITE A FELONY.

☒ 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 Appropriations.)

**(FOR JOURNAL USE ONLY)**

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\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on  
\_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the (House) committee substitute bill/(joint) resolution  
(No. \_\_\_\_\_) is placed on the Calendar of \_\_\_\_\_. (The original bill resolution No. \_\_\_\_\_) is placed  
on the Unfavorable Calendar.

\_\_\_\_\_ The (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is re-referred to the  
Committee on \_\_\_\_\_. (The original bill/resolution) (House/Senate Committee Substitute  
Bill/(Joint) resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative Michaux (Chair) for the Committee on JUDICIARY II.

---

☐ Committee Substitute for

**HB 1299**

A BILL TO BE ENTITLED AN ACT TO CLARIFY WHAT THE COST OF REPAIR WORK CONSISTS OF WHEN DETERMINING WHETHER THE COST OF REPAIR WORK IS SUFFICIENT TO REQUIRE A MOTOR VEHICLE REPAIR SHOP TO PREPARE A WRITTEN REPAIR ESTIMATE.

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

**(FOR JOURNAL USE ONLY)**

---

\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on \_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is placed on the Calendar of \_\_\_\_\_. (The original bill resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

\_\_\_\_\_ The (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is re-referred to the Committee on \_\_\_\_\_. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.



**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative Michaux (Chair) for the Committee on JUDICIARY II.

---

☐ Committee Substitute for

**HB 1298**

A BILL TO BE ENTITLED AN ACT TO REQUIRE THE  
DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION TO STUDY  
THE ADVISABILITY OF ENACTING A YOUTHFUL OFFENDER CODE.

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

**(FOR JOURNAL USE ONLY)**

---

\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on  
\_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the (House) committee substitute bill/(joint) resolution  
(No. \_\_\_\_\_) is placed on the Calendar of \_\_\_\_\_. (The original bill resolution No. \_\_\_\_\_) is placed  
on the Unfavorable Calendar.

\_\_\_\_\_ The (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is re-referred to the  
Committee on \_\_\_\_\_. (The original bill/resolution) (House/Senate Committee Substitute  
Bill/(Joint) resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative Michaux (Chair) for the Committee on JUDICIARY II.

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☐ Committee Substitute for

**HB 1213**                    A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A PERSON CHARGED WITH MULTIPLE OFFENSES MAY HAVE THOSE CHARGES EXPUNGED IF THE ALLEGED OFFENSES OCCURRED WITHIN THE SAME TWELVE-MONTH PERIOD OF TIME AND THE CHARGES ARE SUBSEQUENTLY DISMISSED OR FINDINGS OF NOT GUILTY OR NOT RESPONSIBLE ARE ENTERED AT THE SAME TERM OF COURT.

☒ With a favorable report.

**(FOR JOURNAL USE ONLY)**

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\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on \_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of \_\_\_\_\_.

House Pages

Name Of Committee: J 2 Date: 5-24-05

1. Name: Ellen D. Carter

County: Davie

Sponsor: Howard

2. Name: Katie Gray Velez

County: Gaston

Sponsor: Current

3. Name: Mary Grace Owen

County: Gaston

Sponsor: Dr. Bill Current

4. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

5. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

Sgt-At-Arms

1. Name: Bill Freeman

2. Name: James Worth

3. Name: Lesli Oakley

4. Name: \_\_\_\_\_

5. Name: \_\_\_\_\_

# **AGENDA**

## **HOUSE COMMITTEE ON JUDICIARY II**

**May 05, 2005  
Room 421  
10:00 AM**

### **OPENING REMARKS**

Representative Mickey Michaux, Chair

### **AGENDA ITEMS**

- H 1213 –Expunge Multiple Charges/Occur Within 1 yr. – Reps. Moore, Sutton**
- H 1298 – Youthful Offender Code Study – Reps. Bordsen, Parmon, Haire, Womble**
- H 1299 –Motor Vehicle Repairs/Clarify Cost of Repair – Reps. Bordsen, Wainwright**
- H 935– Construction Site Theft/Aggravate Penalty – Reps. Goforth, Harrell**

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

1

HOUSE BILL 935\*

Short Title: Construction Site Theft/Aggravate Penalty.

(Public)

Sponsors: Representatives Goforth, Harrell (Primary Sponsors); Barnhart, Church, Daughtridge, Dollar, Hill, Hilton, Holliman, Justice, Kiser, LaRoque, Pate, Rapp, Ray, Sauls, Saunders, Setzer, Steen, Stiller, Williams, and Wilson.

Referred to: Judiciary II.

March 28, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE LARCENY FROM A CONSTRUCTION SITE A FELONY.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 14-72 reads as rewritten:

**"§ 14-72. Larceny of property; receiving stolen goods or possessing stolen goods.**

(a) ~~Larceny of goods of the value of more than one thousand dollars (\$1,000) is a Class H felony. The receiving or possessing of stolen goods of the value of more than one thousand dollars (\$1,000) while knowing or having reasonable grounds to believe that the goods are stolen is a Class H felony. Larceny as provided in subsection (b) of this section is a Class H felony. Receiving or possession of stolen goods as provided in subsection (c) of this section is a Class H felony. Except as provided in subsections (b) and (c) of this section, larceny of property, or the receiving or possession of stolen goods knowing or having reasonable grounds to believe them to be stolen, where the value of the property or goods is not more than one thousand dollars (\$1,000), is a Class 1 misdemeanor. In all cases of doubt, the jury shall, in the verdict, fix the value of the property stolen.~~

(a) The following offenses are Class H felonies:

(1) Larceny of goods of the value of more than one thousand dollars (\$1,000).

(2) The receiving or possessing of stolen goods of the value of more than one thousand dollars (\$1,000), while knowing or having reasonable grounds to believe that the goods are stolen.

(a1) If the value of the goods described in (a)(1) or (a)(2) is not more than one thousand dollars (\$1,000), then the offense is a Class 1 misdemeanor.

(a2) In all cases of doubt, the jury shall fix the value of the stolen property in the verdict.

(b) Larceny ~~The crime of larceny is a~~ Class H felony, without regard to the value of the property in question, if the larceny is:

- (1) From the person; or
- (2) Committed pursuant to a violation of G.S. 14-51, 14-53, 14-54 or 14-57; or
- (3) Of any explosive or incendiary device or substance. As used in this section, the phrase "explosive or incendiary device or substance" shall include any explosive or incendiary grenade or bomb; any dynamite, blasting powder, nitroglycerin, TNT, or other high explosive; or any device, ingredient for such device, or type or quantity of substance primarily useful for large-scale destruction of property by explosive or incendiary action or lethal injury to persons by explosive or incendiary action. This definition shall not include fireworks; or any form, type, or quantity of gasoline, butane gas, natural gas, or any other substance having explosive or incendiary properties but serving a legitimate nondestructive or nonlethal use in the form, type, or quantity stolen.
- (4) Of any firearm. As used in this section, the term "firearm" shall include any instrument used in the propulsion of a shot, shell or bullet by the action of gunpowder or any other explosive substance within it. A "firearm," which at the time of theft is not capable of being fired, shall be included within this definition if it can be made to work. This definition shall not include air rifles or air pistols.
- (5) Of any record or paper in the custody of the North Carolina State Archives as defined by G.S. 121-2(7) and 121-2(8).
- (6) From a permitted construction site. For the purposes of this subdivision only:
  - a. Larceny of goods with a value of less than three hundred dollars (\$300.00) shall be a Class 1 misdemeanor.
  - b. A 'permitted construction site' is a site where a permit, license, or other authorization has been issued by a State or local governmental entity for the placement of new construction or improvements to real property.

~~(e) The crime of possessing stolen goods knowing or having reasonable grounds to believe them to be stolen in the circumstances described in subsection (b) is a felony or the crime of receiving stolen goods knowing or having reasonable grounds to believe them to be stolen in the circumstances described in subsection (b) is a felony, without regard to the value of the property in question.~~

(c) The following offenses are Class H felonies, without regard to the value of the goods:

- (1) Possessing stolen goods with actual knowledge, or having reasonable grounds to believe, that the goods were stolen in one of the circumstances set forth in subsection (b) of this section.

1           (2)   Receiving stolen goods with actual knowledge, or having reasonable  
2                   grounds to believe, that the goods were stolen in one of the  
3                   circumstances set forth in subsection (b) of this section.

4           (d)   Where the larceny or receiving or possession of stolen goods as described in  
5 subsection (a) of this section involves the merchandise of any store, a merchant, a  
6 merchant's agent, a merchant's employee, or a peace officer who detains or causes the  
7 arrest of any person shall not be held civilly liable for detention, malicious prosecution,  
8 false imprisonment, or false arrest of the person detained or arrested, when such  
9 detention is upon the premises of the store or in a reasonable proximity thereto, is in a  
10 reasonable manner for a reasonable length of time, and, if in detaining or in causing the  
11 arrest of such person, the merchant, the merchant's agent, the merchant's employee, or  
12 the peace officer had, at the time of the detention or arrest, probable cause to believe  
13 that the person committed an offense under subsection (a) of this section. If the person  
14 being detained by the merchant, the merchant's agent, or the merchant's employee, is a  
15 minor under the age of 18 years, the merchant, the merchant's agent, or the merchant's  
16 employee, shall call or notify, or make a reasonable effort to call or notify the parent or  
17 guardian of the minor, during the period of detention. A merchant, a merchant's agent,  
18 or a merchant's employee, who makes a reasonable effort to call or notify the parent or  
19 guardian of the minor shall not be held civilly liable for failing to notify the parent or  
20 guardian of the minor."

21           **SECTION 2.** This act becomes effective December 1, 2005, and applies to  
22 offenses committed on or after that date. Prosecutions for offenses committed before  
23 the effective date of this act are not abated or affected by this act, and the statutes that  
24 would be applicable but for this act remain applicable to those prosecutions.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

D

HOUSE BILL 935\*

PROPOSED COMMITTEE SUBSTITUTE H935-CSSB-14 [v.5]

5/3/2005 9:13:45 AM

Short Title: Expand Felony for Construction Site Theft.

(Public)

Sponsors:

Referred to:

March 28, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE LARCENY OF GOODS VALUED AT MORE THAN THREE HUNDRED DOLLARS FROM A PERMITTED CONSTRUCTION SITE A CLASS H FELONY AND TO MAKE RECEIVING OR POSSESSING STOLEN GOODS VALUED AT MORE THAN THREE HUNDRED DOLLARS THAT WERE STOLEN FROM A PERMITTED CONSTRUCTION SITE A CLASS H FELONY.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 16 of Chapter 14 is amended by adding a new section to read:

**"§ 14-72.6. Larceny of goods from a permitted construction site; receiving or possessing stolen goods from a permitted construction site.**

(a) Larceny of goods valued at not more than three hundred dollars (\$300.00) from a permitted construction site is a Class 1 misdemeanor. Receiving or possessing stolen goods valued at not more than three hundred dollars (\$300.00) with actual knowledge or having reasonable grounds to believe that the goods were stolen from a permitted construction site is a Class 1 misdemeanor.

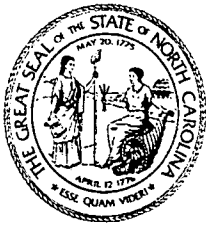
(b) Larceny of goods valued at more than three hundred dollars (\$300.00) from a permitted construction site is a Class H felony. Receiving or possessing stolen goods valued at more than three hundred dollars (\$300.00) with actual knowledge or having reasonable grounds to believe that the goods were stolen from a permitted construction site is a Class H felony.

(c) As used in this section, a 'permitted construction site' is a site where a permit, license, or other authorization has been issued by the State or a local governmental entity for the placement of new construction or improvements to real property."

**SECTION 2.** This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. Prosecutions for offenses committed before



- 1 the effective date of this act are not abated or affected by this act, and the statutes that
- 2 would be applicable but for this act remain applicable to those prosecutions.



# HOUSE BILL 935: Construction Site Theft/Aggravate Penalty

## BILL ANALYSIS

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<b>Committee:</b>	House Judiciary II	<b>Date:</b>	May 3, 2005
<b>Introduced by:</b>	Reps. Goforth, Harrell	<b>Summary by:</b>	Jeff Hudson
<b>Version:</b>	Proposed Committee Substitute H935-CSSB-14 [v.5]		Committee Counsel

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**SUMMARY:** *The Proposed Committee Substitute for House Bill 935 (PCS) would make larceny of goods valued at more than \$300.00 from a permitted construction site a Class H felony and would make receiving or possessing stolen goods valued at more than \$300.00 that were stolen from a permitted construction site a Class H felony.*

**CURRENT LAW:** Larceny is defined at common law as the taking and carrying away by any person of the personal property of another, without the latter's consent, and with the intent to permanently deprive the owner of the property and to convert it to the taker's use.

Generally, the punishment for larceny of personal property and receiving or possessing stolen personal property is based on the value of the property. Larceny of personal property valued at more than \$1,000 and the receiving or possessing of stolen personal property valued at more than \$1,000 is a Class H felony. The presumptive range of punishment for a Class H felony when there are no prior convictions is 5 to 6 months of community, intermediate, or active punishment. Larceny of personal property valued at not more than \$1,000 and the receiving or possessing of stolen personal property valued at not more than \$1,000 is a Class 1 misdemeanor. The presumptive range of punishment for a Class 1 misdemeanor when there are no prior convictions is 1 to 45 days of community punishment.

There are a number of exceptions to the \$1,000 threshold where larceny of personal property or receiving or possessing stolen personal property is a Class H felony regardless of the value of the property. These exceptions include circumstances in which the larceny was: directly from a person, associated with breaking into a building, of an explosive or incendiary device, of a firearm, of ungathered crops, of ginseng, of pine needles or pine straw, and of certain domesticated animals.

**BILL ANALYSIS:** The PCS would make larceny of goods valued at more than \$300.00 from a permitted construction site a Class H felony and would make receiving or possessing stolen goods valued at more than \$300.00 that were stolen from a permitted construction site a Class H felony. Larceny of goods valued at not more than \$300.00 from a permitted construction site would remain a Class 1 misdemeanor and receiving or possessing stolen goods valued at not more than \$300.00 that were stolen from a permitted construction site would remain a Class 1 misdemeanor.

The PCS defines "permitted" construction site as a site where a permit, license, or other authorization has been issued by the State or a local governmental entity for the placement of new construction or improvement to real property.

**EFFECTIVE DATE:** The PCS would become effective December 1, 2005 and apply to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

1

HOUSE BILL 1299

Short Title: Motor Vehicle Repairs/Clarify Cost of Repair.

(Public)

Sponsors: Representatives Bordsen; and Wainwright.

Referred to: Judiciary II.

April 20, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY WHAT THE COST OF REPAIR WORK CONSISTS OF  
WHEN DETERMINING WHETHER THE COST OF REPAIR WORK IS  
SUFFICIENT TO REQUIRE A MOTOR VEHICLE REPAIR SHOP TO PREPARE  
A WRITTEN REPAIR ESTIMATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-354(a) reads as rewritten:

"(a) When any customer requests a motor vehicle repair shop to perform repair work on a motor vehicle, the cost of which repair work will exceed three hundred fifty dollars (\$350.00) to the customer, the shop shall prepare a written repair estimate, which is a form setting forth the estimated cost of repair work, including diagnostic work, before effecting any diagnostic work or repair. In determining under this section whether the cost of the repair work exceeds three hundred fifty dollars (\$350.00), the cost of the repair work shall consist of the cost of parts and labor necessary for the repair work and any charges for necessary diagnostic work and teardown, if any, and shall not include any taxes, any other repair shop supplies or overhead, or any other extra services that are incidental to the repair work. The written repair estimate shall also include a statement allowing the customer to indicate whether replaced parts should be saved for inspection or return and a statement indicating the daily charge for storing the customer's motor vehicle after the customer has been notified that the repair work has been completed."

SECTION 2. This act becomes effective October 1, 2005, and applies to repair estimates that are made on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

D

HOUSE BILL 1299

PROPOSED COMMITTEE SUBSTITUTE H1299-CSSB-19 [v.1]

5/2/2005 2:51:52 PM

Short Title: Motor Vehicle Repairs/Clarify Cost of Repair.

(Public)

Sponsors:

Referred to:

April 20, 2005

A BILL TO BE ENTITLED

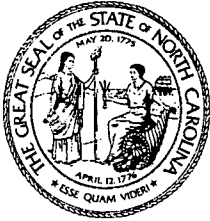
AN ACT TO CLARIFY WHAT THE COST OF REPAIR WORK CONSISTS OF  
WHEN DETERMINING WHETHER THE COST OF REPAIR WORK IS  
SUFFICIENT TO REQUIRE A MOTOR VEHICLE REPAIR SHOP TO PREPARE  
A WRITTEN REPAIR ESTIMATE.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 20-354.3(a) reads as rewritten:

"(a) When any customer requests a motor vehicle repair shop to perform repair work on a motor vehicle, the cost of which repair work will exceed three hundred fifty dollars (\$350.00) to the customer, the shop shall prepare a written repair estimate, which is a form setting forth the estimated cost of repair work, including diagnostic work, before effecting any diagnostic work or repair. In determining under this section whether the cost of the repair work exceeds three hundred fifty dollars (\$350.00), the cost of the repair work shall consist of the cost of parts and labor necessary for the repair work and any charges for necessary diagnostic work and teardown, if any, and shall not include any taxes, any other repair shop supplies or overhead, or any other extra services that are incidental to the repair work. The written repair estimate shall also include a statement allowing the customer to indicate whether replaced parts should be saved for inspection or return and a statement indicating the daily charge for storing the customer's motor vehicle after the customer has been notified that the repair work has been completed."

**SECTION 2.** This act becomes effective October 1, 2005, and applies to repair estimates that are made on or after that date.



# HOUSE BILL 1299: Motor Vehicle Repairs/Clarify Cost of Repair

## BILL ANALYSIS

**Committee:** House Judiciary II  
**Introduced by:** Rep. Bordsen  
**Version:** First Edition

**Date:** May 5, 2005  
**Summary by:** Jeff Hudson  
Committee Counsel

**SUMMARY:** *House Bill 1299 would provide that for purposes of determining whether a written repair estimate is required based on the cost of the repair work, cost of repair work includes the cost of parts and labor necessary for the repair work and any charges for necessary diagnostic work and teardown, but does not include taxes, any other repair shop supplies or overhead, or any other services incidental to the repair work.*

**CURRENT LAW:** G.S. 20-354.3(a) of the North Carolina Motor Vehicle Repair Act provides:

"When any customer requests a motor vehicle repair shop to perform repair work on a motor vehicle, the cost of which repair work will exceed three hundred fifty dollars (\$350.00) to the customer, the shop shall prepare a written repair estimate, which is a form setting forth the estimated cost of repair work, including diagnostic work, before effecting any diagnostic work or repair."

*(G.S. 20-354.3, in its entirety, is set out on the back of this summary.)*

**BILL ANALYSIS:** House Bill 1299 would provide that in determining whether the cost of repair work exceeds \$350.00, the cost of repair work includes the cost of parts and labor necessary for the repair work and any charges for necessary diagnostic work and teardown, but does not include taxes, any other repair shop supplies or overhead, or any other services incidental to the repair work.

**EFFECTIVE DATE:** House Bill 1299 would become effective October 1, 2005 and apply to repair estimates that are made on or after that date.

## **§ 20-354.3. Written motor vehicle repair estimate and disclosure statement required.**

(a) When any customer requests a motor vehicle repair shop to perform repair work on a motor vehicle, the cost of which repair work will exceed three hundred fifty dollars (\$350.00) to the customer, the shop shall prepare a written repair estimate, which is a form setting forth the estimated cost of repair work, including diagnostic work, before effecting any diagnostic work or repair. The written repair estimate shall also include a statement allowing the customer to indicate whether replaced parts should be saved for inspection or return and a statement indicating the daily charge for storing the customer's motor vehicle after the customer has been notified that the repair work has been completed.

(b) The information required by subsection (a) of this section need not be provided if the customer waives in writing his or her right to receive a written estimate. A customer may waive his or her right to receive any written estimates from a motor vehicle repair shop for a period of time specified by the customer in the waiver.

(c) Except as provided in subsection (e) of this section, a copy of the written repair estimate required by subsection (a) of this section shall be given to the customer before repair work is begun.

(d) If the customer leaves his or her motor vehicle at a motor vehicle repair shop during hours when the shop is not open, or if the motor vehicle repair shop reasonably believes that an accurate estimate of the cost of repairs cannot be made until after the diagnostic work has been completed, or if the customer permits the shop or another person to deliver the motor vehicle to the shop, there shall be an implied partial waiver of the written estimate; however, upon completion of the diagnostic work necessary to estimate the cost of repair, the shop shall notify the customer as required by G.S. 20-354.5(a).

(e) Nothing in this section shall be construed to require a motor vehicle repair shop to give a written estimate price if the motor vehicle repair shop does not agree to perform the requested repair.

PUBLIC BILL

1299

H.B. \_\_\_\_\_

SESSION LAW \_\_\_\_\_

A BILL TO BE ENTITLED

AN ACT TO CLARIFY WHAT THE COST OF REPAIR WORK CONSISTS OF WHEN DETERMINING  
WHETHER THE COST OF REPAIR WORK IS SUFFICIENT TO REQUIRE A MOTOR VEHICLE  
REPAIR SHOP TO PREPARE A WRITTEN REPAIR ESTIMATE.

Introduced by Representative(s): Bordsen.

*Thannwright*

Principal Clerk's Use Only

PASSED 1st READING

APR 20 2005

AND REFERRED TO COMMITTEE

ON *Judiciary II*

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

1

HOUSE BILL 1298

Short Title: Youthful Offender Code Study.

(Public)

Sponsors: Representatives Bordsen, Haire, Parmon, Womble (Primary Sponsors);  
Fisher, Insko, and Wainwright.

Referred to: Judiciary II.

April 20, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE DEPARTMENT OF JUVENILE JUSTICE AND  
DELINQUENCY PREVENTION TO STUDY THE ADVISABILITY OF  
ENACTING A YOUTHFUL OFFENDER CODE.

The General Assembly of North Carolina enacts:

**SECTION 1.** The Department of Juvenile Justice and Delinquency Prevention, in consultation with the Department of Correction, the Department of Public Instruction, and the Administrative Office of the Courts, shall study issues related to the conviction and sentencing of persons who are between the ages of 16 and 21 years, or youthful offenders, to determine whether the State should enact a youthful offender code that would provide services and treatment that have been proven effective for persons who are not yet adults. The Department shall review the youthful offender acts of other states, including New York and Georgia, and the relevant North Carolina laws and programs, including the law regarding conditional discharge and expunction of records for first offenses under G.S. 90-96, deferred prosecution under G.S. 15A-1341, the first offenders programs, and other programs for youthful offenders, including pretrial intervention programs, which have been proven effective.

The Department of Correction, the Department of Public Instruction, and the Administrative Office of the Courts shall cooperate with the Department of Juvenile Justice and Delinquency Prevention in conducting the study.

**SECTION 2.** The Department of Juvenile Justice and Delinquency Prevention shall report the results of this study, including any recommended legislation, to the Joint Corrections, Crime Control, and Juvenile Justice Oversight Committee by March 1, 2006.

**SECTION 3.** This act is effective when it becomes law.



**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2005**

**H**

**D**

**HOUSE BILL 1298**  
**PROPOSED COMMITTEE SUBSTITUTE H1298-PCS50394-RQ-18**

Short Title: Youthful Offender Code Study.

(Public)

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Sponsors:

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Referred to:

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April 20, 2005

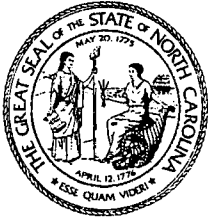
A BILL TO BE ENTITLED  
AN ACT TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO  
STUDY THE ADVISABILITY OF ENACTING A YOUTHFUL OFFENDER  
CODE.

The General Assembly of North Carolina enacts:

**SECTION 1.** The Legislative Research Commission may study issues related to the conviction and sentencing of persons who are between the ages of 16 and 21 years, or youthful offenders, and persons between the ages of 13 and 18 who are subject to G.S. 7B-1604 to determine whether the State should enact a youthful offender code that would provide services and treatment that have been proven effective for persons who are not yet adults. In conducting the study, the Commission may review the youthful offender acts of other states, including New York and Georgia, and the relevant North Carolina laws and programs, including the law regarding conditional discharge and expunction of records for first offenses under G.S. 90-96, deferred prosecution under G.S. 15A-1341, the first offenders programs, and other programs for youthful offenders, including pretrial intervention programs, which have been proven effective.

**SECTION 2.** The Commission may submit a preliminary report to the 2006 Regular Session of the 2005 General Assembly by June 1, 2006, and may submit a final report, along with any recommended legislation, by January 31, 2007, to the 2007 General Assembly.

**SECTION 3.** This act is effective when it becomes law.



# HOUSE BILL 1298: Youthful Offender Code Study

## BILL ANALYSIS

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<b>Committee:</b>	House Judiciary II	<b>Date:</b>	May 4, 2005
<b>Introduced by:</b>	Reps. Bordsen, Haire, Parmon, Womble	<b>Summary by:</b>	Drupti Chauhan
<b>Version:</b>	PCS to First Edition		Committee Counsel
	H1298-CSRQ-18 [v.1]		

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**SUMMARY:** *The PCS to House Bill 1298 would authorize the Legislative Research Commission to study whether or not a youthful offender code should be enacted in North Carolina.*

**BILL ANALYSIS:** The PCS to House Bill 1298 would authorize the Legislative Research Commission to study issues related to the conviction and sentencing of persons between the ages of 16 and 21 years of age. The study shall include the following:

- Whether the State should enact a youthful offender code to provide services and treatment for persons between the ages of 16 and 21;
- A review of the youthful offender acts of other states including New York and Georgia and the relevant NC laws and programs which have been proven effective

The Commission may report the findings of the study, including any recommended legislation, to the 2006 Regular Session of the 2005 General Assembly by March 1, 2006.

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

**BACKGROUND:** The Juvenile Justice Reform Act, Session Law 1998-202, rewrote the North Carolina Juvenile Code in 1998. The Juvenile Code addresses criminal issues for persons that are at least 6 years of age but less than 16 when the crime or infraction was committed. Persons who are 16 when the crime was committed are subject to prosecution as adults. If a person is age 13 or over and commits a felony, the juvenile code allows for the transfer of the proceedings to the adult system.

*H1298el-SMRQ-CSRQ-18.v1*

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

1

HOUSE BILL 1213

Short Title: Expunge Multiple Charges/Occur Within 1 yr.

(Public)

Sponsors: Representatives Moore, Sutton (Primary Sponsors); Parmon and Womble.

Referred to: Judiciary II.

April 13, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON CHARGED WITH MULTIPLE OFFENSES MAY HAVE THOSE CHARGES EXPUNGED IF THE ALLEGED OFFENSES OCCURRED WITHIN THE SAME TWELVE-MONTH PERIOD OF TIME AND THE CHARGES ARE SUBSEQUENTLY DISMISSED OR FINDINGS OF NOT GUILTY OR NOT RESPONSIBLE ARE ENTERED AT THE SAME TERM OF COURT.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 15A-146 reads as rewritten:

**"§ 15A-146. Expunction of records when charges are dismissed or there are findings of not guilty; expunction of records in certain circumstances for charges of multiple offenses when charges are subsequently dismissed or there are findings of not guilty at the same term of court.**

(a) If any person is charged with a crime, either a misdemeanor or a felony, or was charged with an infraction under G.S. 18B-302(i) prior to December 1, 1999, and the charge is dismissed, or a finding of not guilty or not responsible is entered, that person may apply to the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the application and, upon finding that the person had not previously received an expungement under this section, G.S. 15A-145, or G.S. 90-96, and that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial.

(a1) Notwithstanding subsection (a) of this section, if a person is charged with multiple offenses that occurred within the same 12-month period of time and the

1 charges are dismissed, or findings of not guilty or not responsible are entered at the  
2 same term of court, then a person may apply to have each of those charges expunged.  
3 There is no requirement that the multiple offenses arise out of the same transaction or  
4 occurrence or that the multiple offenses were consolidated for judgment provided the  
5 offenses all occurred within the same 12-month period of time. The court shall hold a  
6 hearing on the application. If the court finds that the person had not previously received  
7 an expungement under this section except as allowed for multiple offenses under this  
8 subsection, that the person had not previously received an expungement under  
9 G.S. 15A-145 or G.S. 90-96, and that the person had not previously been convicted of  
10 any felony under the laws of the United States, this State, or any other state, the court  
11 shall order the expunction. No person as to whom such an order has been entered shall  
12 be held thereafter under any provision of any law to be guilty of perjury, or to be guilty  
13 of otherwise giving a false statement or response to any inquiry made for any purpose,  
14 by reason of his failure to recite or acknowledge any expunged entries concerning  
15 apprehension or trial.

16 (b) The court may also order that the said entries shall be expunged from the  
17 records of the court, and direct all law-enforcement agencies bearing record of the same  
18 to expunge their records of the entries. The clerk shall forward a certified copy of the  
19 order to the sheriff, chief of police, or other arresting agency. The sheriff, chief or head  
20 of such other arresting agency shall then transmit the copy of the order with the form  
21 supplied by the State Bureau of Investigation to the State Bureau of Investigation, and  
22 the State Bureau of Investigation shall forward the order to the Federal Bureau of  
23 Investigation. The costs of expunging these records shall not be taxed against the  
24 petitioner.

25 (b1) Any person entitled to expungement under this section may also apply to the  
26 court for an order expunging DNA records when the person's case has been dismissed  
27 by the trial court and the person's DNA record or profile has been included in the State  
28 DNA Database and the person's DNA sample is stored in the State DNA Databank. A  
29 copy of the application for expungement of the DNA record or DNA sample shall be  
30 served on the district attorney for the judicial district in which the felony charges were  
31 brought not less than 20 days prior to the date of the hearing on the application. If the  
32 application for expungement is granted, a certified copy of the trial court's order  
33 dismissing the charges shall be attached to an order of expungement. The order of  
34 expungement shall include the name and address of the defendant and the defendant's  
35 attorney and shall direct the SBI to send a letter documenting expungement as required  
36 by subsection (b2) of this section.

37 (b2) Upon receiving an order of expungement entered pursuant to subsection (b1)  
38 of this section, the SBI shall purge the DNA record and all other identifying information  
39 from the State DNA Database and the DNA sample stored in the State DNA Databank  
40 covered by the order, except that the order shall not apply to other offenses committed  
41 by the individual that qualify for inclusion in the State DNA Database and the State  
42 DNA Databank. A letter documenting expungement of the DNA record and destruction  
43 of the DNA sample shall be sent by the SBI to the defendant and the defendant's  
44 attorney at the address specified by the court in the order of expungement.

1 (c) The Clerk of Superior Court in each county in North Carolina shall, as soon  
2 as practicable after each term of court in his county, file with the Administrative Office  
3 of the Courts, the names of those persons granted an expungement under the provisions  
4 of this section and the Administrative Office of the Courts shall maintain a confidential  
5 file containing the names of persons granted such expungement. The information  
6 contained in such files shall be disclosed only to judges of the General Court of Justice  
7 of North Carolina for the purpose of ascertaining whether any person charged with an  
8 offense has been previously granted an expungement."

9 **SECTION 2.** This act is effective when it becomes law.



# HOUSE BILL 1213: Expunge Multiple Charges/Occur Within 1 yr

## BILL ANALYSIS

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<b>Committee:</b>	House Judiciary II	<b>Date:</b>	May 5, 2005
<b>Introduced by:</b>	Reps. Moore, Sutton	<b>Summary by:</b>	Drupti Chauhan
<b>Version:</b>	First Edition		Committee Counsel

---

**SUMMARY:** *House Bill 1213 would allow a person charged with multiple offenses to have those charges expunged if the alleged offenses occurred within the same 12 month period of time and the charges are subsequently dismissed or findings of not guilty or not responsible are entered in the same term of court.*

**CURRENT LAW:** G.S. 15A-146 provides for the expunction of records when charges are dismissed or there is finding of not guilty. A person charged with any crime, whether a misdemeanor or a felony, who is not convicted of that offense, can apply to have the charge expunged. In order to have the records expunged, the court must find that the person has not previously received an expunction under:

- this section (G.S.15A-146);
- G.S. 15A-145 (expunction of records for first offenders under the age of 18 for misdemeanor convictions); or
- G.S. 90-96 (expunction for certain drug-related offenses).

In addition, the court must also find that the person had not previously been convicted of any felony under the laws of the United States, this State or any other state before ordering the expunction.

**BILL ANALYSIS:** House Bill 1213 would allow a person who is charged with multiple offenses that occurred within the same 12 month time period to apply to have each of those charges expunged if those charges are dismissed or findings of not guilty or not responsible are entered in the same term of court. The multiple offenses do not have to arise out of the same transaction or occurrence nor do the multiple offenses have to have been consolidated for judgment as long as all of the offenses occurred within the same 12 month time period.

The court is required to hold a hearing on the application. The court shall order the expunction if the court finds that the person had not previously:

- Received an expunction under this section except as allowed for multiple offenses under this new provision;
- Received expunctions under G.S. 15A-145 or G.S. 90-96; nor
- Been convicted of any felony under the laws of the United States, this State or any other state.

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

H1213e1-SMRQ

# VISITOR REGISTRATION SHEET

JUDICIARY II

MAY 05 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Becky Ebron	NC Sentencing & Policy Advisory Commission
Debbie Dawes	NC Sentencing & Policy Advisory Commission
S. Katznelson	" "
Larry Dix	DTJP
Lee Hodge	KCLH
J. Bursley	LBA
Mary Thomson	REB/C
Brad Lamb	NC Consumers Council
Bill Rowe	NC Justice Ctr.
Paul Wilms	NCHBA
Lisa Martin	NC Home Builders Assoc.

# VISITOR REGISTRATION SHEET

## JUDICIARY II

MAY 05 2005

**Name of Committee****Date**

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME

**FIRM OR AGENCY AND ADDRESS**

Lisa Bateman

DJJD

Colleen Kochanek

I GONC



House Pages

Name Of Committee: J11 Date: 5/5/05

1. Name: Shannon Power

County: Granville

Sponsor: Jim Crawford

2. Name: Kym Rumley

County: Wake

Sponsor: Rep. Nelson Dollar

3. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

4. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

5. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

Sgt-At-Arms

1. Name: Bill Freeman

2. Name: James Worth

3. Name: Earl Coker

4. Name: \_\_\_\_\_

5. Name: \_\_\_\_\_

**MINUTES  
HOUSE COMMITTEE ON  
JUDICIARY II**

May 10, 2005

The House Committee on Judiciary II met on Tuesday, May 10, 2005, in Room 421 of the Legislative Office Building. The following members were present: Chairman Mickey Michaux, Vice-Chairs Alice Bordsen and James Harrell, Representatives Allen, Farmer-Butterfield, Fisher, Folwell, Gulley, Jones, Walend and Wiley. Drupti Chauhan, Karen Cochrane-Brown and Jeff Hudson, Staff Counselors were in attendance. A Visitor's Registration List is included and made part of these minutes.

The Chairman called the meeting to order and recognized the Pages, Sergeant-At-Arms, Staff and visitors. The following bills were considered:

The Chair recognized Rep. Preston to explain **HB 926, A BILL TO BE ENTITLED AN ACT TO MAKE IT A CRIMINAL OFFENSE TO CONCEAL THE DEATH OF A PERSON**. A Proposed Committee Substitute was introduced for discussion and upon motion made by Rep. Walend the Proposed Committee Substitute (PCS) was adopted by the Committee for discussion. Karen Cochrane-Brown, Staff Counselor was recognized to explain PCS. Upon motion made by Rep. Farmer-Butterfield the Committee gave a favorable report to the Proposed Committee Substitute.

The next order of business was **HB 1243, A BILL TO BE ENTITLED AN ACT REQUIRING GOOD FAITH CAUSE FOR THE EVICTION OF TENANTS RENTING SPACE FOR RESIDENTIAL MANUFACTURED HOMES**. Rep. Gulley moves to accept the Proposed Committee Substitute bill (PCS), which included a title change for discussion. Rep. Fisher was recognized to explain the bill and Staff Counselor, Drupti Chauhan explained changes found in the PCS. Upon motion made by Rep. Farmer-Butterfield, the Committee gave the PCS a favorable report, which includes a title change.

Vice Chair Harrell recognized Rep. Michaux to explain **HB 1309, A BILL TO BE ENTITLED AN ACT TO OFFER COTENANTS THE RIGHT OF FIRST REFUSAL PRIOR TO A FORCED PUBLIC PARTITION SALE**. Rep. Michaux also moves that the Proposed Committee Substitute be adopted by the Committee for discussion and was adopted by the Committee. Jeff Hudson, Staff Counselor gave further explanation of the Proposed Committee Substitute (PCS) and the bill analysis. Upon motion made by Rep. Allen the PCS was given a favorable report by the Committee. The bill will not be reported out at time per Chairman Michaux.

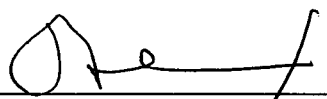
Rep. Fisher was recognized to explain **HB 779, A BILL TO BE ENTITLED AN ACT TO PROHIBIT STUDENTS FROM DROPPING OUT OF SCHOOL BEFORE THE AGE OF EIGHTEEN AND TO INCREASE THE PENALTY FOR TRUANCY**. Rep. Wiley moves that the Proposed Committee Substitute (PCS) be

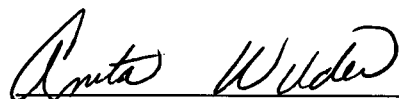
May 10, 2005

adopted for discussion by the Committee which the Committee gave favor for adoption. Drupti Chauhan, Staff Counselor gave further explanation of changes to bill and title change. Upon motion made by Rep. Folwell, the Committee moves for a favorable report to the PCS to included added amendments.

There being no further business, The Chair adjourned the meeting at 10:50 A.M.

Respectfully submitted,

  
\_\_\_\_\_  
Representative H. M. Michaux, Jr.  
Presiding Chair

  
\_\_\_\_\_  
Anita Wilder  
Committee Assistant

**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative Michaux (Chair) for the Committee on JUDICIARY II.

---

☐ Committee Substitute for

**HB 926**      A BILL TO BE ENTITLED AN ACT TO MAKE IT A CRIMINAL OFFENSE  
TO CONCEAL THE DEATH OF A PERSON.

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

**(FOR JOURNAL USE ONLY)**

---

\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on  
\_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the (House) committee substitute bill/(joint) resolution  
(No. \_\_\_\_\_) is placed on the Calendar of \_\_\_\_\_. (The original bill resolution No. \_\_\_\_\_) is placed  
on the Unfavorable Calendar.

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**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative Michaux (Chair) for the Committee on JUDICIARY II.

---

☐ Committee Substitute for

**HB 1243**

A BILL TO BE ENTITLED AN ACT REQUIRING GOOD FAITH  
CAUSE FOR THE EVICTION OF TENANTS RENTING SPACE FOR RESIDENTIAL  
MANUFACTURED HOMES.

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

**(FOR JOURNAL USE ONLY)**

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**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative Michaux (Chair) for the Committee on JUDICIARY II.

---

☐ Committee Substitute for

**HB 779** A BILL TO BE ENTITLED AN ACT TO PROHIBIT STUDENTS FROM DROPPING OUT OF SCHOOL BEFORE THE AGE OF EIGHTEEN AND TO INCREASE THE PENALTY FOR TRUANCY.

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

**(FOR JOURNAL USE ONLY)**

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# **AGENDA**

## **HOUSE COMMITTEE ON JUDICIARY II**

**May 10, 2005  
Room 421  
10:00 AM**

### **OPENING REMARKS**

Representative Mickey Michaux, Chair

### **AGENDA ITEMS**

**H 926--Concealing a Death/Crim. Offense – Rep. Preston  
H 1100-- Break Into Place of Worship-Reps. Walker, Bell, Langdon, Cleveland  
H 1308--Public Safety & Treatment Act – Rep. Michaux  
H 1309- Refusal Rights-Forced Public Partition Sales – Rep. Michaux  
H 1243-Manufactured Homes/Good Faith Evictions-Reps. Fisher, Bordsen  
H 779-Rise Compulsory School Attendance Age-Rep. Fisher**

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

1

HOUSE BILL 926

Short Title: Concealing a Death/Crim. Offense.

(Public)

Sponsors: Representative Preston.

Referred to: Judiciary II.

March 28, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A CRIMINAL OFFENSE TO CONCEAL THE DEATH OF A PERSON.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 52 of Chapter 14 of the General Statutes is amended by adding a new section to read:

**"§ 14-401.22. Concealment of death.**

(a) Any person who, with the intent to conceal the death of a person, violates G.S. 130A-115(e) by failing to notify the appropriate medical examiner of the death is guilty of a Class A1 misdemeanor.

(b) Any person who, with the intent to conceal the death of a person, transports a dead human body without legal authorization is guilty of a Class A1 misdemeanor.

(c) Any person who, with the intent to conceal the death of a person, buries or cremates a dead human body without legal authorization is guilty of a Class A1 misdemeanor."

**SECTION 2.** This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

D

HOUSE BILL 926  
PROPOSED COMMITTEE SUBSTITUTE H926-PCS10323-RO-3

Short Title: Concealing a Death/Crim. Offense.

(Public)

Sponsors:

Referred to:

March 28, 2005

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE IT A CRIMINAL OFFENSE TO CONCEAL THE DEATH OF A  
3 PERSON.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 52 of Chapter 14 of the General Statutes is amended by  
6 adding a new section to read:

7 "§ 14-401.22. Concealment of death.

8 (a) Any person who, with the intent to conceal the death of a person, fails to  
9 notify a law enforcement authority of the death and secretly buries or otherwise  
10 disposes of a dead human body is guilty of a Class I felony.

11 (b) Any person who aids, counsels, or abets any other person in concealing the  
12 death of a person is guilty of a Class A1 misdemeanor."

13 SECTION 2. This act becomes effective December 1, 2005, and applies to  
14 offenses committed on or after that date.

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2005**

**H**

**3**

**HOUSE BILL 1243**  
**Committee Substitute Favorable 5/12/05**  
**Committee Substitute #2 Favorable 6/1/05**

Short Title:   Manufactured Homes/Longer Termination Notice.

(Public)

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Sponsors:

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Referred to:

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April 18, 2005

A BILL TO BE ENTITLED

AN ACT REQUIRING A LONGER NOTICE PERIOD FOR A TERMINATION OF A  
TENANCY FOR THE RENTAL SPACE FOR RESIDENTIAL  
MANUFACTURED HOMES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 42-14 reads as rewritten:

**"§ 42-14. Notice to quit in certain tenancies.**

A tenancy from year to year may be terminated by a notice to quit given one month or more before the end of the current year of the tenancy; a tenancy from month to month by a like notice of seven days; a tenancy from week to week, of two days. Provided, however, where the tenancy involves only the rental of a space for a manufactured home as defined in G.S. 143-143.9(6), a notice to quit must be given at least ~~30~~60 days before the end of the current rental period, regardless of the term of the tenancy."

**SECTION 2.** This act becomes effective January 1, 2006, and applies to all notices to quit given on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

D

HOUSE BILL 1243

PROPOSED COMMITTEE SUBSTITUTE H1243-CSRQ-20 [v.3]

5/10/2005 9:14:10 AM

Short Title: Manufactured Homes/Good Faith Evictions.

(Public)

Sponsors:

Referred to:

April 18, 2005

A BILL TO BE ENTITLED

AN ACT REQUIRING GOOD FAITH CAUSE FOR THE EVICTION OF TENANTS  
RENTING SPACE FOR RESIDENTIAL MANUFACTURED HOMES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 42-14 reads as rewritten:

**"§ 42-14. Notice to quit in certain tenancies.**

A tenancy from year to year may be terminated by a notice to quit given one month or more before the end of the current year of the tenancy; a tenancy from month to month by a like notice of seven days; a tenancy from week to week, of two days. Provided, however, where the tenancy involves only the rental of a space for a manufactured home as defined in G.S. 143-143.9(6), home, as defined in G.S. 143-143.9(6), for residential use, a notice to quit must be given at least 30 days before the end of the current rental period, regardless of the term of the tenancy. the tenancy may be terminated by the landlord only for the reasons provided in G.S. 42-26(c)."

**SECTION 2.** G.S. 42-26 reads as rewritten:

**"§ 42-26. Tenant holding over may be dispossessed in certain cases.**

(a) Any tenant or lessee of any house or land, and the assigns under the tenant or legal representatives of such tenant or lessee, except where the tenancy involves only the rental of a space for a manufactured home, as defined in G.S. 143-143.9(6), for residential use, who holds over and continues in the possession of the demised premises, or any part thereof, without the permission of the landlord, and after demand made for its surrender, may be removed from such premises in the manner hereinafter prescribed in any of the following cases:

- (1) When a tenant in possession of real estate holds over after his term has expired.

(2) When the tenant or lessee, or other person under him, has done or omitted any act by which, according to the stipulations of the lease, his estate has ceased.

(3) When any tenant or lessee of lands or tenements, who is in arrear for rent or has agreed to cultivate the demised premises and to pay a part of the crop to be made thereon as rent, or who has given to the lessor a lien on such crop as a security for the rent, deserts the demised premises, and leaves them unoccupied and uncultivated.

(b) An arrearage in costs owed by a tenant for water or sewer services pursuant to G.S. 62-110(g) shall not be used as a basis for termination of a lease under this Chapter. Any payment to the landlord shall be applied first to the rent owed and then to charges for water or sewer service, unless otherwise designated by the tenant.

(c) The termination of a lease by the landlord where the tenancy involves only the rental of a space for a manufactured home, as defined in G.S. 143-143.9(6), for residential use shall be in writing and provided to the tenant or lessee at least three business days prior to filing a summary ejectment action and shall be for one or more of the following reasons:

(1) When the tenant or lessee, or other person under the tenant or lessee, has done or omitted any act by which, according to the stipulations of the lease, the estate of the tenant or lessee estate has ceased.

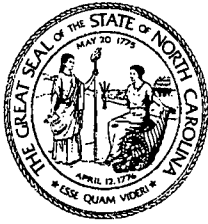
(2) When the tenant or lessee, or other person under the tenant or lessee, has failed to pay rent as provided in G.S. 42-3.

(3) When the tenant or lessee, or other person under the tenant or lessee, has committed an act that is the basis for eviction under Article 7 of this Chapter.

(4) When there is a condemnation or change of use of the land as provided in G.S. 42-14.3, if the landlord complies with the provisions of that section.

(5) When the tenant or lessee unreasonably refuses to enter into a renewal lease agreement."

**SECTION 3.** This act is effective when it becomes law.



# HOUSE BILL 1243: Manufactured Homes/Good Faith Evictions

## BILL ANALYSIS

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<b>Committee:</b>	House Judiciary II	<b>Date:</b>	May 10, 2005
<b>Introduced by:</b>	Reps. Fisher, Bordsen	<b>Summary by:</b>	Drupti Chauhan
<b>Version:</b>	PCS to First Edition		Committee Counsel
	H1243-CSRQ-20 [v.3]		

---

**SUMMARY:** *House Bill 1243 would provide that the tenancy for the rental space for a manufactured home may be terminated only for certain reasons.*

*The PCS makes the bill gender neutral and provides that the landlord can only terminate the tenancy for cause. The notice to quit must be given in writing 3 days prior to the filing of the summary ejectment.*

**CURRENT LAW:** The following is the State law required for the notice to quit tenancies:

- A tenancy from year to year: one month notice to quit
- A tenancy from month to month: seven days notice to quit
- A tenancy from week to week: two days notice to quit
- For the rental of a space for a manufactured home: a notice of 30 days before the end of the current rental period regardless of the term of the tenancy

The owner of a manufactured housing community must give notice of 180 days before the owner intends to **convert** the community to another use that will require the homes to be moved. The owner of the community must give the notice to the owner of the manufactured home. If the closure is due to a valid order of a state or local government, then notice must be given of the closure within 3 days of the date of the order.

A tenant who holds over without the permission of the landlord can be ejected from the premises in any of the following situations:

- When the tenancy has expired
- When the tenant has committed any act that the lease stipulates would terminate the lease
- When the tenant who is in arrears for rent or has agreed to cultivate the land and pay a part of the crop or has given the landlord a lien on the crop does not cultivate the land

**BILL ANALYSIS:** The PCS for House Bill 1243 would provide that the tenancy for the rental space for a manufactured home could be terminated by the landlord **only** for the following reasons:

- The tenant or someone under the tenant has done or omitted any act that the lease stipulates would terminate the lease
- The tenant or someone under the tenant has failed to pay rent
- The tenant or someone under the tenant has committed an act that is the basis for eviction under Article 7 of the Landlord and Tenant Chapter (Eviction due to certain types of criminal activity)
- There is a condemnation or change of use of the land (conversion by the owner)
- The tenant or lessee unreasonably refuses to enter into a renewal lease agreement

The notice must be provided in writing at least three business days before the filing of the summary ejectment.

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

H1243e1-SMRQ-CSRQ-20 v2

Legislative Services Office

North Carolina General Assembly

Research Division, 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

D

HOUSE BILL 1309

PROPOSED COMMITTEE SUBSTITUTE H1309-PCS60468-SB-29

Short Title: Refusal Rights-Forced Public Partition Sales.

(Public)

Sponsors:

Referred to:

April 20, 2005

1 A BILL TO BE ENTITLED  
2 AN ACT TO OFFER COTENANTS THE RIGHT OF FIRST REFUSAL PRIOR TO A  
3 FORCED PUBLIC PARTITION SALE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 46 of the General Statutes is amended by adding a  
6 new section to read:

7 "§ 46-22.1. Sale of cotenant's interest in lieu of sale by partition.

8 (a) Upon the filing of a petition for partition of real property owned by joint  
9 tenants or tenants in common, the court shall provide for the purchase of the interests of  
10 the joint tenants or tenants in common seeking the sale of the property described in the  
11 petition pursuant to G.S. 46-22 to the nonpetitioning joint tenants or tenants in common  
12 if the nonpetitioning joint tenants or tenants in common interested in purchasing such  
13 interests notify the court of that interest not later than 10 days prior to the date set for  
14 trial of the case. The nonpetitioning joint tenants or tenants in common shall be allowed  
15 to purchase the interests in property as provided in this section whether default has been  
16 entered against them or not.

17 (b) In the circumstances described in subsection (a) of this section, and in the  
18 event the parties cannot reach agreement as to the price, the value of the interest or  
19 interests to be sold shall be determined by one or more competent real estate appraisers  
20 or commissioners, as the court shall approve, appointed for that purpose by the court.  
21 The appraisers or commissioners appointed under this section shall make their report in  
22 writing to the court within 30 days after their appointment. The costs of the appraisers  
23 or commissioners pursuant to this section shall be taxed as a part of the cost of court to  
24 those seeking to purchase the interests of the joint tenants or tenants in common  
25 petitioning to sell their interest in the property described in the petition.

26 (c) Should the petitioning joint tenants or tenants in common object to the value  
27 of the interests as determined by the appraisers or commissioners, those joint tenants or  
28 tenants in common shall have 10 days from the date of filing of the report to file written

1 notice of objection to the report and request a hearing before the clerk of superior court  
2 on the value. An evidentiary hearing limited to the proposed valuation of the interests of  
3 the petitioning joint tenants or tenants in common shall be conducted, and an order as to  
4 the valuation of the petitioning joint tenants' or tenants' in common interests shall be  
5 issued.

6 (d) After the valuation of the interest in property as provided in subsection (b) or  
7 (c) of this section, the nonpetitioning joint tenants or tenants in common seeking to  
8 purchase the interests of those filing the petition shall have 45 days to pay into the court  
9 the price set as the value of those interests to be purchased. Upon the payment and  
10 approval of it by the court, the clerk shall execute and deliver or cause to be executed  
11 and delivered the proper instruments transferring title to the purchasers.

12 (e) Should the nonpetitioning joint tenants or tenants in common fail to pay the  
13 purchase price as provided in subsection (d) of this section, the court shall proceed  
14 according to its traditional practices in partition sales as described in G.S. 46-22."

15 **SECTION 2.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

1

HOUSE BILL 779\*

Short Title: Raise Compulsory School Attendance Age.

(Public)

Sponsors: Representatives Fisher; Carney, Church, Dollar, Farmer-Butterfield,  
Insko, Ross, Walend, and Weiss.

Referred to: Education.

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT STUDENTS FROM DROPPING OUT OF SCHOOL  
BEFORE THE AGE OF EIGHTEEN AND TO INCREASE THE PENALTY FOR  
TRUANCY.

The General Assembly of North Carolina enacts:

**SECTION 1.** 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 ~~16-18~~ 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-session~~, until the child graduates from high school. 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



1 required of public schools; and attendance upon such schools, if the school refuses or  
2 neglects to keep such records or to render such reports, shall not be accepted in lieu of  
3 attendance upon the public school of the district to which the child shall be assigned:  
4 Provided, that instruction in a nonpublic school shall not be regarded as meeting the  
5 requirements of the law unless the courses of instruction run concurrently with the term  
6 of the public school in the district and extend for at least as long a term.

7 The principal or his designee shall notify the parent, guardian, or custodian of his  
8 child's excessive absences after the child has accumulated three unexcused absences in a  
9 school year. After not more than six unexcused absences, the principal shall notify the  
10 parent, guardian, or custodian by mail that he may be in violation of the Compulsory  
11 Attendance Law and may be prosecuted if the absences cannot be justified under the  
12 established attendance policies of the State and local boards of education. Once the  
13 parents are notified, the school attendance counselor shall work with the child and his  
14 family to analyze the causes of the absences and determine steps, including adjustment  
15 of the school program or obtaining supplemental services, to eliminate the problem. The  
16 attendance counselor may request that a law-enforcement officer accompany him if he  
17 believes that a home visit is necessary.

18 After 10 accumulated unexcused absences in a school year the principal shall review  
19 any report or investigation prepared under G.S. 115C-381 and shall confer with the  
20 student and his parent, guardian, or custodian if possible to determine whether the  
21 parent, guardian, or custodian has received notification pursuant to this section and  
22 made a good faith effort to comply with the law. If the principal determines that parent,  
23 guardian, or custodian has not, he shall notify the district attorney. If he determines that  
24 parent, guardian, or custodian has, he may file a complaint with the juvenile court  
25 counselor pursuant to Chapter 7B of the General Statutes that the child is habitually  
26 absent from school without a valid excuse. Evidence that shows that the parents,  
27 guardian, or custodian were notified and that the child has accumulated 10 absences  
28 which cannot be justified under the established attendance policies of the local board  
29 shall establish a prima facie case that the child's parent, guardian, or custodian is  
30 responsible for the absences."

31 **SECTION 2.** G.S. 115C-380 reads as rewritten:

32 **"§ 115C-380. Penalty for violation.**

33 Any Except as otherwise provided in G.S. 115C-379, any parent, guardian or other  
34 person violating the provisions of this Part shall be guilty of a Class 3 Class 1  
35 misdemeanor."

36 **SECTION 3.** G.S. 116-235(b)(2) reads as rewritten:

37 "(2) School Attendance. – Every parent, guardian, or other person in this  
38 State having charge or control of a child who is enrolled in the School  
39 and who is less than 16-18 years of age shall cause such child to attend  
40 school continuously for a period equal to the time which the School  
41 shall be in session-session, until the child graduates from high school.  
42 No person shall encourage, entice, or counsel any child to be  
43 unlawfully absent from the School. Any person who aids or abets a  
44 student's unlawful absence from the School shall, upon conviction, be

1 guilty of a ~~Class 3~~ Class 1 misdemeanor. The Director of the School  
2 shall be responsible for implementing such additional policies  
3 concerning compulsory attendance as shall be adopted by the Board of  
4 Trustees, including regulations concerning lawful and unlawful  
5 absences, permissible excuses for temporary absences, maintenance of  
6 attendance records, and attendance counseling."

7 **SECTION 4.** G.S. 7B-1501(27) reads as rewritten:

8 "(27) Undisciplined juvenile. –

9 a. A juvenile who, while less than ~~16~~ 18 years of age but at least 6  
10 years of age, is unlawfully absent from school; or is regularly  
11 disobedient to and beyond the disciplinary control of the  
12 juvenile's parent, guardian, or custodian; or is regularly found in  
13 places where it is unlawful for a juvenile to be; or has run away  
14 from home for a period of more than 24 ~~hours~~; or hours.

15 b. ~~A juvenile who is 16 or 17 years of age and who is regularly~~  
16 ~~disobedient to and beyond the disciplinary control of the~~  
17 ~~juvenile's parent, guardian, or custodian; or is regularly found in~~  
18 ~~places where it is unlawful for a juvenile to be; or has run away~~  
19 ~~from home for a period of more than 24 hours."~~

20 **SECTION 5.** G.S. 143B-515(22) reads as rewritten:

21 "(22) Undisciplined juvenile. –

22 a. A juvenile who, while less than ~~16~~ 18 years of age but at least 6  
23 years of age, is unlawfully absent from school; or is regularly  
24 disobedient to and beyond the disciplinary control of the  
25 juvenile's parent, guardian, or custodian; or is regularly found in  
26 places where it is unlawful for a juvenile to be; or has run away  
27 from home for a period of more than 24 ~~hours~~; or hours.

28 b. ~~A juvenile who is 16 or 17 years of age and who is regularly~~  
29 ~~disobedient to and beyond the disciplinary control of the~~  
30 ~~juvenile's parent, guardian, or custodian; or is regularly found in~~  
31 ~~places where it is unlawful for a juvenile to be; or has run away~~  
32 ~~from home for a period of more than 24 hours."~~

33 **SECTION 6.** This act becomes effective July 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

D

HOUSE BILL 779\*  
PROPOSED COMMITTEE SUBSTITUTE H779-CSRQ-19 [v.1]

5/5/2005 2:48:36 PM

Short Title: Increase the Penalty for Truancy.

(Public)

Sponsors:

Referred to:

March 17, 2005

1 A BILL TO BE ENTITLED  
2 AN ACT TO INCREASE THE PENALTY FOR AIDING AND ABETTING A  
3 STUDENT'S UNLAWFUL ABSENCE FROM SCHOOL.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 115C-380 reads as rewritten:

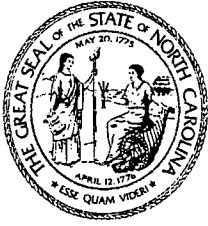
6 "§ 115C-380. Penalty for violation.

7 ~~Any-Except~~ as otherwise provided in G.S. 115C-379, any parent, guardian or other  
8 person violating the provisions of this Part shall be guilty of a ~~Class 3~~ Class 1  
9 misdemeanor."

10 SECTION 2. G.S. 116-235(b)(2) reads as rewritten:

11 "(2) School Attendance. – Every parent, guardian, or other person in this  
12 State having charge or control of a child who is enrolled in the School  
13 and who is less than 16 18 years of age shall cause such child to attend  
14 school continuously for a period equal to the time which the School  
15 shall be in session. No person shall encourage, entice, or counsel any  
16 child to be unlawfully absent from the School. Any person who aids or  
17 abets a student's unlawful absence from the School shall, upon  
18 conviction, be guilty of a ~~Class 3~~ Class 1 misdemeanor. The Director  
19 of the School shall be responsible for implementing such additional  
20 policies concerning compulsory attendance as shall be adopted by the  
21 Board of Trustees, including regulations concerning lawful and  
22 unlawful absences, permissible excuses for temporary absences,  
23 maintenance of attendance records, and attendance counseling."

24 SECTION 3. This act becomes effective December 1, 2005 and applies to  
25 offenses committed on or after that date.



# HOUSE BILL 779: Increase the Penalty for Truancy

## BILL ANALYSIS

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<b>Committee:</b>	House Judiciary II	<b>Date:</b>	May 5, 2005
<b>Introduced by:</b>	Rep. Fisher	<b>Summary by:</b>	Drupti Chauhan
<b>Version:</b>	PCS to First Edition H779-CSRQ-19 [v.1]		Committee Counsel

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**SUMMARY:** *The PCS for House Bill 779 would raise the penalty for failing to comply with the compulsory attendance law from a Class 3 misdemeanor to a Class 1 misdemeanor.*

*The original bill would the attendance age from age 16 to 18 and bill would also make conforming changes in age requirements in the definitions of undisciplined juveniles in the juvenile code and the Department of Juvenile Justice.*

**CURRENT LAW:** G.S. 115C-378 mandates that children are required to attend school in North Carolina between the ages of 7 and 16. Every parent, guardian or other person having control of a child between these ages is required to have the child attend school. The principal is to notify the parent or guardian of a child if the child has 3 unexcused absences in a school year. After six unexcused absences, the principal is to notify the parent or guardian by mail that he or she may be in violation of the compulsory attendance law and may be prosecuted if the absences cannot be justified under attendance policies. A school counselor is to work with the child and family to solve the problem. After 10 unexcused absences in a school year, the principal must review any reports prepared by the school social worker and confer with the student and parents or guardians if possible. If the principal determines that the parent or guardian has not made a good faith effort to comply with the compulsory attendance law, the principal is required to notify the district attorney. If the parent or guardian has made a good faith effort, the principal may file a complaint with the juvenile court counselor stating that the child is habitually absent from school without a valid excuse.

A parent or guardian who violates the compulsory attendance law is guilty of a Class 3 misdemeanor.

**BILL ANALYSIS:** The PCS for House Bill 779 would raise the penalty for a parent or guardian or other person who violates the compulsory attendance law to a Class 1 misdemeanor.

**EFFECTIVE DATE:** The bill would become effective December 1, 2005 and apply to offenses committed on or after that date.

**BACKGROUND:** The punishment for a Class 3 misdemeanor ranges from 1-10 days of community punishment to 1-20 days of community, intermediate, or active punishment. The court may impose a fine of not more than \$200.

Punishment for a Class 1 misdemeanor ranges from 1-45 days of community punishment (for someone with no prior convictions) to 1-120 days of community punishment, intermediate punishment or active punishment (for someone with five or more prior convictions). Fines may be imposed with any disposition. For a Class 1 misdemeanor, the amount of the fine is in the discretion of the court.

H0779e1-SMRQ-CSRQ-19 v1

# VISITOR REGISTRATION SHEET

JUDICIARY II

MAY 10, 2005

Name of Committee

Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME

FIRM OR AGENCY AND ADDRESS

Stephanie Erba	Intern, SBE
Molly Ryan	NCSBA
Chad Hinton	Civitas Institute
Bill Rowe	NC Justice Ctr
Marcus Davis	NCAE
Tim Maen	NCDOC
Suzanne Buckley	Gov Office
Lisa Bateman	DJJDP
Ted Brown	Sheriffs Office
BRAD LOVIN	NC Manufactured Housing
Frank Garry	NC Manufactured Housing
Katherine Gayce	NCASA

## VISITOR REGISTRATION SHEET

JUDICIARY II

MAY 10, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Stephen Rowen	LLPP
JB Towell	AOC
BRIAN LEWIS	Covenant w NC's Children
Paige Johnson	Planned Parenthood
Chad Essick	Poyner & Sprull, L.L.P
Shannah Smith	UNC Center for Civil Rights
Tamara Flinchum	Sentencing Commission
Jessica Sage	NC Family Policy Council
Hilary Arthur	NCASA

House Pages

Name Of Committee: JII Date: 5/10/05

1. Name: Annie Hoyle

County: Durham

Sponsor: Paul Miller

2. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

3. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

4. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

5. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

Sgt-At-Arms

1. Name: BILL FREEMAN

2. Name: JAMES WORTH

3. Name: \_\_\_\_\_

4. Name: \_\_\_\_\_

5. Name: \_\_\_\_\_

**MINUTES  
HOUSE COMMITTEE ON  
JUDICIARY II**

May 12, 2005

The House Committee on Judiciary II met on Thursday, May 12, 2005, in Room 421 of the Legislative Office Building. The following members were present: Chairman Mickey Michaux, Vice-Chairs Alice Bordsen and Timothy Moore, Representatives Allen, Farmer-Butterfield, Fisher, Folwell, Gulley, Jones, Walend and Wiley. Drupti Chauhan, Karen Cochrane-Brown and Jeff Hudson, Staff Counselors were in attendance. A Visitor's Registration list is included and made part of these minutes.

The Chairman called the meeting to order and recognized the Pages, Sergeant-At-Arms, Staff and visitors. The following bills were considered.

Rep. Allred was recognized to explain **HB 1333, A BILL TO BE ENTITLED AN ACT REQUIRING THAT NOTICE BE GIVEN ON ANY CONSUMER CONTRACT THAT CONTAINS A PROVISION REQUIRING THE CONSUMER TO SUBMIT TO BINDING ARBITRATION AS THE ONLY RECOURSE FOR RESOLVING DISPUTES THAT MIGHT ARISE CONCERNING THE CONTRACT.** No action was taken on this bill.

The Chair next recognized Rep. Farmer-Butterfield to explain **HB 1550, A BILL TO BE ENTITLED AN ACT TO ESTABLISHED A LEGISLATIVE STUDY COMMISSION ON STATE GUARDIANSHIP LAWS.** Upon a motion made by Rep. Folwell, the Proposed Committee Substitute bill (PCS) that was introduced for discussion was adopted by the Committee. Upon motion made by Rep. Walend the Committee gave the PCS a favorable report and re-referred to Appropriations.

The next order of business was **HB 1400, A BILL TO BE ENTITLED AN ACT TO INCREASE THE PENALTY FOR PASSING A STOPPED SCHOOL BUS AND TO MAKE SCHOOL BUS STOPS SAFER.** Rep. Folwell was recognized by the Chair to explain the bill. A Proposed Committee Substitute bill (PCS) was submitted for discussion and upon motion made by Rep. Gulley. During the Committee's discussion of bill one amendment was made to the bill and upon a motion made by Rep. Fisher the amendment was rolled into the PCS and was given a favorable report by the Committee.

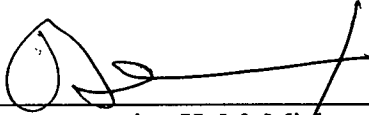
There being no further business, the Chair adjourned the meeting at 10:40 A.M.



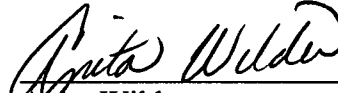
Page 2

Minutes-Judiciary II  
May 12, 2005

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'H. M. Michaux, Jr.', written over a horizontal line.

Representative H. M. Michaux, Jr.  
Presiding Chair

A handwritten signature in black ink, appearing to be 'Anita Wilder', written over a horizontal line.

Anita Wilder  
Committee Assistant

# **AGENDA**

## **HOUSE COMMITTEE ON JUDICIARY II**

**May 12, 2005  
Room 421  
10:00 AM**

### **OPENING REMARKS**

Representative Mickey Michaux, Chair

### **AGENDA ITEMS**

- H 1333–Arbitration Notice to Consumer – Reps. Allred, Faison**
- H 1400– School Bus Safety Act-Rep. Folwell**
- H 1516-False Cert. an Unfair and Deceptive Act – Rep. Setzer**
- H 1550-Guardianship Study – Rep. Farmer-Butterfield**
- H 1554-Expunction/Convictions of Certain Crimes -Reps. Womble, Parmon**

**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative Michaux (Chair) for the Committee on JUDICIARY II.

---

☐ Committee Substitute for

**HB 1550**

A BILL TO BE ENTITLED AN ACT TO ESTABLISH A  
LEGISLATIVE STUDY COMMISSION ON STATE GUARDIANSHIP LAWS.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill, and recommendation that the committee substitute bill # be re-referred to the Committee on Appropriations.)

**(FOR JOURNAL USE ONLY)**

---

\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on \_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is placed on the Calendar of \_\_\_\_\_. (The original bill resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

\_\_\_\_\_ The (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is re-referred to the Committee on \_\_\_\_\_. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative Michaux (Chair) for the Committee on JUDICIARY II.

---

☐ Committee Substitute for

**HB 1400**

A BILL TO BE ENTITLED AN ACT TO INCREASE THE PENALTY  
FOR PASSING A STOPPED SCHOOL BUS AND TO MAKE SCHOOL BUS STOPS SAFER.

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

**(FOR JOURNAL USE ONLY)**

---

\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on  
\_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the (House) committee substitute bill/(joint) resolution  
(No. \_\_\_\_\_) is placed on the Calendar of \_\_\_\_\_. (The original bill resolution No. \_\_\_\_\_) is placed  
on the Unfavorable Calendar.

\_\_\_\_\_ The (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is re-referred to the  
Committee on \_\_\_\_\_. (The original bill/resolution) (House/Senate Committee Substitute  
Bill/(Joint) resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H.

1

HOUSE BILL 1550

Short Title: Guardianship Study.

(Public)

Sponsors: Representatives Farmer-Butterfield; B. Allen, Carney, Fisher, Insko, Johnson, Justice, Justus, Stiller, and Weiss.

Referred to: Judiciary II.

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A LEGISLATIVE STUDY COMMISSION ON STATE GUARDIANSHIP LAWS.

Whereas, State laws pertaining to guardianship and powers of attorney are important for the protection of citizens who are unable to make personal decisions due to mental or physical impairment or incapacity; and

Whereas, by virtue of an increasing elderly population, the number and circumstance of persons who currently need or may need in the future alternate decision makers to act in their best interest is also increasing; and

Whereas, the State's guardianship laws have not been thoroughly reviewed in more than 12 years to determine if changes in content or policy are needed to strengthen the efficiency and effectiveness of these laws; Now, therefore, The General Assembly of North Carolina enacts:

**SECTION 1.(a)** There is created the Legislative Study Commission on State Guardianship Laws. The purpose of the Commission is to review State law pertaining to guardianship and its relationship to other pertinent State laws such as the health care power of attorney, the right to a natural death, and durable power of attorney.

**SECTION 1.(b)** The Commission shall consist of 14 members, seven members appointed by the Speaker of the House of Representatives, at least four of whom shall be members of the House of Representatives, and seven members appointed by the President Pro Tempore of the Senate, at least four of whom shall be members of the Senate. The public members appointed by the Speaker and the President Pro Tempore shall be such persons as have experience with the State guardianship laws, including court administrators, attorneys, judges, public or private guardians, or representatives of the interests of elderly and disabled persons. The Speaker shall designate one representative as cochair, and the President Pro Tempore shall designate one senator as cochair. Vacancies on the Commission shall be filled by the same

1 appointing authority as made the initial appointment. The Commission shall expire upon  
2 delivering its final report.

3 The Commission, while in the discharge of its official duties, may exercise all  
4 powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The  
5 Commission may meet at any time upon the joint call of the cochairs. The Commission  
6 may meet in the Legislative Building or the Legislative Office Building. The  
7 Commission may contract for professional, clerical, or consultant services as provided  
8 by G.S. 120-32.02.

9 The Legislative Services Commission, through the Legislative Services  
10 Officer, shall assign professional staff to assist the Commission in its work. The House  
11 of Representatives' and the Senate's Supervisors of Clerks shall assign clerical staff to  
12 the Commission, and the expenses relating to the clerical employees shall be borne by  
13 the Commission. Members of the Commission shall receive subsistence and travel  
14 expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

15 **SECTION 1.(c)** In conducting the study, the Commission shall consider the  
16 following:

- 17 (1) Whether guardianship should be a remedy of last resort used only if  
18 less restrictive alternatives are insufficient.
- 19 (2) The definition of incompetency.
- 20 (3) Whether courts should be required to make express findings regarding  
21 the extent of a person's incapacity and limit the scope of the  
22 guardianship accordingly.
- 23 (4) Legal rights retained or lost as a result of being adjudicated  
24 incompetent.
- 25 (5) The proper role of attorneys and guardians ad litem in guardianship  
26 proceedings.
- 27 (6) The role of public human services agencies in providing guardianship  
28 services.
- 29 (7) Legal procedures and protections in guardianship proceedings.
- 30 (8) Public monitoring of guardianship.
- 31 (9) Funding for guardianship services provided by public and nonprofit  
32 agencies.
- 33 (10) Educating citizens with respect to guardianship and alternatives to  
34 guardianship.
- 35 (11) Prudent investor rules.
- 36 (12) Powers, duties, and liabilities of guardians.
- 37 (13) Review of the State's adult protective services law.
- 38 (14) Enactment of the Uniform Guardianship and Protective Proceedings  
39 Act (UGPPA).
- 40 (15) Whether guardianship statutes need revision to provide greater  
41 protection of the health and welfare of incapacitated adults.
- 42 (16) Whether the State should track the number of people under private  
43 guardianship and, if so, proposed methods for the tracking.

1           **SECTION 2.** The Legislative Study Commission on State Guardianship  
2 Laws may make an interim report to the 2005 General Assembly not later than May 1,  
3 2006, and shall make its final report to the 2007 General Assembly prior to its  
4 convening.

5           **SECTION 3.** All State departments and agencies and local governments and  
6 their subdivisions shall furnish the Commission with any information in their possession  
7 or available to them.

8           **SECTION 4.** There is appropriated from the General Fund to the General  
9 Assembly the sum of thirty thousand dollars (\$30,000) for the 2005-2006 fiscal year and  
10 the sum of thirty thousand dollars (\$30,000) for the 2006-2007 fiscal year to carry out  
11 the purposes of this act.

12           **SECTION 5.** This act becomes effective July 1, 2005.

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

**H**

**D**

**HOUSE BILL 1550  
PROPOSED COMMITTEE SUBSTITUTE H1550-CSRO-20 [v.1]**

5/11/2005 9:40:17 PM

Short Title: Guardianship Study.

(Public)

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Sponsors:

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Referred to:

---

April 21, 2005

A BILL TO BE ENTITLED  
AN ACT TO ESTABLISH A LEGISLATIVE STUDY COMMISSION ON STATE  
GUARDIANSHIP LAWS.

Whereas, State laws pertaining to guardianship and powers of attorney are important for the protection of citizens who are unable to make personal decisions due to mental or physical impairment or incapacity; and

Whereas, by virtue of an increasing elderly population, the number and circumstance of persons who currently need or may need in the future alternate decision makers to act in their best interest is also increasing; and

Whereas, the State's guardianship laws have not been thoroughly reviewed in more than 12 years to determine if changes in content or policy are needed to strengthen the efficiency and effectiveness of these laws; Now, therefore,  
The General Assembly of North Carolina enacts:

**SECTION 1.(a)** There is created the Legislative Study Commission on State Guardianship Laws. The purpose of the Commission is to review State law pertaining to guardianship and its relationship to other pertinent State laws such as the health care power of attorney, the right to a natural death, and durable power of attorney.

**SECTION 1.(b)** The Commission shall consist of 14 members, seven members appointed by the Speaker of the House of Representatives, at least four of whom shall be members of the House of Representatives, and seven members appointed by the President Pro Tempore of the Senate, at least four of whom shall be members of the Senate. The public members appointed by the Speaker and the President Pro Tempore shall be such persons as have experience with the State guardianship laws, including the Administrative Office of the Courts, attorneys, clerks of superior court, public or private guardians, or representatives of the interests of elderly and disabled persons. The Speaker shall designate one representative as cochair, and the President Pro Tempore shall designate one senator as cochair. Vacancies on the Commission shall



1 be filled by the same appointing authority as made the initial appointment. The  
2 Commission shall expire upon delivering its final report.

3 The Commission, while in the discharge of its official duties, may exercise all  
4 powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The  
5 Commission may meet at any time upon the joint call of the cochairs. The Commission  
6 may meet in the Legislative Building or the Legislative Office Building. The  
7 Commission may contract for professional, clerical, or consultant services as provided  
8 by G.S. 120-32.02.

9 The Legislative Services Commission, through the Legislative Services  
10 Officer, shall assign professional staff to assist the Commission in its work. The House  
11 of Representatives' and the Senate's Supervisors of Clerks shall assign clerical staff to  
12 the Commission, and the expenses relating to the clerical employees shall be borne by  
13 the Commission. Members of the Commission shall receive subsistence and travel  
14 expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

15 **SECTION 1.(c)** In conducting the study, the Commission shall consider the  
16 following:

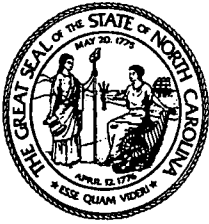
- 17 (1) Whether guardianship should be a remedy of last resort used only if  
18 less restrictive alternatives are insufficient.
- 19 (2) The definition of incompetency.
- 20 (3) Whether courts should be required to make express findings regarding  
21 the extent of a person's incapacity and limit the scope of the  
22 guardianship accordingly.
- 23 (4) Legal rights retained or lost as a result of being adjudicated  
24 incompetent.
- 25 (5) The proper role of attorneys and guardians ad litem in guardianship  
26 proceedings.
- 27 (6) The role of public human services agencies in providing guardianship  
28 services.
- 29 (7) Legal procedures and protections in guardianship proceedings.
- 30 (8) Public monitoring of guardianship.
- 31 (9) Funding for guardianship services provided by public and nonprofit  
32 agencies.
- 33 (10) Educating citizens with respect to guardianship and alternatives to  
34 guardianship.
- 35 (11) Prudent investor rules.
- 36 (12) Powers, duties, and liabilities of guardians.
- 37 (13) Review of the State's adult protective services law.
- 38 (14) Enactment of the Uniform Guardianship and Protective Proceedings  
39 Act (UGPPA).
- 40 (15) Whether guardianship statutes need revision to provide greater  
41 protection of the health and welfare of incapacitated adults.
- 42 (16) Whether the State should track the number of people under private  
43 guardianship and, if so, proposed methods for the tracking.

1           **SECTION 2.** The Legislative Study Commission on State Guardianship  
2 Laws may make an interim report to the 2005 General Assembly not later than May 1,  
3 2006, and shall make its final report to the 2007 General Assembly prior to its  
4 convening.

5           **SECTION 3.** All State departments and agencies and local governments and  
6 their subdivisions shall furnish the Commission with any information in their possession  
7 or available to them.

8           **SECTION 4.** There is appropriated from the General Fund to the General  
9 Assembly the sum of thirty thousand dollars (\$30,000) for the 2005-2006 fiscal year and  
10 the sum of thirty thousand dollars (\$30,000) for the 2006-2007 fiscal year to carry out  
11 the purposes of this act.

12           **SECTION 5.** This act becomes effective July 1, 2005.



# HOUSE BILL 1550: Guardianship Study

## BILL ANALYSIS

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<b>Committee:</b>	House Judiciary II	<b>Date:</b>	May 11, 2005
<b>Introduced by:</b>	Rep. Farmer-Butterfield	<b>Summary by:</b>	Karen Cochrane-Brown
<b>Version:</b>	PCS to First Edition		Committee Co-Counsel
	H1550-CSRO-20[v.1]		

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**SUMMARY:** *House Bill 1550 authorizes the creation of a Legislative Study Commission on State Guardianship Laws and appropriates \$60,000 over this biennium to carry out the study.*

*{The PCS substitutes the Administrative Office of the Courts for court administrators, and clerks of superior court for judges, in the list of persons having experience with guardianship laws. The list includes suggestions of appropriate public members for the Study Commission.}*

## BILL ANALYSIS:

This bill creates the Legislative Study Commission on State Guardianship Laws to review State laws pertaining to guardianship and its relationship to other pertinent State laws such as the health care power of attorney, the right to a natural death, and durable power of attorney.

The Commission will consist of 14 members, 7 appointed by the Speaker of the House of Representatives and 7 appointed by the President Pro Tempore of the Senate. Each leader can appoint four member of their respective houses and three public members. The leaders shall also designate cochairs.

The Commission may meet upon the call of the cochairs and has the powers of a joint legislative committee, including:

- The power to compel State officers to furnish information requested by the Commission.
- The power to invite or subpoena witnesses.
- The power to seek civil contempt as punishment for failure to respond to a subpoena.

The Legislative Services Officer is directed to assign staff to the Commission and may call on other knowledgeable people or experts or contract for consultants.

The bill contains a list of issues the Commission is directed to consider in conducting the study.

The Commission may make an interim report to the 2005 General Assembly by May 1, 2006, and must make a final report to the 2007 General Assembly prior to its convening.

Finally, the bill appropriates \$30,000 from the General Fund for the 2005-2006 fiscal year, and an additional \$30,000 for the 2006-2007 fiscal year to carry out the study.

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

*H1550e1-SMRO-CSRO-20v1*

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

1

HOUSE BILL 1400

Short Title: School Bus Safety Act.

(Public)

Sponsors: Representatives Folwell; Almond, Brown, Capps, Cleveland, Current, Dockham, Dollar, Glazier, Holliman, Holloway, Langdon, McGee, Pate, Walend, Wiley, and Womble.

Referred to: Judiciary II.

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR PASSING A STOPPED SCHOOL BUS AND TO MAKE SCHOOL BUS STOPS SAFER.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 20-217(a) reads as rewritten:

"(a) The driver of any vehicle upon approaching from any direction on the same street, highway, or public vehicular area any school bus (including privately owned buses transporting children and school buses transporting senior citizens under G.S. 115C-243), while the bus is displaying its mechanical stop signal or flashing red stoplights, and is stopped for the purpose of receiving or discharging passengers, shall bring the vehicle to a full stop ~~before passing or attempting to pass the bus,~~ and shall remain stopped until the mechanical stop signal has been withdrawn, the flashing red stoplights have been turned off, and the bus has moved ~~on~~ on before passing or attempting to pass the bus."

**SECTION 2.** G.S. 20-217(b) reads as rewritten:

"(b) The provisions of this section are applicable only in the event the school bus bears upon the front and rear a plainly visible sign containing the words ~~"school bus" in letters not less than eight inches in height.~~ "school bus."

**SECTION 3.** G.S. 20-217(e) reads as rewritten:

"(e) ~~Any~~ Except as provided in subsection (g) of this section, any person violating the provisions of this section shall be guilty of a Class 21 misdemeanor."

**SECTION 4.** G.S. 20-217 is amended by adding a new subsection to read:

"(g) Any person who violates subsection (a) of this section and strikes any person causing serious bodily injury to that person shall be guilty of a Class I felony."

**SECTION 5.** This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

**H**

**D**

**HOUSE BILL 1400  
PROPOSED COMMITTEE SUBSTITUTE H1400-CSRQ-27 [v.1]**

5/11/2005 5:30:01 PM

Short Title: School Bus Safety Act.

(Public)

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Sponsors:

---

Referred to:

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April 21, 2005

1 A BILL TO BE ENTITLED  
2 AN ACT TO INCREASE THE PENALTY FOR PASSING A STOPPED SCHOOL  
3 BUS AND TO MAKE SCHOOL BUS STOPS SAFER.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 20-217 reads as rewritten:

6 "(a) The driver of any vehicle upon approaching from any direction on the same  
7 street, highway, or public vehicular area any school bus (including privately owned  
8 buses transporting children and school buses transporting senior citizens under  
9 G.S. 115C-243), while the bus is displaying its mechanical stop signal or flashing red  
10 stoplights, and is stopped for the purpose of receiving or discharging passengers, shall  
11 bring the vehicle to a full stop ~~before passing or attempting to pass the bus,~~ and shall  
12 remain stopped until the mechanical stop signal has been withdrawn, the flashing red  
13 stoplights have been turned off, and the bus has moved ~~on~~ on before passing or  
14 attempting to pass the bus.

15 (b) The provisions of this section are applicable only in the event the school bus  
16 bears upon the front and rear a plainly visible sign containing the words "~~school bus~~" in  
17 ~~letters not less than eight inches in height.~~ 'school bus.'

18 (c) Notwithstanding the provisions of subsection (a) of this section, the driver of  
19 a vehicle traveling in the opposite direction from the school bus, upon any road,  
20 highway or city street which has been divided into two roadways, so constructed as to  
21 separate vehicular traffic between the two roadways by an intervening space (including  
22 a center lane for left turns if the roadway consists of at least four more lanes) or by a  
23 physical barrier, need not stop upon meeting and passing any school bus which has  
24 stopped in the roadway across such dividing space or physical barrier.

25 (d) It shall be unlawful for any school bus driver to stop and receive or discharge  
26 passengers or for any principal or superintendent of any school, routing a school bus, to  
27 authorize the driver of any school bus to stop and receive or discharge passengers upon  
28 any roadway described by subsection (c) of this section where passengers would be

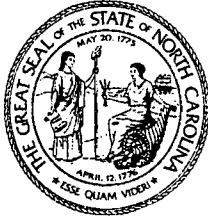
1 required to cross the roadway to reach their destination or to board the bus; provided,  
2 that passengers may be discharged or received at points where pedestrians and vehicular  
3 traffic are controlled by adequate stop-and-go traffic signals.

4 (e) Any Except as provided in subsection (g) of this section, any person violating  
5 the provisions of this section shall be guilty of a Class 21 misdemeanor.

6 (f) Expired.

7 (g) Any person who violates subsection (a) of this section and strikes any person  
8 causing serious bodily injury to that person shall be guilty of a Class I felony."

9 **SECTION 2.** This act becomes effective December 1, 2005, and applies to  
10 offenses committed on or after that date.



# HOUSE BILL 1400: School Bus Safety Act

## BILL ANALYSIS

**Committee:** House Judiciary II  
**Introduced by:** Rep. Folwell  
**Version:** PCS to First Edition  
H1400-CSRQ-27 [v.1]

**Date:** May 11, 2005  
**Summary by:** Drupti Chauhan  
Committee Counsel

**SUMMARY:** *House Bill 1400 would amend the statute concerning when a motor vehicle must stop for school buses, increases the penalty for violations of the section and creates a new penalty.*

*The PCS makes technical changes.*

**CURRENT LAW:** G.S. 20-217 provides that a motorist approaching any school bus from any direction on the same street as the school bus while the school bus is displaying its mechanical stop sign or flashing red stoplights must bring the vehicle to a full stop before passing or attempting to pass the bus and must remain stopped until the stop signal has been withdrawn, the flashing red stoplights turned off and the bus has moved on.

The statute provides that the bus must have "school bus" written on it in letters that are not less than eight inches in height in order to have the statute be applicable.

A violation of the section results in a Class 2 misdemeanor.

### BILL ANALYSIS:

House Bill 1400 would clarify that a driver must bring a vehicle to a full stop and must remain stopped until the mechanical stop signal has been withdrawn, the flashing red stoplights have been turned off and the bus moved on before passing or attempting to pass the bus.

The bill would remove the requirement that "school bus" must be in letters that are not less than 8 inches in height on the front and rear of the bus. The bill would just require that the "school bus" must be on the front and rear of the bus in order for the provisions of the statute to be applicable.

The penalty for violation of the statute would be increased to a Class 1 misdemeanor.

The bill would also add a new penalty of a Class I felony if serious bodily injury to a person struck as a result of a violation of the statute.

**EFFECTIVE DATE:** The bill would become effective December 1, 2005 and apply to offenses committed on or after that date.

**BACKGROUND:** Punishment for a Class 1 misdemeanor ranges from 1-45 days of community punishment (for someone with no prior convictions) to 1-120 days of community punishment, intermediate punishment or active punishment (for someone with five or more prior convictions). Fines may be imposed with any disposition. For a Class 1 misdemeanor, the amount of the fine is in the discretion of the court. Punishment for a Class 2 ranges from 1-30 days of community punishment (for someone with no prior convictions) to 1-60 days of community punishment, intermediate punishment or active punishment (for someone with five or more prior convictions).

The presumptive punishment range for a Class I felony is 4-6 months of community punishment to 8-10 months of intermediate or active punishment.

H1400e1-SMRQ-CSRQ-27 v1

House Pages

Name Of Committee: JUDICIARY II Date: 5-12-05

1. Name: Jonathan Mestas

County: Wake

Sponsor: Rep. Eddins

2. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

3. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

4. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

5. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

Sgt-At-Arms

1. Name: BILL FREEMAN

2. Name: FRANK PREVO

3. Name: \_\_\_\_\_

4. Name: \_\_\_\_\_

5. Name: \_\_\_\_\_



# VISITOR REGISTRATION SHEET

JUDICIARY II

MAY 12, 2005

Name of Committee

Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME

FIRM OR AGENCY AND ADDRESS

John Dyer	SBE/DPI
Derek Graham	DPI
John McMillan	MF + S
Bill Rowel	NC Justice Ctr.
Bob Rowel	AOC
Brad Lamb	NC Consumer Council
Molly Ryan	NCSBA
Betty Turner	Bank of America
Katherine Gayer	NCAAA
James Hunter	WCPST
Henry Jones	Attorney Raley's

## VISITOR REGISTRATION SHEET

JUDICIARY II

MAY 12, 2005

Name of Committee

Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME

FIRM OR AGENCY AND ADDRESS

Bill Scobbin

KCLH

Stacy Flannery

NCHCFA

Rosalyn Pettyford

DAAS

Karen Gunn

NCHCFA

**MINUTES  
HOUSE COMMITTEE ON  
JUDICIARY II**

MAY 17, 2005

The House Committee on Judiciary II met on Tuesday, May 17, 2005, in Room 421 of the Legislative Office at 10:00 A.M. The following members were present: Chairman Mickey Michaux, Vice-Chairs, Alice Bordsen, James Harrell and Timothy Moore, Representatives Allen, Farmer-Butterfield, Fisher, Folwell, Gulley, Jones, Walend and Wiley. Drupti Chauhan, Karen Cochrane-Brown and Jeff Hudson, Staff Counselors were in attendance. A Visitor's Registration list is included and made part of these minutes.

The Chairman called the meeting to order and recognized the Pages, Sergeant-At-Arms, Staff and visitors. The following bills were considered:

Rep. Michaux was recognized explain **HB 1309, A BILL TO BE ENTITLED AN ACT TO OFFER COTENANTS THE RIGHT OF FIRST REFUSAL PRIOR TO A FORCED PUBLIC PARTITION SALE.** Rep. Walend moves that the Committee reconsider the Proposed Committee Substitute bill that was voted on in a previous meeting (May 10, 2005) and it was seconded. Upon motion made by Rep. Farmer-Butterfield, a new Proposed Committee Substitute bill (PCS) was adopted by the Committee for discussion. Rep. Fisher moved that a favorable report be given to the PCS and the Committee voted in favor of this.

The Chairman next recognized Rep. McGee to explain **HB 835, A BILL TO BE ENTITLED AN ACT TO PROVIDE LAW ENFORCEMENT OFFICERS WITH AN EXPEDITED PROCESS AND REDUCED COSTS IN OBTAINING CONCEALED CARRY PERMITS.** Jeff Hudson, Staff Counselor gave the bill analysis. Upon motion made by Rep. Moore, the Committee gave the bill a favorable report and re-referred it to the Finance Committee.

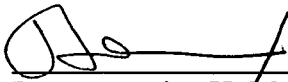
Rep. Folwell was recognized to explain **HB 1401, A BILL TO BE ENTITLED AN ACT TO ALLOW A SWORN LAW ENFORCEMENT OFFICER WITH A STATE, COUNTY, OR MUNICIPAL LAW ENFORCEMENT AGENCY TO CARRY A CONCEALED WEAPON AT ALL TIME.** The Proposed Committee Substitute bill (PCS) was introduced for discussion and upon the recommendation of Rep. Gulley the PCS was adopted by the Committee. Jeff Hudson, Staff Counselor was recognized to explain PCS. After much discussion, no action was taken on this bill and it was temporarily displaced to be discussed in the May 24, 2005 meeting.

There being no further business, the Chair adjourned the meeting at 10:55 A.M.

Page 2  
Minutes-Judiciary II

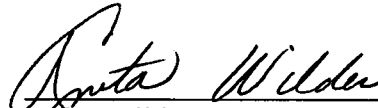
May 17, 2005

Respectfully submitted,



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Representative H. M. Michaux, Jr.  
Presiding Chair



---

Anita Wilder  
Committee Assistant

**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative Michaux (Chair) for the Committee on JUDICIARY II.

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☐ Committee Substitute for

**HB 1309**

A BILL TO BE ENTITLED AN ACT TO OFFER COTENANTS THE  
RIGHT OF FIRST REFUSAL PRIOR TO A FORCED PUBLIC PARTITION SALE.

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

**(FOR JOURNAL USE ONLY)**

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\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on  
\_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the (House) committee substitute bill/(joint) resolution  
(No. \_\_\_\_\_) is placed on the Calendar of \_\_\_\_\_. (The original bill resolution No. \_\_\_\_\_) is placed  
on the Unfavorable Calendar.

\_\_\_\_\_ The (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is re-referred to the  
Committee on \_\_\_\_\_. (The original bill/resolution) (House/Senate Committee Substitute  
Bill/(Joint) resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative Michaux (Chair) for the Committee on JUDICIARY II.

---

☐ Committee Substitute for

**HB 835**      A BILL TO BE ENTITLED AN ACT TO PROVIDE LAW ENFORCEMENT OFFICERS WITH AN EXPEDITED PROCESS AND REDUCED COSTS IN OBTAINING CONCEALED CARRY PERMITS.

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

**(FOR JOURNAL USE ONLY)**

---

\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on \_\_\_\_\_.

\_\_\_\_\_ The bill/resolution is re-referred to the Committee on \_\_\_\_\_.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

D

HOUSE BILL 1309

PROPOSED COMMITTEE SUBSTITUTE H1309-PCS60468-SB-29

Short Title: Refusal Rights-Forced Public Partition Sales.

(Public)

Sponsors:

Referred to:

April 20, 2005

1 A BILL TO BE ENTITLED  
2 AN ACT TO OFFER COTENANTS THE RIGHT OF FIRST REFUSAL PRIOR TO A  
3 FORCED PUBLIC PARTITION SALE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 46 of the General Statutes is amended by adding a  
6 new section to read:

7 "§ 46-22.1. Sale of cotenant's interest in lieu of sale by partition.

8 (a) Upon the filing of a petition for partition of real property owned by joint  
9 tenants or tenants in common, the court shall provide for the purchase of the interests of  
10 the joint tenants or tenants in common seeking the sale of the property described in the  
11 petition pursuant to G.S. 46-22 to the nonpetitioning joint tenants or tenants in common  
12 if the nonpetitioning joint tenants or tenants in common interested in purchasing such  
13 interests notify the court of that interest not later than 10 days prior to the date set for  
14 trial of the case. The nonpetitioning joint tenants or tenants in common shall be allowed  
15 to purchase the interests in property as provided in this section whether default has been  
16 entered against them or not.

17 (b) In the circumstances described in subsection (a) of this section, and in the  
18 event the parties cannot reach agreement as to the price, the value of the interest or  
19 interests to be sold shall be determined by one or more competent real estate appraisers  
20 or commissioners, as the court shall approve, appointed for that purpose by the court.  
21 The appraisers or commissioners appointed under this section shall make their report in  
22 writing to the court within 30 days after their appointment. The costs of the appraisers  
23 or commissioners pursuant to this section shall be taxed as a part of the cost of court to  
24 those seeking to purchase the interests of the joint tenants or tenants in common  
25 petitioning to sell their interest in the property described in the petition.

26 (c) Should the petitioning joint tenants or tenants in common object to the value  
27 of the interests as determined by the appraisers or commissioners, those joint tenants or  
28 tenants in common shall have 10 days from the date of filing of the report to file written

1 notice of objection to the report and request a hearing before the clerk of superior court  
2 on the value. An evidentiary hearing limited to the proposed valuation of the interests of  
3 the petitioning joint tenants or tenants in common shall be conducted, and an order as to  
4 the valuation of the petitioning joint tenants' or tenants' in common interests shall be  
5 issued.

6 (d) After the valuation of the interest in property as provided in subsection (b) or  
7 (c) of this section, the nonpetitioning joint tenants or tenants in common seeking to  
8 purchase the interests of those filing the petition shall have 45 days to pay into the court  
9 the price set as the value of those interests to be purchased. Upon the payment and  
10 approval of it by the court, the clerk shall execute and deliver or cause to be executed  
11 and delivered the proper instruments transferring title to the purchasers.

12 (e) Should the nonpetitioning joint tenants or tenants in common fail to pay the  
13 purchase price as provided in subsection (d) of this section, the court shall proceed  
14 according to its traditional practices in partition sales as described in G.S. 46-22."

15 **SECTION 2.** This act is effective when it becomes law.



**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

**H**

**1**

**HOUSE BILL 835**

Short Title:   Concealed Carry for Law Enforcement Officers. (Public)

Sponsors:   Representatives McGee, Moore, Brown (Primary Sponsors); Almond, Blust, Capps, Cleveland, Daughtridge, Daughtry, Dockham, Dollar, Eddins, Folwell, Frye, Gillespie, Glazier, Gulley, Hilton, Hollo, Holloway, Holmes, Justice, Kiser, Lewis, Owens, Parmon, Pate, Preston, Rhodes, Stam, Starnes, Steen, Stiller, Walend, Wiley, and Williams.

Referred to:   Judiciary II, if favorable, Finance.

March 22, 2005

A BILL TO BE ENTITLED  
AN ACT TO PROVIDE LAW ENFORCEMENT OFFICERS WITH AN EXPEDITED  
PROCESS AND REDUCED COSTS IN OBTAINING CONCEALED CARRY  
PERMITS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 14-415.19 reads as rewritten:

**"§ 14-415.19. Fees.**

(a) The permit fees assessed under this Article are payable to the sheriff. The sheriff shall transmit the proceeds of these fees to the county finance officer to be remitted or credited by the county finance officer in accordance with the provisions of this section. Except as otherwise provided by this section, the permit fees are as follows:

Application fee.....	\$80.00
Renewal fee.....	\$75.00
Duplicate permit fee.....	\$15.00

The county finance officer shall remit forty-five dollars (\$45.00) of each new application fee and forty dollars (\$40.00) of each renewal fee assessed under this subsection to the North Carolina Department of Justice for the costs of State and federal criminal record checks performed in connection with processing applications and for the implementation of the provisions of this Article. The remaining thirty-five dollars (\$35.00) of each application or renewal fee shall be used by the sheriff to pay the costs of administering this Article and for other law enforcement purposes. The county shall expend the restricted funds for these purposes only.

(a1) The permit fees for a retired sworn law enforcement officer who provides the information required by subdivisions (1) and (2) of this subsection to the sheriff, in addition to any other information required under this Article, are as follows:

Application fee.....	\$45.00
Renewal fee.....	\$40.00

- (1) A copy of the officer's letter of retirement from either the North Carolina Teachers' and State Employees' Retirement System or the North Carolina Local Governmental Employees' Retirement System.
- (2) Written documentation from the head of the agency where the person was previously employed indicating that the person was neither involuntarily terminated nor under administrative or criminal investigation within six months of retirement.

The county finance officer shall remit the proceeds of the fees assessed under this subsection to the North Carolina Department of Justice to cover the cost of performing the State and federal criminal record checks performed in connection with processing applications and for the implementation of the provisions of this Article.

(a2) The permit fees for a sworn law enforcement officer who provides the information required by subdivisions (1) and (2) of this subsection to the sheriff, in addition to any other information required under this Article, are as follows:

<u>Application fee.....</u>	<u>\$45.00</u>
<u>Renewal fee.....</u>	<u>\$40.00</u>

- (1) A letter stating that the application for a concealed carry permit is made on the officer's own behalf and is not necessary or required as part of their employment by any local or State law enforcement agency.
- (2) Written documentation from the head of the agency where the officer is employed indicating that the officer is not under administrative or criminal investigation.

The county finance officer shall remit the proceeds of the fees assessed under this subsection to the North Carolina Department of Justice to cover the cost of performing the State and federal criminal record checks performed in connection with processing applications and for the implementation of the provisions of this Article.

(b) An additional fee, not to exceed ten dollars (\$10.00), shall be collected by the sheriff from an applicant for a permit to pay for the costs of processing the applicant's fingerprints, if fingerprints were required to be taken. This fee shall be retained by the sheriff."

**SECTION 2.** G.S. 14-415.15 reads as rewritten:

**"§ 14-415.15. Issuance or denial of permit.**

(a) Except as permitted under subsection (b) or (b1) of this section, within 90 days after receipt of the items listed in G.S. 14-415.13 from an applicant, the sheriff

1 shall either issue or deny the permit. The sheriff may conduct any investigation  
2 necessary to determine the qualification or competency of the person applying for the  
3 permit, including record checks.

4 (b) Upon presentment to the sheriff of the items required under  
5 G.S. 14-415.13(a)(1), (2), and (3), the sheriff may issue a temporary permit for a period  
6 not to exceed 90 days to a person who the sheriff reasonably believes is in an  
7 emergency situation that may constitute a risk of safety to the person, the person's  
8 family or property. The temporary permit may not be renewed and may be revoked by  
9 the sheriff without a hearing.

10 (b1) If a sworn law enforcement officer presents the sheriff with the items required  
11 under G.S. 14-415.13(a)(1), (2), and (3), and the items required under  
12 G.S. 14-415-19(a2), then the sheriff shall issue a temporary permit for a period not to  
13 exceed 90 days. The temporary permit may not be renewed.

14 (c) A person's application for a permit shall be denied only if the applicant fails  
15 to qualify under the criteria listed in this Article. If the sheriff denies the application for  
16 a permit, the sheriff shall, within 90 days, notify the applicant in writing, stating the  
17 grounds for denial. An applicant may appeal the denial, revocation, or nonrenewal of a  
18 permit by petitioning a district court judge of the district in which the application was  
19 filed. The determination by the court, on appeal, shall be upon the facts, the law, and the  
20 reasonableness of the sheriff's refusal. The determination by the court shall be final."

21 **SECTION 3.** This act becomes effective October 1, 2005.

# **AGENDA**

## **HOUSE COMMITTEE ON JUDICIARY II**

**May 17, 2005  
Room 421  
10:00 AM**

### **OPENING REMARKS**

Representative Mickey Michaux, Chair

### **AGENDA ITEMS**

**H 835-Concealed Carry for Law Enforcement Officers – Reps. McGee, Moore, Brown  
H 1394-Testamentary Recommendation of Guardian-Rep. Moore  
H 1401-Concealed Carry By Law Enforcement Officers– Rep. Folwell  
H 1309-Refusal Rights-Forced Public Partition Sales-Rep. Michaux**

## VISITOR REGISTRATION SHEET

## JUDICIARY II

Name of Committee

MAY 17, 2005

Date \_\_\_\_\_

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

**NAME****FIRM OR AGENCY AND ADDRESS**[illegible]

# VISITOR REGISTRATION SHEET

JUDICIARY II

MAY 17, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

JB Towell	AOX
John G. Marx	FOV
John Alder	DO5
Ashley Williams	intern, Rep. Sauls
Holly Howington	intern, Rep. Eddins
Shannon Reid	Research Assistant, Bill Drafting
MICHAEL STANLEY	RESEARCH ASSISTANT, BILL DRAFTING
Doug Caruth	NCRA
Chad Essick	Poyner & Spruill LLP
Colleen Kochanek	NCACP / NCLEOA
Lao Ruben	CYC

**MINUTES  
HOUSE COMMITTEE ON  
JUDICIARY II**

May 19, 2005

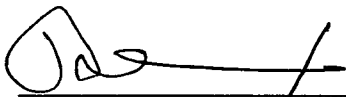
The House Committee on Judiciary II met on Thursday, May 19, 2005, in Room 421 of the Legislative Office Building at 10:00 A.M. The following members were present: Chairman Mickey Michaux, Vice-Chairs Alice Bordsen and Timothy Moore, Representatives Allen, Farmer-Butterfield, Fisher, Folwell, Gulley, Jones, Walend and Wiley. Drupti Chauhan, Karen Cochrane-Brown and Jeff Hudson, Staff Counselors were in attendance. A Visitor's Registration list is included and made part of these minutes.

The Chairman called the meeting to order and recognized the Pages, Sergeant-At-Arms, Staff and visitors. The following bill was considered:

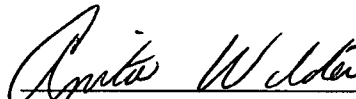
The Chair recognized Rep. Folwell to explain **HB 1404, A BILL TO BE ENTITLED AN ACT TO REQUIRE THE NORTH CAROLINA STATE HIGHWAY PATROL TO DESIGNATE ENFORCEMENT PERSONNEL TO SERVE AS PROCESS OFFICERS IN EACH DISTRICT OF EACH TROOP AND TO SERVICE PROCESS AND REVOCATION ORDERS FOR THE NORTH CAROLINA DIVISION OF MOTOR VEHICLES.** After much discussion between the Committee members and concerns expressed by visitors, Rep. Bordsen moved that the bill be removed from the agenda today for further review within the agencies (Highway Patrol, Department of Motor Vehicles, Crime Control and Administrative Office of the Courts) that expressed concern, to which the Committee voted in favor of.

There being no further business, the meeting was adjourned at 10:40 A.M.

Respectfully submitted,



Representative H. M. Michaux, Jr.  
Presiding Chair



Anita Wilder  
Committee Assistant

# **AGENDA**

## **HOUSE COMMITTEE ON JUDICIARY II**

**May 19, 2005  
Room 421  
10:00 AM**

### **OPENING REMARKS**

Representative Mickey Michaux, Chair

### **AGENDA ITEMS**

**H 1394-Testamentary Recommendation of Guardian-Rep. Moore  
H 1404-Seizure of Documents and Plates – Reps.– Rep. Folwell, Starnes  
H 1428-District Judge Retention Elections-Reps. Harrell, Hackney**



**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
2005-2006 SESSION  
BILL SPONSOR NOTIFICATION**

You are hereby notified that the Committee on **JUDICIARY II** will meet as follows:

**DAY & DATE:**     **Thursday, May 19, 2005**

**TIME:**             **10:00 a.m.**

**LOCATION:**        **Room 421**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

**H 1394– Testamentary Recommendation of Guardian – Rep. Moore**

**H 1404– Seizure of Documents and Plates - Reps. Folwell, Starnes**

**H 1428–District Judge Retention Elections – Reps. Harrell, Hackney**

Respectfully,  
Representative H. M. Michaux, Jr.  
Chair

I hereby certify this notice was filed by the committee assistant at the following offices at  
**11:45 a.m. on May 17, 2005.**

☒ Principal Clerk  
☒ Reading Clerk - House Chamber

Anita Wilder (Committee Assistant)

# VISITOR REGISTRATION SHEET

JUDICIARY II

MAY 19, 2005

Name of Committee

Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME

FIRM OR AGENCY AND ADDRESS

Mike Waters	NCRPA
Marvin Waters	CCPS
Capt. Marc Nichols	NCSHP
Major C. J. Carden	NCSHP
Major W. J. Wilson, Jr	NCSHP
Brenda Freeman	DMV
Kathy Brannan	DMV
Debra Quisenberry	For the Comm. Bks.
Jeana Blackburn	NC DOT intern
Rob Swiff	NCSHP
Portia Mantley	NC DOT / DMV

## VISITOR REGISTRATION SHEET

## JUDICIARY II

**Name of Committee**

MAY 19, 2005

**Date**

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME \_\_\_\_\_

**FIRM OR AGENCY AND ADDRESS**

Chad Hinton

Civitas Institute

Zenira Oden

Baskerville School Rocky Mount NC 27801

Kathleen Mearns

LaSalle Elementary School Rckm+NC

House Pages

Name Of Committee: J II Date: 5-19-05

1. Name: Thomas Edwards

County: Wake

Sponsor: Speaker Pro Temp Morgan

2. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

3. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

4. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

5. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

Sgt-At-Arms

1. Name: Bill Freeman

2. Name: Frank Prevost

3. Name: \_\_\_\_\_

4. Name: \_\_\_\_\_

5. Name: \_\_\_\_\_

**MINUTES  
HOUSE COMMITTEE ON  
JUDICIARY II**

May 24, 2005

The House Committee on Judiciary II met on Tuesday, May 24, 2005, in Room 421 of the Legislative Office Building at 10:00 A.M. The following members were present: Chairman Mickey Michaux, Vice-Chairs Alice Bordsen, James Harrell and Timothy Moore, Representatives Allen, Farmer-Butterfield, Fisher, Folwell, Gulley, Jones, Walend and Wiley. Drupti Chauhan, Karen Cochrane-Brown and Jeff Hudson, Staff Counselors were in attendance. A Visitor's Registration list is included and made part of these minutes.

The Chairman called the meeting to order and recognized the Pages, Sergeant-At-Arms, Staff and visitors.

Rep. Dale Folwell was recognized to explain **HB 1401, A BILL TO BE ENTITLED AN ACT TO ALLOW A SWORN LAW ENFORCEMENT OFFICER WITH A STATE, COUNTY, OR MUNICIPAL LAW ENFORCEMENT AGENCY TO CARRY A CONCEALED WEAPON AT ALL TIMES**. Upon motion made by Rep. Fisher, the Proposed Committee Substitute (PCS) bill was adopted by the Committee for discussion. Jeff Hudson, Staff Counselor explained new changes to PCS. This bill was previously heard in J-II committee meeting on May 19, 2005 and the agencies and the sponsor of this bill have met and are in agreement of the bill's language. Upon motion made by Rep. Walend the PCS was given a favorable report with a title change.

The next order of business was **HB 1146, A BILL TO BE ENTITLED AN ACT TO IMPROVE THE FORECLOSURE PROCESS**, which Rep. Michaux was recognized to explain. The Proposed Committee Substitute (PCS) bill was introduced for discussion and upon motion made by Rep. Walend, the Committee voted to discuss the PCS. Karen Cochrane-Brown, Staff Counselor was recognized to explain the PCS. After much discussion and the need to change some language in the bill, Rep. Michaux moved that the bill be removed from the calendar until May 26, 2005, the Committee voted in favor of this motion.

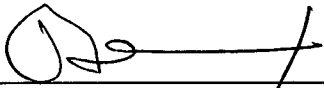
The Chair recognized Rep. Moore to explain **HB 1394, A BILL TO BE ENTITLED AN ACT TO ALLOW THE PARENTS OF AN INCOMPETENT ADULT WHO IS NOT MARRIED TO RECOMMEND A GUARDIAN FOR THAT ADULT BY WILL OR OTHER DOCUMENT**. The Proposed Committee Substitute was submitted and upon the motion made by Rep. Jones, the Committee voted to adopt the PCs for discussion. Rep. Allen moved that the PCS be given a favorable report and the Committee concurred.

There being no further business, the Chair adjourned the meeting at 10: 45 A.M.

Page 2

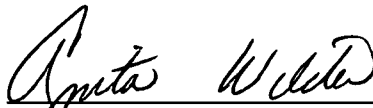
Minutes-Judiciary II  
May 24, 2005

Respectfully submitted,



---

Representative H. M. Michaux, Jr.  
Presiding Chair



---

Anita Wilder  
Committee Assistant

**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative Michaux (Chair) for the Committee on JUDICIARY II.

---

☐ Committee Substitute for

**HB 1394** A BILL TO BE ENTITLED AN ACT TO ALLOW THE PARENTS OF AN INCOMPETENT ADULT WHO IS NOT MARRIED TO RECOMMEND A GUARDIAN FOR THAT ADULT BY WILL OR OTHER DOCUMENT.

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

**(FOR JOURNAL USE ONLY)**

---

\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on \_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is placed on the Calendar of \_\_\_\_\_. (The original bill resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

\_\_\_\_\_ The (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is re-referred to the Committee on \_\_\_\_\_. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative Michaux (Chair) for the Committee on JUDICIARY II.

---

☐ Committee Substitute for

**HB 1401**                      A BILL TO BE ENTITLED AN ACT TO ALLOW A SWORN LAW  
ENFORCEMENT OFFICER WITH A STATE, COUNTY, OR MUNICIPAL LAW  
ENFORCEMENT AGENCY TO CARRY A CONCEALED WEAPON AT ALL TIMES.

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

**(FOR JOURNAL USE ONLY)**

---

\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on  
\_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the (House) committee substitute bill/(joint) resolution  
(No. \_\_\_\_\_) is placed on the Calendar of \_\_\_\_\_. (The original bill resolution No. \_\_\_\_\_) is placed  
on the Unfavorable Calendar.

\_\_\_\_\_ The (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is re-referred to the  
Committee on \_\_\_\_\_. (The original bill/resolution) (House/Senate Committee Substitute  
Bill/(Joint) resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

D

HOUSE BILL 1394  
PROPOSED COMMITTEE SUBSTITUTE H1394-CSRQ-30 [v.1]

5/17/2005 12:52:27 PM

Short Title: Testamentary Recommendation of Guardian.

(Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE PARENTS OF AN INCOMPETENT ADULT WHO IS  
NOT MARRIED TO RECOMMEND A GUARDIAN FOR THAT ADULT BY  
WILL OR OTHER DOCUMENT.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 5 of Chapter 35A is amended by adding a new section  
to read:

**"§ 35A-1212.1. Recommendation of appointment of guardian by will or other  
writing.**

Any parent may by will, recommend appointment of a guardian for an unmarried  
child who has been adjudicated an incompetent person and specify desired limitations  
on the powers to be given to the guardian. If both parents make such recommendations,  
the will with the latest date shall, in the absence of other relevant factors, prevail. Such  
recommendation shall be a strong guide for the clerk in appointing a guardian, but the  
clerk is not bound by the recommendation if the clerk finds that a different appointment  
is in the incompetent adult's best interest. If the will specifically so directs, a guardian  
appointed pursuant to such recommendation may be permitted to qualify and serve  
without giving bond, unless the clerk finds as a fact that the interest of the incompetent  
adult would be best served by requiring the guardian to give bond."

**SECTION 2.** G.S. 35A-1214 reads as rewritten:

**"§ 35A-1214. Priorities for appointment.**

The clerk shall consider appointing a guardian according to the following order of  
priority: an individual recommended under G.S. 35A-1212.1; an individual; a  
corporation; or a disinterested public agent. No public agent shall be appointed  
guardian until diligent efforts have been made to find an appropriate individual or  
corporation to serve as guardian, but in every instance the clerk shall base the  
appointment of a guardian or guardians on the best interest of the ward."

**SECTION 3.** G.S. 35A-1230 reads as rewritten:

1 **"§ 35A-1230. Bond required before receiving property.**

2 Except as otherwise provided by G.S. 35A-1212.1 and G.S. 35A-1225(a), no general  
3 guardian or guardian of the estate shall be permitted to receive the ward's property until  
4 he has given sufficient surety, approved by the clerk, to account for and apply the same  
5 under the direction of the court, provided that if the guardian is a nonresident of this  
6 State and the value of the property received exceeds one thousand dollars (\$1,000) the  
7 surety shall be a bond under G.S. 35A-1231(a) executed by a duly authorized surety  
8 company, or secured by cash in an amount equal to the amount of the bond or by a  
9 mortgage executed under Chapter 109 of the General Statutes on real estate located in  
10 the county, the value of which, excluding all prior liens and encumbrances, shall be at  
11 least one and one-fourth times the amount of the bond; and further provided that the  
12 nonresident shall appoint a resident agent to accept service of process in all actions and  
13 proceedings with respect to the guardianship. The clerk shall not require a guardian of  
14 the person who is a resident of North Carolina to post a bond; the clerk may require a  
15 nonresident guardian of the person to post a bond or other security for the faithful  
16 performance of the guardian's duties."

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

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

D

HOUSE BILL 1401  
PROPOSED COMMITTEE SUBSTITUTE H1401-CSSB-32 [v.1]

5/19/2005 2:45:27 PM

Short Title: Concealed Carry By Law Enforcement Officers.

(Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED  
AN ACT TO AMEND THE CIRCUMSTANCES UNDER WHICH FEDERAL LAW  
ENFORCEMENT OFFICERS AND SWORN LAW ENFORCEMENT OFFICERS  
MAY CARRY CONCEALED WEAPONS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 14-269(b) reads as rewritten:

"(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;~~ States;
- (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 provided that an officer does not carry a concealed weapon while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the officer's body.~~
  - ~~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."~~

1

**SECTION 2.** This act is effective when it becomes law.

# **AGENDA**

## **HOUSE COMMITTEE ON JUDICIARY II**

**May 24, 2005  
Room 421  
10:00 AM**

### **OPENING REMARKS**

Representative Mickey Michaux, Chair

### **AGENDA ITEMS**

**H 1146-Foreclosure Reform-Rep. Michaux  
H 1394-Testamentary Recommendation of Guardian-Rep. Moore  
H 1401-Concealed Carry By Law Enforcement Officers-Rep.- Rep. Folwell  
H 1428-District Judge Retention Elections-Reps. Harrell, Hackney**

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
2005-2006 SESSION  
BILL SPONSOR NOTIFICATION**

You are hereby notified that the Committee on **JUDICIARY II** will meet as follows:

**DAY & DATE:**     **Tuesday May 24, 2005**

**TIME:**             **10:00 a.m.**

**LOCATION:**        **Room 421**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

**H 1146- Foreclosure Reform-Rep. Michaux**

**H 1394- Testamentary Recommendation of Guardian – Rep. Moore**

**H 1401- Concealed Carry By Law Enforcement Officers - Reps. Folwell**

**H 1428-District Judge Retention Elections – Reps. Harrell, Hackney**

Respectfully,  
Representative H. M. Michaux, Jr.  
Chair

I hereby certify this notice was filed by the committee assistant at the following offices at  
**12:00 p.m. on May 19, 2005.**

  X   Principal Clerk  
  X   Reading Clerk - House Chamber

Anita Wilder (Committee Assistant)

# VISITOR REGISTRATION SHEET

JUDICIARY-II

MAY 24, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

TR Powell	HOC
Shanne Buckley	Gov office
David Harris	NCGA Research
Alan Tetterton	NCGA
Michelle Frazier	NC Bar Ass'n
BRAD LOVIN	NC MANUFACTURED HOUSING
Eddie Caldwell	NC Sheriff's Assn.
Frank Gray	N.C. Man. Housing
Lee Hodge	KCUH
Roz Smith	NCBA
Carlene Met	NC Justice Ctr
A. R. Rife	

# VISITOR REGISTRATION SHEET

## JUDICIARY II

MAY 24, 2005

Name of Committee

**Date**

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME \_\_\_\_\_

**FIRM OR AGENCY AND ADDRESS**

Kimberly Daniels Capitol Group

Wm. Brown	Capital Group
-----------	---------------

Paul Sted	NC Banker
-----------	-----------

Chad Hinton      Civitas Institute

And, Ellen NC R mit

Bill W. W.	NCA TL
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Larry Lechner	HSBC - NA
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**MINUTES  
HOUSE COMMITTEE ON  
JUDICIARY II**

May 26, 2005

The House Committee on Judiciary II met on Thursday, May 26, 2005, in Room 421 of the Legislative Building at 10:00 A.M. The following members were present: Chairman Mickey Michaux, Vice-Chairs Alice Bordsen, James Harrell and Timothy Moore, Representatives Allen, Farmer-Butterfield, Folwell, Gulley, Jones, Walend and Wiley. Drupti Chauhan, Karen-Cochrane-Brown, and Jeff Hudson, Staff Counselors were in attendance. A Visitor's Registration list is included and made part of these minutes.

The Chairman called the meeting to order and recognized the Pages, Sergeant-At-Arms, Staff and guest. Attorney General Roy Cooper was also in attendance and recognized, along with Amigo Wade of the Virginia Division of Legislative Services. The following bills were considered:

Rep. Wiley recognized Attorney General Roy Cooper to speak on **SB 472, A BILL TO BE ENTITLED AN ACT TO PROTECT CHILDREN FROM SEXUAL PREDATORS BY ALSO MAKING IT A FELONY CRIMINAL OFFENSE TO SOLICIT A PERSON THE PERPETRATOR BELIEVES TO A CHILD TO COMMIT UNLAWFUL SEX ACTS, TO REQUIRE PERSONS CONVICTED OF THIS OFFENSE TO REGISTER AS SEX OFFENDERS, AND TO AUTHORIZE THE STATE BUREAU OF INVESTIGATION TO INVESTIGATE CERTAIN CRIMES COMMITTED BY USE OF A COMPUTER.** A Proposed Committee Substitute (PCS) bill was introduced for discussion and upon a motion made by Rep. Farmer-Butterfield the PCS was adopted by the Committee for discussion. Senator Thomas was also recognized to speak on the bill. Upon motion by Rep. Folwell the Committee gave a favorable report to the Proposed Committee Substitute bill.

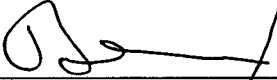
The Chair recognized Rep. Harrell to **explain HB 1428, A BILL TO BE ENTITLED AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO PROVIDE THAT WHEN A DISTRICT COURT JUDGE IS COMPLETING A FOUR-YEAR ELECTIVE TERM OF OFFICE AND WISHES TO CONTINUE IN OFFICE, THE NEXT ELECTION SHALL BE BY VOTE OF THE PEOPLE FOR RETENTION FOR AN EIGHT-YEAR TERM.** A Proposed Committee Substitute (PCS) bill was introduced and upon a motion made by Rep. Gulley the Committee gave a favorable vote to adopt the PCS for discussion. Jerry Cohen was recognized to give further explanation of the bill as it is a constitution amendment. Upon a motion made by Rep. Allen the Committee voted to give the PCS a favorable report.

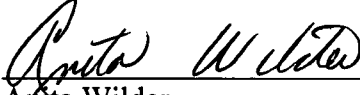
The next order of business was **HB 1516, A BILL TO BE ENTITLED AN ACT TO DECLARE SIGNING A WRITTEN STATEMENT THAT ALL**

**MATERIALMEN'S LIENS ARE SATISFIED IS AN UNFAIR AND DECEPTIVE ACT** and Rep. Setzer was recognized to explain the bill. A Proposed Committee Substitute (PCS) bill was introduced for discussion and upon motion made by Rep. Allen the PCS was adopted by the Committee for discussion. Jeff Hudson, Staff Counselor was recognized to explain the Proposed Committee Substitute (PCS) analysis. Upon motion made by Rep. Wiley the Committee gave the bill a favorable report, which changes the title.

There being no further business the Chair adjourned the meeting at 10:50 A.M.

Respectfully submitted,

  
\_\_\_\_\_  
Representative H. M. Michaux, Jr.  
Presiding Chair

  
\_\_\_\_\_  
Anita Wilder  
Committee Assistant

**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative Michaux (Chair) for the Committee on JUDICIARY II.

---

☐ Committee Substitute for

**SB 472** A BILL TO BE ENTITLED AN ACT TO PROTECT CHILDREN FROM SEXUAL PREDATORS BY ALSO MAKING IT A FELONY CRIMINAL OFFENSE TO SOLICIT A PERSON THE PERPETRATOR BELIEVES TO BE A CHILD TO COMMIT UNLAWFUL SEX ACTS, AND TO REQUIRE PERSONS CONVICTED OF THIS OFFENSE TO REGISTER AS SEX OFFENDERS.

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

**(FOR JOURNAL USE ONLY)**

---

\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on \_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is placed on the Calendar of \_\_\_\_\_. (The original bill resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

\_\_\_\_\_ The (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is re-referred to the Committee on \_\_\_\_\_. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on \_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is placed on the Calendar of \_\_\_\_\_. (The original bill resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

\_\_\_\_\_ The (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is re-referred to the Committee on \_\_\_\_\_. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative Michaux (Chair) for the Committee on JUDICIARY II.

---

☐ Committee Substitute for

**HB 1428**

A BILL TO BE ENTITLED AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO PROVIDE THAT WHEN A DISTRICT COURT JUDGE IS COMPLETING A FOUR-YEAR ELECTIVE TERM OF OFFICE AND WISHES TO CONTINUE IN OFFICE, THE NEXT ELECTION SHALL BE BY VOTE OF THE PEOPLE FOR RETENTION FOR AN EIGHT-YEAR TERM.

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

**(FOR JOURNAL USE ONLY)**

---

\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on \_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is placed on the Calendar of \_\_\_\_\_. (The original bill resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

\_\_\_\_\_ The (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is re-referred to the Committee on \_\_\_\_\_. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative Michaux (Chair) for the Committee on JUDICIARY II.

---

☐ Committee Substitute for

**HB 1516**                      A BILL TO BE ENTITLED AN ACT TO DECLARE SIGNING A  
WRITTEN STATEMENT THAT ALL MATERIALMEN'S LIENS ARE SATISFIED IS AN  
UNFAIR AND DECEPTIVE ACT.

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

**(FOR JOURNAL USE ONLY)**

---

\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on  
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(No. \_\_\_\_\_) is placed on the Calendar of \_\_\_\_\_. (The original bill resolution No. \_\_\_\_\_) is placed  
on the Unfavorable Calendar.

\_\_\_\_\_ The (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is re-referred to the  
Committee on \_\_\_\_\_. (The original bill/resolution) (House/Senate Committee Substitute  
Bill/(Joint) resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

S

D

SENATE BILL 472  
Second Edition Engrossed 4/5/05  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S472-PCS85257-RO-26

Short Title: Child Exploitation Prevention Act.

(Public)

Sponsors:

Referred to:

March 10, 2005

A BILL TO BE ENTITLED

AN ACT TO PROTECT CHILDREN FROM SEXUAL PREDATORS BY ALSO  
MAKING IT A FELONY CRIMINAL OFFENSE TO SOLICIT A PERSON THE  
PERPETRATOR BELIEVES TO BE A CHILD TO COMMIT UNLAWFUL SEX  
ACTS, TO REQUIRE PERSONS CONVICTED OF THIS OFFENSE TO  
REGISTER AS SEX OFFENDERS, AND TO AUTHORIZE THE STATE  
BUREAU OF INVESTIGATION TO INVESTIGATE CERTAIN CRIMES  
COMMITTED BY USE OF A COMPUTER.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 14-202.3 reads as rewritten:

**"§ 14-202.3. Solicitation of child by computer to commit an unlawful sex act.**

(a) Offense. – A person is guilty of solicitation of a child by a computer if the person is 16 years of age or older and the person knowingly, with the intent to commit an unlawful sex act, entices, advises, coerces, orders, or commands, by means of a computer, a child who is less than 16 years of age and at least 3 years younger than the defendant, or a person the defendant believes to be a child who is less than 16 years of age and who the defendant believes to be at least 3 years younger than the defendant, to meet with the defendant or any other person for the purpose of committing an unlawful sex act. Consent is not a defense to a charge under this section.

(b) Jurisdiction. – The offense is committed in the State for purposes of determining jurisdiction, if the transmission that constitutes the offense either originates in the State or is received in the State.

(c) Punishment. – A violation of this section is a Class I ~~felony~~, H felony."

**SECTION 2.** G.S. 14-208.6(5) reads as rewritten:

"(5) "Sexually violent offense" means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.5 (second degree sexual offense),

1 G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7  
2 (intercourse and sexual offense with certain victims), G.S. 14-178  
3 (incest between near relatives), G.S. 14-190.6 (employing or  
4 permitting minor to assist in offenses against public morality and  
5 decency), G.S. 14-190.16 (first degree sexual exploitation of a minor),  
6 G.S. 14-190.17 (second degree sexual exploitation of a minor),  
7 G.S. 14-190.17A (third degree sexual exploitation of a minor),  
8 G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19  
9 (participating in the prostitution of a minor), ~~or~~ G.S. 14-202.1 (taking  
10 indecent liberties with children), or G.S. 14-202.3 (Solicitation of child  
11 by computer to commit an unlawful sex act). The term also includes  
12 the following: a solicitation or conspiracy to commit any of these  
13 offenses; aiding and abetting any of these offenses."

14 **SECTION 3.** G.S. 114-15 is amended by adding a new subsection to read:

15 "(b1) The State Bureau of Investigation is further authorized, upon request of the  
16 Governor or Attorney General, to investigate the solicitation, commission, or attempted  
17 commission, by means of a computer, computer network, computer system, electronic  
18 mail service provider, or the Internet, of the crimes defined in the following statutes:

- 19 (1) G.S. 14-190.6;  
20 (2) G.S. 14-190.7;  
21 (3) G.S. 14-190.8;  
22 (4) G.S. 14-190.14;  
23 (5) G.S. 14-190.15;  
24 (6) G.S. 14-190.16;  
25 (7) G.S. 14-190.17;  
26 (8) G.S. 14-190.17A;  
27 (9) G.S. 14-190.18;  
28 (10) G.S. 14-190.19;  
29 (11) G.S. 14-202.3;

30 Upon determining the location of the criminal violation, the State Bureau of  
31 Investigation shall promptly notify the sheriff and local law enforcement of its  
32 investigation."

33 **SECTION 4.** This act becomes effective December 1, 2005, and applies to  
34 offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

D

HOUSE BILL 1428

PROPOSED COMMITTEE SUBSTITUTE H1428-PCS70485-LB-59

Short Title: District Judge Retention Elections.

(Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO PROVIDE THAT WHEN A DISTRICT COURT JUDGE IS COMPLETING A FOUR-YEAR ELECTIVE TERM OF OFFICE AND WISHES TO CONTINUE IN OFFICE, THE NEXT ELECTION SHALL BE BY VOTE OF THE PEOPLE FOR RETENTION FOR AN EIGHT-YEAR TERM, AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

**SECTION 1.** Section 10 of Article IV of the North Carolina Constitution reads as rewritten:

**"Sec. 10. District Courts.**

(1) The General Assembly shall, from time to time, divide the State into a convenient number of local court districts and shall prescribe where the District Courts shall sit, but a District Court must sit in at least one place in each county. ~~District Judges shall be elected for each district for a term of four years, in a manner prescribed by law.~~ When more than one District Judge is authorized and elected for a district, the Chief Justice of the Supreme Court shall designate one of the judges as Chief District Judge. Every District Judge shall reside in the district for which he is elected.

(2) District Judges shall be elected for each district for a term of four years, except that a judge who has been elected to a four-year term or who has been retained for an eight-year term, 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 District Judge's retention. A District Judge approved for retention is elected to an eight-year term. If the voters fail to approve the retention in office of a District Judge, the office shall become vacant at the end of the term of office, the Governor shall appoint a person to serve until the next election for members of the General Assembly, at which time it shall be filled by election for a four-year term, and the person defeated for retention may not be appointed to a vacancy in that office until the expiration of four years from the end of



1 the term. If a District Judge does not seek retention, the General Assembly shall provide  
2 by law for the procedure for choosing a successor.

3 This subsection shall be implemented in a manner prescribed by law.

4 (3) For each county, the senior regular resident Judge of the Superior Court  
5 serving the county shall appoint from nominations submitted by the Clerk of the  
6 Superior Court of the county, one or more Magistrates who shall be officers of the  
7 District Court. The initial term of appointment for a magistrate shall be for two years  
8 and subsequent terms shall be for four years.

9 (4) The number of District Judges and Magistrates shall, from time to time, be  
10 determined by the General Assembly. Vacancies in the office of District Judge shall be  
11 filled for the unexpired term in a manner prescribed by law. Vacancies in the office of  
12 Magistrate shall be filled for the unexpired term in the manner provided for original  
13 appointment to the office, unless otherwise provided by the General Assembly."

14 **SECTION 2.** The amendment set out in Section 1 of this act shall be  
15 submitted to the qualified voters of the State on November 7, 2006, which election shall  
16 be conducted under the laws then governing elections in the State. Ballots, voting  
17 systems, or both may be used in accordance with Chapter 163 of the General Statutes.  
18 The question on the ballot shall be:

19 "[ ] FOR [ ] AGAINST

20 Constitutional amendment to provide that an elected district court judge who  
21 wishes to remain in office after the end of an elected term shall be subject to the  
22 question of the district judge's retention in office being submitted for approval or  
23 disapproval by nonpartisan vote of the people at a general election, and to serve an  
24 eight-year term if the voters retain the district judge in office."

25 **SECTION 3.** If a majority of votes cast on the question are in favor of the  
26 amendment set out in Section 1 of this act, the State Board of Elections shall certify the  
27 amendment to the Secretary of State. The amendment becomes effective upon this  
28 certification. The Secretary of State shall enroll the amendment so certified among the  
29 permanent records of that office.

30 **SECTION 4.(a)** Article 25 of Chapter 163 of the General Statutes is  
31 amended by adding a new section to read:

32 **"§ 163-329.1. District Judge retention elections.**

33 (a) As provided by Section 10 of Article IV of the North Carolina Constitution, a  
34 District Judge who has been elected to a four-year term, or who has been retained in  
35 office for an eight-year term, desiring to continue in office beyond the end of the term  
36 for which that judge has been elected or retained shall be subject to confirmation by  
37 nonpartisan ballot, by a majority of votes cast on the issue of the judge's retention.

38 (b) A District Judge subject to subsection (a) of this section shall indicate the  
39 desire to continue in office by filing a notice to that effect with the State Board of  
40 Elections no earlier than 12:00 noon on the first Monday in December in the year prior  
41 to the expiration of the term and no later than 12:00 noon on the second Monday of  
42 January in the year of the expiration of the term. The notice shall be on a form approved  
43 by the State Board of Elections. Notice can be withdrawn at any time prior to 12:00  
44 noon on the second Monday of January in the year of the expiration of the term. If a

District Judge subject to this provision does not file notice under this section prior to the deadline, then a regular election for a full four-year term shall be conducted under this Article.

(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 this Article. The form of the ballot shall be determined by the State Board of Elections.

(d) If a person who has filed a notice calling a retention election dies or is removed from office prior to the deadline to file notice under this section, the retention election is cancelled and a regular election for a full four-year term shall be conducted under this Article.

If a person who has filed a notice calling a retention election dies or is removed from office after the deadline to file notice under this section but no later than 60 days before the general election, an election on a plurality basis for a full four-year term shall be held in the district under the procedures of G.S. 163-329. If a person who has filed a notice calling a retention election dies or is removed from office less than 60 days before the election, the State Board of Elections may cancel the retention election if it determines that the ballots can be reprinted without significant expense, or if the ballots cannot be reprinted, then the results of the election shall be ineffective, and in either case the Governor shall appoint a person to serve beginning the first Monday in December until a person can be elected for a four-year term at the next general election."

**SECTION 5.** G.S. 163-1(d) is amended under the column "Term of Office" for Judges of District Court by deleting "Four years, from the first Monday in December next after election" and substituting "Four years or eight years, from the first Monday in December next after election, as provided by G.S. 7A-140".

**SECTION 6.** G.S. 7A-140 reads as rewritten:  
**"§ 7A-140. Number; election; term; qualification; oath.**

There shall be at least one district judge for each district. Each district judge shall be elected or retained by the qualified voters of the district court district in which ~~he~~ that judge is to serve at the time of the election for members of the General Assembly. The number of judges for each district shall be determined by the General Assembly. Each judge shall be a resident of the district for which elected, and shall serve a term of four years from initial election, or eight years from retention, beginning on the first Monday in December following ~~his election.~~ election or retention.

Each district judge shall devote ~~his~~ full time to the duties of ~~his~~ office. ~~He~~ A district judge shall not practice law during ~~his~~ the term, nor shall ~~he~~ during such term be the partner or associate of any person engaged in the practice of law.

Before entering upon his duties, each district judge, in addition to other oaths prescribed by law, shall take the oath of office prescribed for a judge of the General Court of Justice."

**SECTION 7.** Sections 4 through 6 of this act become effective only if the constitutional amendment proposed by Section 1 of this act is approved by the qualified

1 voters as provided by Section 2 of this act. Sections 4 through 6 of this act apply with  
2 respect to elections held in 2008 or thereafter.

3 **SECTION 8.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

D

HOUSE BILL 1516  
PROPOSED COMMITTEE SUBSTITUTE H1516-PCS80413-SB-28

Short Title: False Cert. an Unfair and Deceptive Act.

(Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT IT IS AN UNFAIR AND DECEPTIVE ACT FOR A PERSON TO SIGN A WRITTEN STATEMENT THAT ALL MATERIALMEN'S LIENS ARE SATISFIED WHEN THE PERSON HAS ACTUAL KNOWLEDGE THAT ANY MATERIALMEN'S LIEN REMAINS UNSATISFIED.

The General Assembly of North Carolina enacts:

**SECTION 1.** The title of Part 3 of Article 2 of Chapter 44A of the General Statutes reads as rewritten:

"Part 3. ~~Criminal~~ Sanctions for Furnishing a False Statement in Connection with Improvement to Real Property."

**SECTION 2.** Part 3 of Article 2 of Chapter 44A of the General Statutes is amended by adding a new section to read:

**"§ 44A-24.1. Certain false statements an unfair and deceptive act.**

It shall be an unfair and deceptive act under Chapter 75 of the General Statutes for any person to sign a written statement of any kind stating that all liens established pursuant to this Article have been satisfied when the person has actual knowledge that any lien established pursuant to this Article remains unsatisfied."

**SECTION 3.** This act becomes effective October 1, 2005, and applies to written statements signed on or after that date.

# **AGENDA**

## **HOUSE COMMITTEE ON JUDICIARY II**

**May 26, 2005  
Room 421  
10:00 AM**

### **OPENING REMARKS**

Representative Mickey Michaux, Chair

### **AGENDA ITEMS**

**H 1146-Foreclosure Reform-Rep. Michaux  
H 1428-District Judge Retention Elections-Reps. Harrell, Hackney  
S-472 (H-614) -Child Exploitation Prevention Act -Sen. Thomas, Rep. Wiley  
H 1516-False Cert. An Unfair and Deceptive Act-Rep. Setzer  
H 1554-Expunction/Convictions of Certain Crimes-Reps. Womble, Parmon**

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
2005-2006 SESSION  
BILL SPONSOR NOTIFICATION**

You are hereby notified that the Committee on **JUDICIARY II** will meet as follows:

**DAY & DATE:**     **Thursday, May 26, 2005**

**TIME:**             **10:00 a.m.**

**LOCATION:**        **Room 421**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

**H 1146- Foreclosure Reform-Rep. Michaux**

**H 1428-District Judge Retention Elections – Reps. Harrell, Hackney**

**S 472 (H 614)-Child Exploitation Prevention Act– Rep. Wiley, Sen. Thomas**

**H 1516– False Cert. An Unfair and Deceptive Act- Rep. Setzer**

**H 1554–Expunction/Convictions of Certain Crimes- Reps. Womble, Parmon**

Respectfully,  
Representative H. M. Michaux, Jr.  
Chair

I hereby certify this notice was filed by the committee assistant at the following offices at  
**11:00 a.m. on May 24, 2005.**

  X   Principal Clerk  
  X   Reading Clerk - House Chamber

Anita Wilder (Committee Assistant)

## VISITOR REGISTRATION SHEET

JUDICIARY II

MAY 26, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Larry Heckner	HSBC North America
Bob Kroll	AGC
JAY CHAUDHURI	AGO
WILL MCKINNEY	AGO
Rohith Parasuraman	AGC
Chasta Hamilton	AGU
Robin Pendergraft	SBI
Kevin Wert	SBI
Gary MILLER	NCAFO
Paul Stahl	NC Bankers Assn.
ANN LORE	OVHS

## VISITOR REGISTRATION SHEET

## JUDICIARY II

Name of Committee

MAY 26, 2005

**Date**

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME \_\_\_\_\_

**FIRM OR AGENCY AND ADDRESS**

# Amigo Wade

VA Division of Legislative Services  
910 Capitol St. Richmond, VA 23219



House Pages

Name Of Committee: J11      Date: 5-26-05

1. Name: Mark Hamblin  
County: Beaufort  
Sponsor: Brubaker
2. Name: Christopher Shaw  
County: Cumberland  
Sponsor: McAllister
3. Name: \_\_\_\_\_  
County: \_\_\_\_\_  
Sponsor: \_\_\_\_\_
4. Name: \_\_\_\_\_  
County: \_\_\_\_\_  
Sponsor: \_\_\_\_\_
5. Name: \_\_\_\_\_  
County: \_\_\_\_\_  
Sponsor: \_\_\_\_\_

Sgt-At-Arms

1. Name: BILL FREEMAN
2. Name: FRANK PREVO
3. Name: JAMES WORTH
4. Name: \_\_\_\_\_
5. Name: \_\_\_\_\_

**MINUTES  
HOUSE COMMITTEE ON  
JUDICIARY II**

MAY 31, 2005

The House Committee on Judiciary II met on Tuesday, May 31, 2005, in Room 421 of the Legislative Office Building at 10:00 A.M. The following members were present: Chairman Mickey Michaux, Vice-Chairs Alice Bordsen and James Harrell, Representatives Allen, Farmer-Butterfield, Fisher, Folwell, Gulley, Jones, and Wiley. Drupti Chauhan, Karen Cochrane-Brown and Jeff Hudson, Staff Counselors were in attendance. A Visitor's Registration list is included and made part of these minutes.

The Chairman called the meeting to order and recognized the Pages, Sergeant-At-Arms, Staff and visitors. The following bills were considered:

The Chair recognized Rep. Fisher to explain **HB 1243, A BILL TO ENTITLED AN ACT REQUIRING GOOD FAITH CAUSE FOR THE EVICTION OF TENANTS RENTING SPACE FOR RESIDENTIAL MANUFACTURED HOMES.** A Proposed Committee Substitute (PCS) was introduced for discussion and upon the motion made by Rep. Gulley the Committee adopted the PCS for discussion. Upon motion made by Ex-Officio, Rep. Culpepper the Committee gave the PCS a favorable report, which also changes the title.

Rep. Womble was next recognized to explain **HB 1554, A BILL TO ENTITLED AN ACT TO PROVIDE FOR THE EXPUNCTION OF CONVICTIONS FOR CERTAIN CRIMINAL OFFENSES.** A Proposed Committee Substitute (PCS) was introduced for discussion and upon a motion made by Rep. Folwell, the Committee voted to adopt the PCS for discussion. Drupti Chauhan, Staff Counselor was also recognized to explain the PCS and bill analysis. After much opposition to this bill from several organizations including the Administrative Office of the Court, N. C. Sheriff's Association, Wake County District Attorney's Office, Chairman Michaux moved to pull the bill (not subject to crossover and that it will need to go to the Finance Committee due to fees involved) and the Committee favorable this motion.

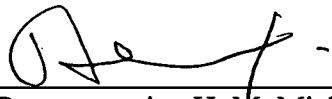
The order of business was **HB 1404, A BILL TO BE ENTITLED AN ACT TO REQUIRE THE NORTH CAROLINA STATE HIGHWAY PATROL TO DESIGNATE ENFORCEMENT PERSONNEL TO SERVE AS PROCESS OFFICERS IN EACH DISTRICT OF EACH TROOP AND TO SERVE PROCESS AND REVOCATION ORDERS FOR THE NORTH CAROLINA DIVISION OF MOTOR VEHICLES.** Rep. Folwell was recognized to speak on the bill and also introduce a Proposed Committee Substitute (PCS) for discussion and upon motion by the Representative, the Committee voted to adopt the PCS for discussion. Several amendments were made to the PCS and upon motion made by Rep. Folwell the Committee voted to adopt the amendments and incorporate them into the PCS. Upon

Page 2

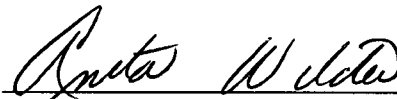
Minutes-J-II  
May 31, 2005

motion by Rep. Folwell the Committee voted to give a favorable report to the PCS which also changes the title.

Respectfully submitted,



Representative H. M. Michaux, Jr.  
Presiding Chair



Anita Wilder  
Committee Assistant

**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative Michaux (Chair) for the Committee on JUDICIARY II.

---

☐ Committee Substitute for

**HB 1404**

A BILL TO BE ENTITLED AN ACT TO REQUIRE THE NORTH CAROLINA STATE HIGHWAY PATROL TO DESIGNATE ENFORCEMENT PERSONNEL TO SERVE AS PROCESS OFFICERS IN EACH DISTRICT OF EACH TROOP AND TO SERVE PROCESS AND REVOCATION ORDERS FOR THE NORTH CAROLINA DIVISION OF MOTOR VEHICLES.

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

*which changes the title*

**(FOR JOURNAL USE ONLY)**

---

\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on \_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is placed on the Calendar of \_\_\_\_\_. (The original bill resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

\_\_\_\_\_ The (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is re-referred to the Committee on \_\_\_\_\_. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative Michaux (Chair) for the Committee on JUDICIARY II.

☒ Committee Substitute for

**HB 1243**

A BILL TO BE ENTITLED AN ACT REQUIRING GOOD FAITH  
CAUSE FOR THE EVICTION OF TENANTS RENTING SPACE FOR RESIDENTIAL  
MANUFACTURED HOMES.

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

*#2  
committee substitute bill #1*

**(FOR JOURNAL USE ONLY)**

\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on  
\_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the (House) committee substitute bill/(joint) resolution  
(No. \_\_\_\_\_) is placed on the Calendar of \_\_\_\_\_. (The original bill resolution No. \_\_\_\_\_) is placed  
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\_\_\_\_\_ Pursuant to Rule 36(b), the (House) committee substitute bill/(joint) resolution  
(No. \_\_\_\_\_) is placed on the Calendar of \_\_\_\_\_. (The original bill resolution No. \_\_\_\_\_) is placed  
on the Unfavorable Calendar.

\_\_\_\_\_ The (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is re-referred to the  
Committee on \_\_\_\_\_. (The original bill/resolution) (House/Senate Committee Substitute  
Bill/(Joint) resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

D

HOUSE BILL 1404  
PROPOSED COMMITTEE SUBSTITUTE H1404-PCS10357-RO-28

Short Title: Seizure of Documents and Plates.

(Public)

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Sponsors:

---

Referred to:

---

April 21, 2005

A BILL TO BE ENTITLED  
AN ACT TO REQUIRE LAW ENFORCEMENT OFFICERS TO SERVE PROCESS  
AND REVOCATION ORDERS FOR THE NORTH CAROLINA DIVISION OF  
MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 20-45 reads as rewritten:

**"§ 20-45. Seizure of documents and plates.**

(a) The Division is hereby authorized to take possession of any certificate of title, registration card, permit, license, or registration plate issued by it upon expiration, revocation, cancellation, or suspension thereof, or which is fictitious, or which has been unlawfully or erroneously issued, or which has been unlawfully used.

(b) ~~Nothing contained herein or elsewhere shall be construed to require the Division to take possession of any certificate of title, registration card permit, license, or registration plate which has expired, been revoked, canceled or suspended or which is fictitious or which has been unlawfully or erroneously issued, or which has been unlawfully used.~~ The Division may give notice to the owner, licensee or lessee of its authority to take possession of any ownership document, operator's license, or plate registration plate issued by it and require that person to surrender it to the Commissioner or his officers or agents. Any person who fails to surrender the ownership document, operator's license, or plate, or any duplicate thereof upon personal service of notice or within 10 days after receipt of notice by mail, as provided in G.S. 20-48, shall be guilty of a Class 2 misdemeanor.

(c) If the Division does not receive the registration plate which has been revoked; canceled; suspended; which was fictitious; which has been unlawfully or erroneously issued; or which has been unlawfully used, the Division shall issue a process or revocation order directing the State Highway Patrol and all other law enforcement agencies to locate the registration plate and seize it. The law enforcement officer serving the process or revocation order shall take appropriate enforcement action against the

1 owner, licensee, or lessee. A law enforcement officer shall have the same authority  
2 while serving a process or revocation order as if the member was serving an arrest  
3 warrant."

4       **SECTION 2.** This act becomes effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

D

HOUSE BILL 1554  
PROPOSED COMMITTEE SUBSTITUTE H1554-CSRQ-24 [v.4]

5/27/2005 10:52:44 AM

Short Title: Expunction/Convictions of Certain Crimes.

(Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED  
AN ACT TO PROVIDE FOR THE EXPUNCTION OF CONVICTIONS FOR  
CERTAIN CRIMINAL OFFENSES.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

**"§ 15A-149. Expunction of records for conviction of certain criminal offenses if there are no subsequent criminal convictions for five years.**

(a) For purposes of this section, the term "criminal offense" means a misdemeanor or a Class C through Class I felony; however, the term does not include any of the following:

- (1) An offense that includes assault as an essential element of the offense.
- (2) An offense for which the offender must register under Article 27A of Chapter 14 of the General Statutes.
- (3) An offense that includes the possession or use of a firearm as an essential element of the offense.
- (4) An offense for which the offender was armed with or used a firearm.
- (5) An offense that is trafficking under G.S. 90-95(h).

(b) Whenever a person who has not been previously convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, the laws of this State, or any other state pleads guilty to or is guilty of a criminal offense, the person may file a petition in the court where the person was convicted for expunction of the criminal offense from the person's criminal record. The petition cannot be filed earlier than five years after the date of the conviction or any period of probation or sentence served, whichever occurs later. The petition shall contain, but not be limited to, the following:

- (1) An affidavit by the petitioner that he or she has been of good behavior for the five-year period since the date of conviction of the criminal



(d) The court shall also order that the conviction for the criminal offense be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief, or head of any other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

(e) Any person entitled to an expunction under this section may also apply to the court for an order expunging DNA records when the person's DNA record or profile has been included in the State DNA Database, and the person's DNA sample is stored in the State DNA Databank. A copy of the application for expunction of the DNA record or DNA sample shall be served on the district attorney for the judicial district in which the charges of the criminal offense were brought not less than 20 days prior to the date of the hearing on the application. The order of expunction shall include the name and address of the defendant and the defendant's attorney and shall direct the SBI to send a letter documenting expunction as required by subsection (f) of this section.

(f) Upon receiving an order of expunction entered pursuant to subsection (c) of this section, the SBI shall purge the DNA record and all other identifying information from the State DNA Database and the DNA sample stored in the State DNA Databank covered by the order, except that the order shall not apply to other offenses committed by the individual that qualify for inclusion in the State DNA Database and the State DNA Databank. A letter documenting expunction of the DNA record and destruction of the DNA sample shall be sent by the SBI to the defendant and the defendant's attorney at the address specified by the court in the order of expunction.

(g) Any other applicable State or local government agency shall expunge from its records entries made as a result of the 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.

(h) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his or her county, file with the Administrative Office of the Courts, the name of those persons granted expunctions under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the name of persons granted expunctions. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted an expunction.

(i) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of sixty-five dollars (\$65.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

**SECTION 2.** This act becomes effective December 1, 2005.

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2005**

**H**

**D**

**HOUSE BILL 1243**  
**Committee Substitute Favorable 5/12/05**  
**PROPOSED COMMITTEE SUBSTITUTE H1243-PCS10356-RQ-34**

Short Title:   Manufactured Homes/Longer Termination Notice. (Public)

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Sponsors:

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Referred to:

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April 18, 2005

A BILL TO BE ENTITLED  
AN ACT REQUIRING A LONGER NOTICE PERIOD FOR A TERMINATION OF A  
TENANCY FOR THE RENTAL SPACE FOR RESIDENTIAL  
MANUFACTURED HOMES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 42-14 reads as rewritten:

**"§ 42-14. Notice to quit in certain tenancies.**

A tenancy from year to year may be terminated by a notice to quit given one month or more before the end of the current year of the tenancy; a tenancy from month to month by a like notice of seven days; a tenancy from week to week, of two days. Provided, however, where the tenancy involves only the rental of a space for a manufactured home as defined in G.S. 143-143.9(6), a notice to quit must be given at least ~~30~~60 days before the end of the current rental period, regardless of the term of the tenancy."

**SECTION 2.** This act becomes effective January 1, 2006, and applies to all notices to quit given on or after that date.

# **AGENDA**

## **HOUSE COMMITTEE ON JUDICIARY II**

**May 31, 2005  
Room 421  
10:00 AM**

### **OPENING REMARKS**

Representative Mickey Michaux, Chair

### **AGENDA ITEMS**

**H 1146-Foreclosure Reform-Rep. Michaux  
H 1243-Manufactured Homes/Good Faith Evictions-Reps. Fisher, Bordsen  
H 1404-Seizure of Documents and Plates-Reps. Folwell, Starnes  
H 1554-Expunction/Convictions of Certain Crimes-Reps. Womble, Parmon**

**Anita Wilder (Rep. Michaux)**

---

**From:** Anita Wilder (Rep. Michaux)  
**Sent:** Thursday, May 26, 2005 1:00 PM  
**To:** Rep. Alice Bordsen; Rep. Dale Folwell; Rep. Edgar Starnes; Rep. Mickey Michaux, Jr.; Rep. Susan Fisher  
**Cc:** Drupti Chauhan (Research); James Peyton (House Deputy Sgt. at Arms); Jeffrey Hudson (Research); Karen Cochrane-Brown (Research)  
**Subject:** J-II House Committee Notice-May 31, 2005

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND**

**BILL SPONSOR NOTIFICATION  
2005-2006 SESSION**

You are hereby notified that the Committee on **JUDICIARY II** will meet as follows:

**DAY & DATE:** Tuesday, May 31, 2005

**TIME:** 10:00 a.m.

**LOCATION:** Room 421

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

**H 1146-Foreclosure Reform-Rep. Michaux**

**H 1243-Manufactured Homes/Good Faith - Reps. Fisher, Bordsen**

**H 1404-Seizure of Documents and Plates-Reps. Folwell, Starnes**

Respectfully,  
Representative H. M. Michaux, Jr.  
Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **1:00 p.m. on May 26, 2005.**

☒ Principal Clerk  
☒ Reading Clerk - House Chamber

Anita Wilder (Committee Assistant)

---

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5/26/2005

# VISITOR REGISTRATION SHEET

JUDICIARY II

MAY 31, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Kathy Hartkopf	NC CSE
Bill Rowe	NC Justice Ctr.
Carlene McNulty	NC Justice Ctr.
Al Ripley	NC " "
Chris Kolda	Self-Help
Arden Mollifield	"
David Harris	NCGA
Stacy Flannery	NCHCFM
Elizabeth Dutton	NCCBI
Paul Stock	NC Bankers Assoc
Bill Scoggin	KCH
Ann Lane	OUAS

# VISITOR REGISTRATION SHEET

JUDICIARY II

MAY 31, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Chad Essick	Poyner & Spruill, LLP
<del>Elle Collins</del>	<del>NC State House</del>
BRAD LOVIN	NC Manufactured Housing
Frank Gray	NC Manufactured Housing
Beth Hathcock	AG's Office - DMV Section
Parula Bar	AOC
Chip Kullin	Nelson Mullins
Justin	IFNC
Pej Dore	NC Conference of D.A.s
Colin Willoughby	DA - 10 <sup>th</sup> Dist
Joey Gaudin	DMV License + Text

## VISITOR REGISTRATION SHEET

511

5/31/05

Name of Committee

**Date**

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME

**FIRM OR AGENCY AND ADDRESS**

Portia Manley

NC DOT / DMV

Brenda Freeman

“ ”

Marc Nichols

NCSHP

Hawaii Water

CCPS

Walter J. Wilson Jr.

State Highway Patrol

John W. Congleton

NC DOT

House Pages

JUDICIARY II  
Name Of Committee: \_\_\_\_\_ Date: 5-31-05

1. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

2. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

3. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

4. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

5. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

Sgt-At-Arms

1. Name: BILL FREEMAN

2. Name: JAMES WORTH

3. Name: DUSEY RHODES

4. Name: \_\_\_\_\_

5. Name: \_\_\_\_\_



**MINUTES  
HOUSE COMMITTEE ON  
JUDICIARY II**

June 1, 2005

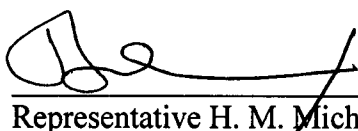
The House Committee on Judiciary II met on Wednesday, June 01, 2005, in Room 421 of the Legislative Office Building at 10:00 A.M. The following members were present: Chairman Mickey Michaux, Vice-Chair Alice Bordsen, Representatives, Fisher, Gulley, Jones, Walend and Wiley. Drupti Chauhan and Jeff Hudson, Staff Counselors were in attendance. A Visitor's Registration list is included and made part of these minutes.

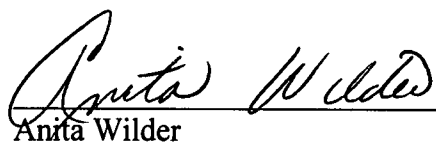
The Chairman called the meeting to order and recognized the Pages, Sergeant-At-Arms, Staff and visitors. The following bill was considered:

Rep. Michaux was recognized to speak on **HB 1146, A BILL TO BE ENTITLED AN ACT TO IMPROVE THE FORECLOSURE PROCESS**, which was originally presented to the Committee on May 24, 2005. Karen Cochrane-Brown, Staff Counselor was recognized to explain changes that the new Proposed Committee Substitute (PCS) would make to the bill. Upon motion made by Rep. Jones, the Committee voted to give the PCS a favorable report

There being no further business, the Chair adjourned the meeting at 10:15 A.M.

Respectfully submitted,

  
\_\_\_\_\_  
Representative H. M. Michaux, Jr.  
Presiding Chair

  
\_\_\_\_\_  
Anita Wilder  
Committee Assistant

**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative Michaux (Chair) for the Committee on JUDICIARY II.

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☐ Committee Substitute for

**HB 1146**                      A BILL TO BE ENTITLED AN ACT TO IMPROVE THE  
FORECLOSURE PROCESS.

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

**(FOR JOURNAL USE ONLY)**

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\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on  
\_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the (House) committee substitute bill/(joint) resolution  
(No. \_\_\_\_\_) is placed on the Calendar of \_\_\_\_\_. (The original bill resolution No. \_\_\_\_\_) is placed  
on the Unfavorable Calendar.

\_\_\_\_\_ The (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is re-referred to the  
Committee on \_\_\_\_\_. (The original bill/resolution) (House/Senate Committee Substitute  
Bill/(Joint) resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

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HOUSE BILL 1146  
PROPOSED COMMITTEE SUBSTITUTE H1146-PCS10361-RO-29

Short Title: Foreclosure Reform.

(Public)

Sponsors:

Referred to:

April 7, 2005

A BILL TO BE ENTITLED  
AN ACT TO IMPROVE THE FORECLOSURE PROCESS.  
The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 45-21.16(c)(7) reads as rewritten:

"(7) The right of the debtor (or other party served) to appear before the clerk of court at a time and on a date specified, at which appearance he shall be afforded the opportunity to show cause as to why the foreclosure should not be allowed to be held. The notice shall contain a all of the following:

- a. A statement that if the debtor does not intend to contest the creditor's allegations of default, the debtor does not have to appear at the hearing and that his failure to attend the hearing will not affect his right to pay the indebtedness and thereby prevent the proposed sale, or to attend the actual sale, should he elect to do so.
- b. A statement that the trustee, or substitute trustee, is a neutral party and in the event that the debtor contests the issues presented in the foreclosure hearing, the trustee, or substitute trustee, shall not advocate for the lender or for the debtor.
- c. A statement that the debtor has the right to file a separate lawsuit pursuant to G.S. 45-21.34 in which the debtor may be able to assert legal or equitable claims against the maker or holder of the loan and in which the debtor may apply to a judge of the superior court for injunctive relief stopping the mortgage sale prior to the time that the rights of the parties to the sale or resale become fixed.
- d. A statement that the debtor has the right to appear at the hearing and serve a written response.

1           e.     A statement that if the debtor fails to appear at the hearing, the  
2                 trustee will ask the clerk for an order to sell the debtor's home.

3           f.     A statement that the debtor has the right to contest the  
4                 allegations in the notice."

5           **SECTION 2.** G.S. 45-21.29(k) reads as rewritten:

6           "(k) Orders for possession of real property sold pursuant to this Article, in favor of  
7 the purchaser and against any party or parties in possession at the time of application  
8 therefore, may be issued by the clerk of the superior court of the county in which such  
9 property is sold, when:

10           (1) Such property has been sold in the exercise of the power of sale  
11               contained in any mortgage, deed of trust, leasehold mortgage,  
12               leasehold deed of trust, or a power of sale authorized by any other  
13               statutory provisions,

14           (2) Repealed by Session Laws 1993, c. 305, s. 18.

15           (2a) The provisions of this Article have been complied with,

16           (3) The sale has been consummated, and the purchase price has been paid,

17           (4) The purchaser has acquired title to and is entitled to possession of the  
18               real property sold,

19           (5) ~~Ten~~ Thirty days' notice has been given to the party or parties who  
20               remain in possession at the time application is made, and

21           (6) Application is made by petition to such clerk by the mortgagee, the  
22               trustee, the purchaser of the property, or any such person's authorized  
23               representative."

24           **SECTION 3.** This act becomes effective October 1, 2005, and applies to any  
25 loan agreement entered into on or after that date.

# **AGENDA**

## **HOUSE COMMITTEE ON JUDICIARY II**

**June 01,005  
Room 421  
10:00 AM**

### **OPENING REMARKS**

Representative Mickey Michaux, Chair

### **AGENDA ITEMS**

**H 1146-Foreclosure Reform-Rep. Michaux**

|

House Pages

Name Of Committee: J-11 Date: 6-1-05

1. Name: Meredith Hurley

County: Cumberland

Sponsor: Margaret Dickson

2. Name: Amanda Hurley

County: Cumberland

Sponsor: Margaret Dickson

3. Name: Cody Mack Gaddis

County: Cumberland

Sponsor: Margaret Dickson

4. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

5. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

Sgt-At-Arms

1. Name: Bill Freeman

2. Name: James Worth

3. Name: \_\_\_\_\_

4. Name: \_\_\_\_\_

5. Name: \_\_\_\_\_

## VISITOR REGISTRATION SHEET

JUDICIARY II

JUNE 01, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Harry Tipler	NCLHW
Paul Stock	NCSA
Betty Turner	BAL
Stacy Flannery	NCHCFA
John McHale	MF&S
Anne Winer	AT&T
Jack Bessy	N.C. Home Housing
Brad Lovin	" "
Karen John	Smith Anderson

**MINUTES  
HOUSE COMMITTEE ON  
JUDICIARY II**

June 23, 2005

The House Committee on Judiciary II met on Thursday, June 23, 2005, in Room 421 of the Legislative Office Building at 10:00 A.M. The following members were present: Chairman Mickey Michaux, Vice-Chair Alice Bordsen, Representatives, Allen, Farmer-Butterfield, Fisher, Gulley, Jones, Walend and Wiley. Drupti Chauhan and Jeff Hudson, Staff Counselors were in attendance. A Visitor's Registration list is included and made part of these minutes.

The Chairman called the meeting to order and recognized the Pages, Sergeant-At-Arms, Staff and visitors. Senate bills 486 and 846 were removed from today's agenda. The following bill was considered:

The Chair recognized Senator Snow to explain **SB 776, A BILL TO BE ENTITLED AN ACT TO AMEND THE INDECENT EXPOSURE LAW TO APPLY TO INDECENT EXPOSURE TO PERSON OF THE SAME SEX WITH GREATER PENALTIES FOR INDECENT EXPOSURE TO PERSON UNDER AGE SIXTEEN, AND TO REQUIRE SEX OFFENDER REGISTRATION UPON FELONY CONVICTION.** A Proposed Committee Substitute (PCS) bill was introduced for discussion and upon motion made by Rep. Fisher, the Committee voted to adopt the PCS for discussion. Drupti Chauhan, Staff Counselor was also recognized to give the bill analysis and explain changes that the PCS would make to the original bill. Rep. Walend made a motion that the PCs be given and favorable report and the Committee voted in favor of the motion.

There being no further business, the Chair adjourned the meeting at 10:20 A.M.

Respectfully submitted,



Representative H. M. Michaux, Jr.  
Presiding Chair



Anita Wilder  
Committee Assistant



**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative Michaux (Chair) for the Committee on JUDICIARY II.

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☐ Committee Substitute for

**SB 776**      A BILL TO BE ENTITLED AN ACT TO AMEND THE INDECENT EXPOSURE LAW TO APPLY TO INDECENT EXPOSURE TO PERSONS OF THE SAME SEX WITH GREATER PENALTIES FOR INDECENT EXPOSURE TO PERSONS UNDER AGE SIXTEEN, AND TO REQUIRE SEX OFFENDER REGISTRATION UPON FELONY CONVICTION.

☒ With a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill -1.

**(FOR JOURNAL USE ONLY)**

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\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on \_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is placed on the Calendar of \_\_\_\_\_. (The original bill resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

\_\_\_\_\_ The (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is re-referred to the Committee on \_\_\_\_\_. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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SENATE BILL 776  
Judiciary II Committee Substitute Adopted 5/10/05  
Third Edition Engrossed 5/12/05  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S776-PCS55255-RQ-46

Short Title: Amend Indecent Exposure Law.

(Public)

Sponsors:

Referred to:

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE INDECENT EXPOSURE LAW TO APPLY TO INDECENT EXPOSURE TO PERSONS OF THE SAME SEX WITH GREATER PENALTIES FOR INDECENT EXPOSURE TO PERSONS UNDER AGE SIXTEEN, AND TO REQUIRE SEX OFFENDER REGISTRATION UPON FELONY CONVICTION.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 14-190.9 reads as rewritten:

**"§ 14-190.9. Indecent exposure.**

(a) Any ~~Unless the conduct is punishable under subsection (a1) of this section,~~ any person who shall willfully expose the private parts of his or her person in any public place and in the presence of any other person or persons, ~~of the opposite sex, except for those places designated for a public purpose where the same sex exposure is incidental to a necessary activity,~~ or aids or abets in any such act, or who procures another to perform such act; or any person, who as owner, manager, lessee, director, promoter or agent, or in any other capacity knowingly hires, leases or permits the land, building, or premises of which he is owner, lessee or tenant, or over which he has control, to be used for purposes of any such act, shall be guilty of a Class 2 misdemeanor.

(a1) Unless the conduct is prohibited by another law providing greater punishment, any person at least 18 years of age who shall willfully expose the private parts of his or her person in any public place in the presence of any other person less than 16 years of age for the purpose of arousing or gratifying sexual desire shall be guilty of a Class H felony. An offense committed under this subsection shall not be considered to be a lesser included offense under G.S. 14-202.1.

(b) Notwithstanding any other provision of law, a woman may breast feed in any public or private location where she is otherwise authorized to be, irrespective of

1 whether the nipple of the mother's breast is uncovered during or incidental to the breast  
2 feeding.

3 (c) Notwithstanding any other provision of law, a local government may regulate  
4 the location and operation of sexually oriented businesses. Such local regulation may  
5 restrict or prohibit nude, seminude, or topless dancing to the extent consistent with the  
6 constitutional protection afforded free speech."

7 **SECTION 2.** G.S. 14-208.6(5) reads as rewritten:

8 "(5) "Sexually violent offense" means a violation of G.S. 14-27.2 (first  
9 degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first  
10 degree sexual offense), G.S. 14-27.5 (second degree sexual offense),  
11 G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7  
12 (intercourse and sexual offense with certain victims), G.S. 14-178  
13 (incest between near relatives), G.S. 14-190.6 (employing or  
14 permitting minor to assist in offenses against public morality and  
15 decency), G.S. 14-190.9(a1) (felonious indecent exposure),  
16 G.S. 14-190.16 (first degree sexual exploitation of a minor),  
17 G.S. 14-190.17 (second degree sexual exploitation of a minor),  
18 G.S. 14-190.17A (third degree sexual exploitation of a minor),  
19 G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19  
20 (participating in the prostitution of a minor), or G.S. 14-202.1 (taking  
21 indecent liberties with children). The term also includes the following:  
22 a solicitation or conspiracy to commit any of these offenses; aiding and  
23 abetting any of these offenses."

24 **SECTION 3.** This act becomes effective December 1, 2005, and applies to  
25 offenses committed on or after that date.

# **AGENDA**

## **HOUSE COMMITTEE ON JUDICIARY II**

**June 23, 2005  
Room 421  
10:00 AM**

### **OPENING REMARKS**

Representative Mickey Michaux, Chair

### **AGENDA ITEMS**

**S 486 – Rachel’s Law – Senator Allran-**

**S 846 – Modernize Bail Bondsman Registration – Senator Swindell**

**S 776 – Amend Indecent Exposure Law – Senator Snow**

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2005-2006 SESSION**

You are hereby notified that the Committee on **JUDICIARY II** will meet as follows:

**DAY & DATE:**     **Thursday, June 23, 2005**

**TIME:**             **10:00 A.M.**

**LOCATION:**        **Room 421**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

**S 486-Rachel's Law-Senator Allran**

**S 846-Modernize Bail Bondsman Registration-Senator Swindell**

**S 776-Amend Indecent Exposure Law-Senator Snow**

Respectfully,  
Representative H. M. Michaux, Jr.  
Chair

I hereby certify this notice was filed by the committee assistant at the following offices at  
**10:30 a.m. on June 21, 2005.**

☒ Principal Clerk  
☒ Reading Clerk - House Chamber

Anita Wilder (Committee Assistant)

## VISITOR REGISTRATION SHEET

JUDICIARY II

JUNE 23, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Jo McCants	AAC
Brad Crawford	AOC
Andy Ellen	NCFMIA
John R. [Signature]	NCFPC
BRIAN LEWIS	Covenant w/ NC's children
FRANK W. FOLGER	NCDOE
Jay Gaither	District Attorney, 25 <sup>th</sup>
Johanna Reese	DFNR

House Pages

Name Of Committee: II Date: 6-23-05

1. Name: Max Hamilton

County: Wake

Sponsor: Rep. Jennifer Weiss

2. Name: Panos Harakas

County: Gaston

Sponsor: Rep. Bill Current

3. Name: Andrew Rogers

County: Person

Sponsor: Rep. Winkie Wilkins

4. Name: Nick Grasman

County: Guilford

Sponsor: Rep. Harold Brubaker

5. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

Sgt-At-Arms

1. Name: James Worth

2. Name: BRAD BAREFOOT

3. Name: FRANK PREVO

4. Name: \_\_\_\_\_

5. Name: \_\_\_\_\_

**MINUTES  
HOUSE COMMITTEE ON  
JUDICIARY II]**

June 30, 2005

The House Committee on Judiciary II met on Thursday, June 30, 2005, in Room 421 of the Legislative Office Building at 10:00 A.M. The following members were present: Chairman Mickey Michaux, Vice-Chairs Alice Bordsen and Timothy Moore, Representatives Allen, Farmer-Butterfield, Fisher, Folwell, Gulley, Jones and Walend. Drupti Chauhan, Karen Cochrane-Brown and Jeff Hudson were in attendance. A Visitor's Registration list is included and made part of these minutes.

The Chairman called the meeting to order and recognized the Pages, Sergeant-At-Arms, Staff and visitors. The following bills were considered:

The Chair recognized Senator Rand to explain **SB 1118, A BILL TO BE ENTITLED AN ACT TO PERMIT CERTAIN CLAIMS UNDER THE TORT CLAIMS ACT WHEN THE STATE REFUSED TO DEFEND A CIVIL ACTION BROUGHT AGAINST A STATE LAW ENFORCEMENT OFFICER ON THE GROUNDS THAT THE OFFICER DID NOT ACT WITHIN THE SCOPE AND COURSE OF EMPLOYMENT, AND A COURT SUBSEQUENTLY DETERMINED THAT THE OFFICER DID ACT WITHIN THE SCOPE AND COURSE OF EMPLOYMENT.** A Proposed Substituted Committee bill (PCS) was introduced for discussion and upon motion made by Rep. Gulley the PCS was adopted by the Committee for discussion. Karen Cochrane-Brown, Staff Counselor was recognized to explain the bill analysis and any other changes found in the PCS. Upon motion by Rep. Moore the Committee voted to give a favorable report to the PCS.

The next order of business was **SB 527, A BILL TO BE ENTITLED AN ACT TO ENHANCE THE CAPACITY OF PRIVATE INSTITUTIONS OF HIGHER EDUCATION TO PROTECT THE SAFETY AND WELFARE OF THEIR STUDENTS, FACULTY AND STAFF BY ENACTING THE CAMPUS POLICE ACT** and Eddie Speas, an attorney with Poyner and Spruill Law Firm, who stood in for Senator Clodfelter was recognized to explain the bill. This bill is the Senate's Proposed Committee Substitute (PCS). Drupti Chauhan, Staff Counselor was recognized to explain the bill analysis. Rep. Moore moved to amend the bill on Page 9, line 27-28 and Rep. Michaux also moved to have the bill amended on Page 11 (date to be changed) and for the amendments to be adopted into the bill in a Proposed Committee Substitute. Rep. Folwell moves that all of the amendments be incorporated into a PCS and it be given a favorable report and the Committee voted in favor of the motion.

Senator Smith next recognized to explain **SB 972, A BILL TO BE ENTITLED AN ACT TO CREATE THE CRIMINAL OFFENSE OF BREAKING OR ENTERING A BUILDING THAT IS A PLACE OF RELIGIOUS WORSHIP.**

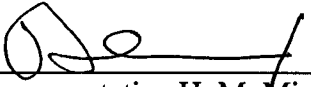


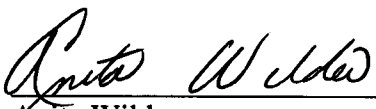
June 30, 2005

Rep. Bell was also recognized to speak on the bill's behalf. This bill originates from break-ins that occurred in Rep. Bell's district. Karen Cochrane-Brown, Staff Counselor was in attendance and recognized to explain the bill analysis. A fiscal note was introduced for this bill and Chairman Michaux moved for a Subcommittee to be assigned to study this bill. The following members were assigned to the Subcommittee: Rep. Moore, Chairman, Representatives Walend, Jones and Allen. This committee will give a report from their study of the bill during the July 7<sup>th</sup>, 2005 meeting.

There being no further business, the Chair adjourned the meeting at 10:38 A.M.

Respectfully submitted,

  
\_\_\_\_\_  
Representative H. M. Michaux, Jr.  
Presiding Chair

  
\_\_\_\_\_  
Anita Wilder  
Committee Assistant

**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative Michaux (Chair) for the Committee on JUDICIARY II.

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☒ Committee Substitute for

**SB 1118**

A BILL TO BE ENTITLED AN ACT TO PERMIT CERTAIN CLAIMS UNDER THE TORT CLAIMS ACT WHEN THE STATE REFUSED TO DEFEND A CIVIL ACTION BROUGHT AGAINST A STATE LAW ENFORCEMENT OFFICER ON THE GROUNDS THAT THE OFFICER DID NOT ACT WITHIN THE SCOPE AND COURSE OF EMPLOYMENT, AND A COURT SUBSEQUENTLY DETERMINED THAT THE OFFICER DID ACT WITHIN THE SCOPE AND COURSE OF EMPLOYMENT.

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

**(FOR JOURNAL USE ONLY)**

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\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on \_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is placed on the Calendar of \_\_\_\_\_. (The original bill resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

\_\_\_\_\_ The (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is re-referred to the Committee on \_\_\_\_\_. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative Michaux (Chair) for the Committee on JUDICIARY II.

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☒ Committee Substitute ~~for~~ #2

**SB 527** A BILL TO BE ENTITLED AN ACT TO ENHANCE THE CAPACITY OF PRIVATE INSTITUTIONS OF HIGHER EDUCATION TO PROTECT THE SAFETY AND WELFARE OF THEIR STUDENTS, FACULTY, AND STAFF BY ENACTING THE CAMPUS POLICE ACT.

☒ With a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill (2).

**(FOR JOURNAL USE ONLY)**

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\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on \_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is placed on the Calendar of \_\_\_\_\_. (The original bill resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

\_\_\_\_\_ The (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is re-referred to the Committee on \_\_\_\_\_. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2005**

**S**

**D**

**SENATE BILL 1118**  
**Judiciary I Committee Substitute Adopted 5/3/05**  
**PROPOSED HOUSE COMMITTEE SUBSTITUTE S1118-PCS15257-RO-38**

Short Title: Torts by State Law Enforcement.

(Public)

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Sponsors:

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Referred to:

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March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO PERMIT CERTAIN CLAIMS UNDER THE TORT CLAIMS ACT WHEN THE STATE REFUSED TO DEFEND A CIVIL ACTION BROUGHT AGAINST A STATE LAW ENFORCEMENT OFFICER ON THE GROUNDS THAT THE OFFICER DID NOT ACT WITHIN THE SCOPE AND COURSE OF EMPLOYMENT, AND A COURT SUBSEQUENTLY DETERMINED THAT THE OFFICER DID ACT WITHIN THE SCOPE AND COURSE OF EMPLOYMENT.

The General Assembly of North Carolina enacts:

**SECTION 1.** Notwithstanding G.S. 143-299, where a judgment was entered in a civil action in federal court prior to the effective date of this act against a member of the Highway Patrol for an injury to a person and where the court that rendered the judgment concluded that the person's injury was the result of an act of the member of the Highway Patrol committed while acting within the course and scope of the officer's employment, the person who brought the action has 180 days from the effective date of this act to file an action to recover damages under Article 31 of Chapter 143 of the General Statutes. It shall not be a defense that the member of the Highway Patrol is no longer a State employee, or that any time limit for seeking the recovery of damages or any other time limit of civil procedure has expired. The limitation on the amount that may be recovered under this section shall be the limit of liability under Article 31 of Chapter 143 of the General Statutes applicable at the time the tort occurred. No interest on the amount recoverable shall accrue until an amount of damages is awarded under Article 31 of Chapter 143 of the General Statutes as authorized by this section.

**SECTION 2.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S

D

SENATE BILL 527

Judiciary I Committee Substitute Adopted 4/4/05

Finance Committee Substitute Adopted 5/26/05

PROPOSED HOUSE COMMITTEE SUBSTITUTE S527-PCS55257-RQ-48

Short Title: Campus Police Act.

(Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE CAPACITY OF PRIVATE INSTITUTIONS OF  
HIGHER EDUCATION TO PROTECT THE SAFETY AND WELFARE OF  
THEIR STUDENTS, FACULTY, AND STAFF BY ENACTING THE CAMPUS  
POLICE ACT.

The General Assembly of North Carolina enacts:

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

**"Chapter 74G.**

**"Campus Police Act.**

**"§ 74G-1. Title.**

This Chapter is the "Campus Police Act" and may be cited by that name.

**"§ 74G-2. Policy and scope.**

(a) The purpose of this Chapter is to protect the safety and welfare of students, faculty, and staff in institutions of higher education by fostering integrity, proficiency, and competence among campus police agencies and campus police officers. To achieve this purpose, the General Assembly finds that a Campus Police Program needs to be established. As part of the Campus Police Program, the Attorney General is given the authority to certify a private, nonprofit institution of higher education, other than those described by G.S. 116-15(d), as a campus police agency and to commission an individual as a campus police officer.

(b) The purpose of this Chapter is also to assure, to the extent consistent with the State and federal constitutions, that this protection is not denied to students, faculty, and staff at private, nonprofit institutions of higher education originally established by or affiliated with religious denominations. To achieve this purpose, the General Assembly finds that:

- (1) Most of the State's private, nonprofit institutions of higher education were originally established by or affiliated with religious denominations;
- (2) These institutions have made and continue to make significant contributions in education to the State and the nation;
- (3) These institutions admit students regardless of their spiritual or religious beliefs;
- (4) These institutions' principal mission is educational;
- (5) All of these institutions are accredited by the Commission on Colleges of the Southern Association of Colleges and Schools and as such have independent governing boards of trustees;
- (6) The principal State power conferred on campus police by this Chapter is the power of arrest;
- (7) This power is important to protect the safety and welfare of students, faculty, and staff at these institutions;
- (8) In exercising the power of arrest, these officers apply standards established by State and federal law only; and
- (9) The exercise of this power is reviewable by the General Court of Justice and the federal courts.

(c) Public educational institutions operating under the authority of the Board of Governors of The University of North Carolina or the State Board of Community Colleges and private educational institutions that are licensed by the Board of Governors of The University of North Carolina pursuant to G.S. 116-15 or that are exempt from licensure by the Board of Governors pursuant to G.S. 116-15(c) may apply to the Attorney General to be certified as a campus police agency. A campus police agency may apply to the Attorney General to commission an individual designated by the agency to act as a campus police officer for the agency.

**"§ 74G-3. Liability insurance policy or certificate of self-insurance required; suspension of campus police agency certification for failure to comply.**

(a) An applicant for certification as a campus police agency must file with the Attorney General either a copy of a liability insurance policy that meets the requirements of this section or a certificate of self-insurance designating assets sufficient to satisfy the coverage requirements of this section if the applicant is a nonpublic entity. The policy or certificate of self-insurance must provide not less than one million dollars (\$1,000,000) of coverage per incident for personal injury or property damage resulting from a negligent act of the applicant or an agent or employee of the applicant operating in the course and scope of employment or under color of law. The form, execution, and terms of a liability insurance policy must meet the requirements of the Attorney General.

(b) An insurance carrier that issues a liability insurance policy required by this section may cancel the policy upon giving 30 days' written notice to both the campus police agency and the Attorney General. The written notice must be given by certified mail, return receipt requested. Cancellation of a liability insurance policy does not affect any liability on the policy that accrued prior to the effective cancellation date.

(c) A campus police agency that is a nonpublic entity must maintain the liability insurance policy or certificate of self-insurance required by this section in effect at all times. The Attorney General shall suspend the certification of a campus police agency that fails to maintain a liability insurance policy or certificate of self-insurance when required to do so by this section. A certification suspended for this reason may not be reinstated until the person whose certification was suspended files with the Attorney General an application for reinstatement and either the required liability insurance policy or certificate of self-insurance.

**"§ 74G-4. Powers of Attorney General.**

The Attorney General has the following powers in addition to those conferred elsewhere in this Chapter:

- (1) To establish minimum education, experience, and training standards and establish and require written or oral examinations for an applicant for certification as a campus police agency, a certified campus police agency, an applicant for commission as a campus police officer, or a commissioned campus police officer.
- (2) To require a campus police agency or a campus police officer to submit reports or other information.
- (3) To inspect records maintained by a campus police agency.
- (4) To conduct investigations regarding alleged violations of this Chapter or a rule adopted under this Chapter and to make evaluations as may be necessary to determine if a campus police agency or a campus police officer is complying with this Chapter or a rule adopted under this Chapter.
- (5) To deny, suspend, or revoke a certification as a campus police agency or a commission as a campus police officer for failure to meet the requirements of or comply with this Chapter or a rule adopted under this Chapter, in accordance with Article 3 of Chapter 150B of the General Statutes.
- (6) To appear in the name of the Campus Police Program and apply to the courts having jurisdiction for injunctions to prevent a violation of this Chapter or a rule adopted under this Chapter.
- (7) To delegate the authority to administer this Chapter.
- (8) To require that the Criminal Justice Standards Division provide administrative support staff for the Campus Police Program.
- (9) To adopt rules needed to implement this Chapter, in accordance with Chapter 150B of the General Statutes.

**"§ 74G-5. Records.**

(a) The Attorney General is the legal custodian of all books, papers, documents, or other records and property of the Campus Police Program.

(b) Any papers, documents, or other records that become the property of the Campus Police Program and are placed in a campus police officer's personnel file maintained by the Attorney General are subject to the same restrictions concerning

1 disclosure as set forth in Chapters 126, 153A, and 160A of the General Statutes for  
2 other personnel records.

3 (c) Notwithstanding the provisions of subsection (b) of this section, the Attorney  
4 General may disclose the contents of any records maintained under the authority of this  
5 Chapter to the Criminal Justice Education and Training Standards Commission, the  
6 Sheriff's Education and Training Standards Commission, or any other criminal justice  
7 agency for certification or employment purposes.

8 **"§ 74G-6. Oaths, powers, and authority of campus police officers.**

9 (a) Requirements. – An individual who is commissioned as a campus police  
10 officer must take the oath of office required of a law enforcement officer before the  
11 individual assumes the duties of a campus police officer. The person in each campus  
12 police agency who is responsible for the agency's campus police officers must be  
13 commissioned as a campus police officer.

14 (b) Powers and Authority of Officers. – Campus police officers, while in the  
15 performance of their duties of employment, have the same powers as municipal and  
16 county police officers to make arrests for both felonies and misdemeanors and to charge  
17 for infractions on any of the following:

- 18 (1) Real property owned by or in the possession and control of the  
19 institution employing the officer.
- 20 (2) Any portion of any public road or highway passing through the real  
21 property described in subdivision (1) of this subsection or immediately  
22 adjoining it, wherever located.
- 23 (3) Any other real property while in continuous and immediate pursuit of a  
24 person for an offense committed upon property described in  
25 subdivision (1) or (2) of this subsection.

26 In exercising the powers conferred by this subsection, campus police officers shall  
27 apply the standards established by the law of this State and the United States.

28 (c) Powers and Authority of Institutions. – The governing body of any private  
29 educational institution that has a campus police agency may:

- 30 (1) Enter into joint agreements with the governing board of any  
31 municipality to extend the law enforcement authority of campus police  
32 officers into any or all of the municipality's jurisdiction and to  
33 determine the circumstances in which this extension of authority may  
34 be granted;
- 35 (2) Enter into joint agreements with the governing board of any county  
36 and, with the consent of the sheriff, to extend the law enforcement  
37 authority of campus police officers into any or all of the county's  
38 jurisdiction and to determine the circumstances in which this extension  
39 of authority may be granted; and
- 40 (3) Enter into joint agreements with the governing board of any other  
41 public or private educational institution that has a campus police  
42 agency pursuant to this Chapter or pursuant to G.S. 116-40.5 to extend  
43 the law enforcement authority of its campus police officers into any or



all of the other institution's jurisdiction and to determine the circumstances as to which its extension of authority may be granted.

(d) Concealed Weapons. – Campus police officers shall have, if duly authorized by their campus police agency and by the sheriff of the county in which the campus police agency is located, the authority to carry concealed weapons pursuant to and in conformity with G.S. 14-269(b)(5).

(e) Public Institutions Option. – Notwithstanding any of the provisions of this Chapter, the board of trustees of any constituent institution of The University of North Carolina may elect to have its officers certified under Chapter 17C and Chapter 116 of the General Statutes, and the board of trustees of any community college may elect to have its officers certified under Chapter 17C and Chapter 115D of the General Statutes rather than requesting certification as a campus police agency and campus police commission pursuant to the provisions of this Chapter.

(f) Exclusive Authority. – Notwithstanding any other provision of law, the authority granted to campus police officers certified under this Chapter shall be limited to the provisions of this Chapter.

**"§ 74G-7. Badges, uniforms, weapons, and vehicles.**

Campus police agencies shall be responsible for ensuring that all employees, whether or not commissioned, comply with the provisions of this Chapter and the rules adopted under this Chapter, including those provisions pertaining to the wearing of badges and uniforms, the carrying of weapons, and the operation of vehicles.

**"§ 74G-8. Minimum standards for campus police officers.**

Applicants for commission as a campus police officer and a commissioned campus police officer must meet and maintain the same minimum preemployment and in-service standards as are required for State law enforcement officers by the North Carolina Criminal Justice Education and Training Standards Commission and must meet and maintain any other preemployment and in-service requirements set by the Attorney General.

**"§ 74G-9. Compensation of campus police officers.**

The compensation of a campus police officer shall be paid by the campus police agency for which the officer is commissioned, as may be agreed on between them.

**"§ 74G-10. Expiration, renewal, and termination of agency certification or officer commission.**

(a) Agency. – Unless sooner suspended or revoked by the Attorney General, a campus police agency's certification expires on June 30 of the calendar year following the date it is issued. A campus police agency may renew the certification upon payment of the appropriate fee and compliance with this Chapter and the rules adopted under this Chapter. An entity whose campus police agency's certification was denied or revoked for a violation of this Chapter or a rule adopted under this Chapter is not eligible to apply again for that certification for three years.

(b) Officer. – Unless sooner suspended or revoked by the Attorney General, a campus police officer's commission expires on June 30 of the calendar year following the date it is issued. A campus police officer may renew a commission upon payment of the appropriate fee and compliance with this Chapter and the rules adopted under this

Chapter. The Attorney General shall immediately revoke the commission of a campus police officer when any of the following occurs:

- (1) Termination of employment with the campus police agency for which the officer is commissioned.
- (2) Termination, suspension, or revocation of the certification of the campus police agency for which the officer is commissioned.
- (3) Failure to meet in-service training requirements as required by this Chapter or the rules adopted under this Chapter.
- (4) Violation of this Chapter or a rule adopted under this Chapter.

An individual whose campus police officer's commission was denied or revoked for a violation of this Chapter or a rule adopted under this Chapter is not eligible to apply again for a commission for three years.

**"§ 74G-11. Immunity.**

Neither the Attorney General nor any of the Attorney General's employees may be held criminally or civilly liable for any acts or omissions in carrying out the provisions of this Chapter or for the acts or omissions of agencies or officers certified or commissioned under this Chapter.

**"§ 74G-12. Fees.**

The Attorney General may charge fees for the items listed in the following table, not to exceed the amounts listed in the table:

<u>Item</u>	<u>Maximum Fee</u>
<u>Application for certification as</u>	<u>\$ 250.00</u>
<u>a campus police agency</u>	
<u>Annual renewal of certification</u>	<u>\$ 200.00</u>
<u>as a campus police agency</u>	
<u>Application for reinstatement of</u>	<u>\$ 1,000</u>
<u>certification as a campus</u>	
<u>police agency</u>	
<u>Application for commission as a</u>	<u>\$ 100.00</u>
<u>campus police officer</u>	
<u>Annual renewal of commission as</u>	<u>\$ 50.00</u>
<u>a campus police officer</u>	
<u>Application for reinstatement of</u>	<u>\$ 150.00</u>
<u>commission as a campus police</u>	
<u>officer</u>	

The fees imposed under this section are not refundable. Fees collected under this section shall be applied to the cost of administering this Chapter.

**"§ 74G-13. Penalties and enforcement.**

(a) No private person, firm, association, or corporation, and no public institution, agency, or other entity shall engage in, perform any services as, or in any way hold itself out as a campus police agency or engage in the recruitment or hiring of campus police officers without having first complied with the provisions of this Chapter. Any person, firm, association, or corporation or their agents and employees violating any of the provisions of this Chapter shall be guilty of a Class 1 misdemeanor.

(b) The Campus Police Program may apply in its own name to the superior court for an injunction to prevent any violation or threatened violation of this Chapter or a rule adopted under this Chapter, and the superior courts have jurisdiction to grant the requested relief, irrespective of whether or not criminal prosecution has been instituted or administrative sanctions imposed because of the violation. The venue for an action brought under this subsection shall be in any county selected by the Attorney General.

(c) This section does not relieve a campus police agency from any civil liability for the acts of its campus police officers in exercising or attempting to exercise the powers conferred by this Chapter."

SECTION 2. G.S. 74E-2(b) reads as rewritten:

"(b) ~~A public or private educational institution or hospital, a State institution, or a corporation engaged in providing on-site police security personnel services for persons or property may apply to the Attorney General to be certified as a company police agency. A company police agency may apply to the Attorney General to commission an individual designated by the agency to act as a company police officer for the agency."~~

SECTION 3. G.S. 74E-6 reads as rewritten:

"§ 74E-6. Oaths, powers, and authority of company police officers.

(a) Requirements. – An individual who is commissioned as a company police officer must take the oath of office required of a law enforcement officer before the individual assumes the duties of a company police officer. The person in each company police agency who is responsible for the agency's company police officers must be commissioned as a company police officer.

(b) Categories. – The following three distinct classifications of company police officers are established:

(1) Campus Police Officers – ~~Only Those~~ those company police officers who are employed by any college or university that is a constituent institution of The University of North Carolina or any private college or university that is licensed or exempted from licensure as prescribed by ~~G.S. 116-15~~ G.S. 116-15, and who are employed by a campus police agency that was licensed pursuant to this Chapter prior to the enactment of Chapter 74G of the General Statutes.

(2) Railroad Police Officers – Those company police officers who are employed by a certified rail carrier and commissioned as company police officers under this Chapter.

(3) Special Police Officers – All company police officers not designated as a campus police officer or railroad police officer.

(c) All Company Police. – Company police officers, while in the performance of their duties of employment, have the same powers as municipal and county police officers to make arrests for both felonies and misdemeanors and to charge for infractions on any of the following:

(1) Real property owned by or in the possession and control of their employer.

(2) Real property owned by or in the possession and control of a person who has contracted with the employer to provide on-site company police security personnel services for the property.

(3) Any other real property while in continuous and immediate pursuit of a person for an offense committed upon property described in subdivisions (1) or (2) of this subsection.

Company police officers shall have, if duly authorized by the superior officer in charge, the authority to carry concealed weapons pursuant to and in conformity with G.S. 14-269(b)(5).

(d) Campus Police. – Campus police officers have the powers contained in subsection (c) of this section and also have the powers in that subsection upon that portion of any public road or highway passing through or immediately adjoining the property described in that subsection, wherever located. The board of trustees of any college or university that qualifies as a campus police agency pursuant to this Chapter may enter into a mutual aid agreement with the governing board of a municipality or, with the consent of the county sheriff, a county to the same extent as a municipal police department pursuant to Chapter 160A.

(e) Railroad Police. – Railroad police officers have the powers contained in subsection (c) and also have the powers and authority granted by federal law or by a regulation promulgated by the United States Secretary of Transportation. Notwithstanding any of the provisions of this Chapter, the limitations on the power to make arrests contained in subsection (c) above, shall not be applicable to railroad police officers commissioned by the Attorney General pursuant to the authority of this Chapter.

~~(f) Campus Option. – Notwithstanding any of the provisions of this Chapter, the Board of Trustees of any constituent institution of The University of North Carolina may elect to have its officers certified under Chapter 17C and Chapter 116 of the General Statutes and the board of trustees of any community college may elect to have its officers certified under Chapter 17C and Chapter 115D of the General Statutes rather than requesting certification as a company police agency and company police commission pursuant to the provisions of this Chapter.~~

(g) Exclusive Authority. – Notwithstanding any other provision of law, the authority granted to company police officers shall be limited to the provisions of this Chapter."

**SECTION 4. G.S. 14-415.10(4) reads as rewritten:**

"(4) Qualified former sworn law enforcement officer. – An individual who retired from service as a law enforcement officer with a local, State, campus police, or company police agency in North Carolina, other than for reasons of mental disability, who has been retired as a sworn law enforcement officer two years or less from the date of the permit application, and who satisfies all of the following:

a. Immediately before retirement, the individual was a qualified law enforcement officer with a local, State, or company police agency in North Carolina.

- b. The individual has a nonforfeitable right to benefits under the retirement plan of the local, State, or company police agency as a law enforcement officer or has 20 or more aggregate years of law enforcement service and has retired from a company police agency that does not have a retirement plan.
- c. The individual is not prohibited by State or federal law from receiving a firearm."

**SECTION 5.** G.S. 14-415.10(5) reads as rewritten:

"(5) Qualified sworn law enforcement officer. – A law enforcement officer employed by a local, State, campus police, or company police agency in North Carolina who satisfies all of the following:

- a. The individual is authorized by the agency to carry a handgun in the course of duty.
- b. The individual is not the subject of a disciplinary action by the agency that prevents the carrying of a handgun.
- c. The individual meets the requirements established by the agency regarding handguns."

**SECTION 6.1.** G.S. 14-34.2 reads as rewritten:

**"§ 14-34.2. Assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers.**

Unless a person's conduct is covered under some other provision of law providing greater punishment, any person who commits an assault with a firearm or any other deadly weapon upon an officer or employee of the State or of any political subdivision of the State, a company police officer certified pursuant to the provisions of Chapter 74E of the General Statutes, or a campus police officer certified pursuant to the provisions of Chapter 74G, Chapter 17C or Chapter 116 of the General Statutes, in the performance of his duties shall be guilty of a Class F felony."

**SECTION 6.2.** G.S. 14-33(c) reads as rewritten:

"(c) Unless the conduct is covered under some other provision of law providing greater punishment, any person who commits any assault, assault and battery, or affray is guilty of a Class A1 misdemeanor if, in the course of the assault, assault and battery, or affray, he or she:

- (1) Inflicts serious injury upon another person or uses a deadly weapon;
- (2) Assaults a female, he being a male person at least 18 years of age;
- (3) Assaults a child under the age of 12 years;
- (4) Assaults an officer or employee of the State or any political subdivision of the State, when the officer or employee is discharging or attempting to discharge his official duties;
- (5) Repealed by Session Laws 1999-105, s. 1, effective December 1, 1999; or
- (6) Assaults a school employee or school volunteer when the employee or volunteer is discharging or attempting to discharge his or her duties as an employee or volunteer, or assaults a school employee or school volunteer as a result of the discharge or attempt to discharge that

individual's duties as a school employee or school volunteer. For purposes of this subdivision, the following definitions shall apply:

a. "Duties" means:

1. All activities on school property;
2. All activities, wherever occurring, during a school authorized event or the accompanying of students to or from that event; and
3. All activities relating to the operation of school transportation.

b. "Employee" or "volunteer" means:

1. An employee of a local board of education; or a charter school authorized under G.S. 115C-238.29D, or a nonpublic school which has filed intent to operate under Part 1 or Part 2 of Article 39 of Chapter 115C of the General Statutes;
2. An independent contractor or an employee of an independent contractor of a local board of education, charter school authorized under G.S. 115C-238.29D, or a nonpublic school which has filed intent to operate under Part 1 or Part 2 of Article 39 of Chapter 115C of the General Statutes, if the independent contractor carries out duties customarily performed by employees of the school; and
3. An adult who volunteers his or her services or presence at any school activity and is under the supervision of an individual listed in sub-sub-subdivision 1. or 2. of this sub-subdivision.

(7) Assaults a public transit operator, including a public employee or a private contractor employed as a public transit operator, when the operator is discharging or attempting to discharge his or her duties.

(8) Assaults a company police officer certified pursuant to the provisions of Chapter 74E of the General Statutes or a campus police officer certified pursuant to the provisions of Chapter 74G, Chapter 17C, or Chapter 116 of the General Statutes in the performance of that person's duties.

**SECTION 7.** G.S. 15A-402(f) reads as rewritten:

"(f) Campus Police Officers, Immediate and Continuous Flight. – A campus police officer: (i) appointed by a campus law-enforcement agency established pursuant to G.S. 116-40.5(a); (ii) appointed by a campus law enforcement agency established under G.S. 115D-21.1(a); or (iii) commissioned by the Attorney General pursuant to Chapter 74E or Chapter 74G of the General Statutes and employed by a college or university which is licensed, or exempted from licensure, by G.S. 116-15 may arrest a person outside his territorial jurisdiction when the person arrested has committed a criminal offense within the territorial jurisdiction, for which the officer could have

1 arrested the person within that territory, and the arrest is made during such person's  
2 immediate and continuous flight from that territory."

3 **SECTION 8.** G.S. 160A-288(d) reads as rewritten:

4 "(d) For purposes of this section, the following shall be considered the equivalent  
5 of a municipal police department:

- 6 (1) Campus law-enforcement agencies established pursuant to  
7 G.S. 115D-21.1(a) or G.S. 116-40.5(a); and
- 8 (2) Colleges or universities which are licensed, or exempted from  
9 licensure, by G.S. 116-15 and which employ company police officers  
10 commissioned by the Attorney General pursuant to Chapter ~~74E~~; 74E  
11 or Chapter 74G of the General Statutes; and
- 12 (3) Law enforcement agencies operated or eligible to be operated by a  
13 municipality pursuant to G.S. 63-53(2)."

14 **SECTION 9.** G.S. 160A-288.2(d) reads as rewritten:

15 "(d) For the purposes of this section, the following shall be considered the  
16 equivalent of a municipal police department:

- 17 (1) Campus law-enforcement agencies established pursuant to  
18 G.S. 116-40.5(a); and
- 19 (2) Colleges or universities which are licensed, or exempted from  
20 licensure, by G.S. 116-15 and which employ company police officers  
21 commissioned by the Attorney General pursuant to Chapter ~~74E~~; 74E  
22 or Chapter 74G of the General Statutes."

23 **SECTION 10.** G.S. 14-401.6(a) reads as rewritten:

24 **"§ 14-401.6. Unlawful to possess, etc., tear gas except for certain purposes.**

25 (a) It is unlawful for any person, firm, corporation or association to possess, use,  
26 store, sell, or transport within the State of North Carolina, any form of that type of gas  
27 generally known as "tear gas," or any container or device for holding or releasing that  
28 gas; except this section does not apply to the possession, use, storage, sale or  
29 transportation of that gas or any container or device for holding or releasing that gas:

30 ...

- 31 (4) By or for security guards registered under Chapter 74C of the General  
32 ~~Statutes or Statutes~~, company police officers commissioned under  
33 Chapter 74E of the General Statutes, or campus police officers  
34 commissioned under Chapter 74G of the General Statutes provided  
35 they are on duty and have received training according to standards  
36 prescribed by the State Bureau of Investigation;

37 ...."

38 **SECTION 11.** G.S. 20-37.6(f) reads as rewritten:

39 "(f) Penalties for Violation. –

40 ...."

- 41 (3) A law-enforcement officer, including a company police officer  
42 commissioned by the Attorney General under Chapter ~~74E~~; 74E of the  
43 General Statutes, or a campus police officer commissioned by the  
44 Attorney General under Chapter 74G of the General Statutes, may

1 cause a vehicle parked in violation of this section to be towed. The  
2 officer is a legal possessor as provided in G.S. 20-161(d)(2). The  
3 officer shall not be held to answer in any civil or criminal action to any  
4 owner, lienholder or other person legally entitled to the possession of  
5 any motor vehicle removed from a space pursuant to this section,  
6 except where the motor vehicle is willfully, maliciously, or negligently  
7 damaged in the removal from the space to a place of storage.

8 ...."

9 **SECTION 12.** When this act becomes law, all certificates issued to police  
10 agencies at private institutions of higher education and commissions issued to their  
11 police officers pursuant to Chapter 74E of the General Statutes shall automatically  
12 convert to certification and commissions issued pursuant to this act and shall be  
13 administered in conformity with this act. Notwithstanding any of the provisions of  
14 Chapter 74G of the General Statutes, as enacted by this act, or the provisions of Chapter  
15 74E of the General Statutes, the board of trustees of any educational institution that, on  
16 the effective date of this act, has a company police agency licensed pursuant to Chapter  
17 74E of the General Statutes, may elect to continue to have its officers certified under  
18 Chapter 74E of the General Statutes rather than pursuant to Chapter 74G of the General  
19 Statutes, as enacted by this act, by making a written request to the Attorney General no  
20 later than October 1, 2005.

21 **SECTION 13.** This act is effective when it becomes law.



# **AGENDA**

## **HOUSE COMMITTEE ON JUDICIARY II**

**June 30, 2005  
Room 421  
10:00 AM**

### **OPENING REMARKS**

Representative Mickey Michaux, Chair

### **AGENDA ITEMS**

**S 527 –Campus Police Act- Senator Clodfelter**

**S 972 – Break Into Place of Worship-Senators Smith, Albertson**

**S 1118 – Torts by State Law Enforcement/Employees-Senator Rand**

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2005-2006 SESSION**

You are hereby notified that the Committee on **JUDICIARY II** will meet as follows:

**DAY & DATE:**     **Thursday, June 30, 2005**

**TIME:**             **10:00 A.M.**

**LOCATION:**         **Room 421**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

**S 527-Campus Police Act-Senator Clodfelter**

**S 972-Break Into Place of Worship-Senator Smith**

**S 1118-Torts by State Law Enforcement/Employees-Senator Rand**

Respectfully,  
Representative H. M. Michaux, Jr.  
Chair

I hereby certify this notice was filed by the committee assistant at the following offices at  
**5:00 p.m. on June 27, 2005.**

☒ **Principal Clerk**  
☒ **Reading Clerk - House Chamber**

Anita Wilder (Committee Assistant)

# VISITOR REGISTRATION SHEET

JUDICIARY II

JUNE 30, 2005

Name of Committee

Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME

FIRM OR AGENCY AND ADDRESS

Jack Zh	NCACR
Colleen Kochanek	NCACP
Tom Yonca	NCACP / NCACLEA
E Spinn	Prigmore & Spinn
Hope Williams	NCACR
William Malone	NCACR
Russ Dubisky	CCPS
Ann Little	DUAS
Hal Miller	NCACCT
De Hall	STAFF
Hubert Wilson	NCCTA

House Pages

Name Of Committee:

I II

Date:

6-30-05

1. Name: Max Rose

County: Durham

Sponsor: Luebke

2. Name: Olav Steen

County: Rowan

Sponsor: Rep. Fred Steen

3. Name: Kenny Jones

County: Craven

Sponsor: Rep. Alice Underhill

4. Name: Kathryn Thompson

County: Mecklenburg

Sponsor: Jim Black

5. Name: Mary Squire

County: New Hanover County

Sponsor: McComas

(6.) Nicole Carpenter  
Mecklenburg  
Jim Black

Sgt-At-Arms

1. Name: JAMES WORTH

2. Name: MARTHA GADDISON

3. Name: FRANK TREVU

4. Name: \_\_\_\_\_

5. Name: \_\_\_\_\_

**MINUTES  
HOUSE COMMITTEE ON  
JUDICIARY II**

July 7, 2005

The House Committee on Judiciary II met on Thursday, July 7, 2005, in Room 421 of the Legislative Office Building at 10:00 A.M. The following members were present: Chairman Mickey Michaux, Vice-Chair Timothy Moore, Representatives, Farmer-Butterfield, Fisher, Folwell, Gulley, Jones and Wiley. Drupti Chauhan, Karen Cochrane-Brown and Jeff Hudson, Staff Counselors were in attendance. A Visitor's Registration List is included and made part of these minutes.

The Chairman called the meeting to order and recognized the Pages, Sergeant-At-Arms, Staff and visitors. The following bills were considered:

The Chair recognized Senator Jacumin to explain **SB 421, A BILL TO BE ENTITLED AN ACT TO EXEMPT RADIO EMERGENCY ASSOCIATED COMMUNICATIONS TEAMS FROM THE LAW GOVERNING THE SOLICITATION OF CONTRIBUTIONS**. Jeff Hudson, Staff Counselor was recognized to explain the bill analysis. Upon motion made by Rep. Folwell for a favorable report the Committee gave the bill a favorable report.

The next order of business was **SB 972, A BILL TO BE ENTITLED AN ACT TO CREATE THE CRIMINAL OFFENSE OF BREAKING OR ENTERING A BUILDING THAT IS A PLACE OF RELIGIOUS WORSHIP**. Rep. Tracy Walker was recognized to explain the bill as Senator Smith was in another Committee meeting. The bill had been before the Committee and Rep. Michaux moved it to a Subcommittee chaired by Rep. Timothy Moore who presented the full Committee with a favorable report (See Subcommittee Minutes-Attachment 2). Upon motion made by Rep. Moore, the Committee gave the bill a favorable report.

The Chair recognized Senator Thomas to explain **SB 109, A BILL TO BE ENTITLED AN ACT TO GRANT TO DEPLOYED MILITARY PERSONNEL AN EXTENSION OF TIME WITHIN WHICH TO RENEW A CONCEALED HANDGUN PERMIT**. Jeff Hudson, Staff Counselor was recognized to give an analysis of the bill. Upon motion made by Rep. Gulley, the Committee gave the bill a favorable report.

There being no further business, the Chair adjourned the meeting at 10:25 a.m.

Page 2

Minutes-Judiciary II  
July 7, 2005

Respectfully submitted,



---

Representative H. M. Michaux, Jr.  
Presiding Chair



---

Anita Wilder  
Committee Assistant

**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative Michaux (Chair) for the Committee on JUDICIARY II.

---

☐ Committee Substitute for

**SB 421**      A BILL TO BE ENTITLED AN ACT TO EXEMPT RADIO EMERGENCY  
ASSOCIATED COMMUNICATIONS TEAMS FROM THE LAW GOVERNING THE  
SOLICITATION OF CONTRIBUTIONS.

☒ With a favorable report.

**(FOR JOURNAL USE ONLY)**

---

\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on  
\_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of \_\_\_\_\_.

**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative Michaux (Chair) for the Committee on JUDICIARY II.

---

☐ Committee Substitute for

**SB 972**      A BILL TO BE ENTITLED AN ACT TO CREATE THE CRIMINAL  
OFFENSE OF BREAKING OR ENTERING A BUILDING THAT IS A PLACE OF  
RELIGIOUS WORSHIP.

☒ With a favorable report.

**(FOR JOURNAL USE ONLY)**

---

\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on  
\_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of \_\_\_\_\_.



**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative Michaux (Chair) for the Committee on JUDICIARY II.

---

☒ Committee Substitute for

**SB 109**      A BILL TO BE ENTITLED AN ACT TO GRANT TO DEPLOYED  
MILITARY PERSONNEL AN EXTENSION OF TIME WITHIN WHICH TO RENEW A  
CONCEALED HANDGUN PERMIT.

☒ With a favorable report.

**(FOR JOURNAL USE ONLY)**

---

\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on  
\_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of \_\_\_\_\_.

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

S

D

**SENATE DRS35072-LT-18 (2/9)**

Short Title: Exempt REACT/Charitable Solicitations. (Public)

Sponsors: Senator Jacumin.

Referred to:

**A BILL TO BE ENTITLED**  
**AN ACT TO EXEMPT RADIO EMERGENCY ASSOCIATED COMMUNICATIONS**  
**TEAMS FROM THE LAW GOVERNING THE SOLICITATION OF CONTRIBUTIONS.**  
The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 131F-3(10) reads as rewritten:

"(10) A volunteer fire department, REACT (Radio Emergency Associated Communications Teams), rescue squad, or emergency medical service."

**SECTION 2.** This act becomes effective October 1, 2005.

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

S

1

**SENATE BILL 972**

Short Title: Break Into Place of Worship. (Public)

Sponsors: Senators Smith, Albertson; Apodaca, Blake, Brock, Brown, Forrester,  
Holloman, Hunt, Jacumin, Presnell, Stevens, and Tillman.

Referred to: Judiciary I.

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF BREAKING OR ENTERING A  
BUILDING THAT IS A PLACE OF WORSHIP.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 14 of Chapter 14 of the General Statutes is amended by adding a new section to read:

**"§ 14-56.4. Breaking or entering a building that is a place of worship.**

(a) Any person who wrongfully breaks or enters any building that is a place of worship is guilty of a Class G felony except as provided by subsection (b) of this section.

(b) A person is guilty of a Class F felony, if:

- (1) The person breaks or enters two or more buildings that are places of worship;  
or
- (2) The person is convicted of a second or subsequent violation of subsection (a) of this section.

(c) As used in this section, a "building that is a place of worship" shall be construed to include any church, chapel, meetinghouse, synagogue, temple, or mosque."

**SECTION 2.** This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

S

2

SENATE BILL 109  
Judiciary II Committee Substitute Adopted 3/9/05

Short Title: Handgun Permit Renewal/Deployed Military. (Public)

Sponsors:

Referred to:

February 10, 2005

A BILL TO BE ENTITLED

AN ACT TO GRANT TO DEPLOYED MILITARY PERSONNEL AN EXTENSION OF  
TIME WITHIN WHICH TO RENEW A CONCEALED HANDGUN PERMIT.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 14-415.10 reads as rewritten:

**"§ 14-415.10. Definitions.**

The following definitions apply to this Article:

- (1) Carry a concealed handgun. – The term includes possession of a concealed handgun.
- (1a) Deployed or deployment. – Any military duty that removes a military permittee from the permittee's county of residence during which time the permittee's permit expires or will expire.
- (2) Handgun. – A firearm that has a short stock and is designed to be held and fired by the use of a single hand.
- (2a) Military permittee. – A person who holds a permit who is also a member of the armed forces of the United States, the armed forces reserves of the United States, the North Carolina Army National Guard, or the North Carolina Air National Guard.
- (3) Permit. – A concealed handgun permit issued in accordance with the provisions of this Article.
- (3a) Proof of deployment. – A copy of the military permittee's deployment orders or other written notification from the permittee's command indicating the start and end date of deployment and that orders the permittee to travel outside the permittee's county of residence.
- (4) Qualified former sworn law enforcement officer. – An individual who retired from service as a law enforcement officer with a local, State, or company police agency in North Carolina, other than for reasons of mental disability, who has been retired as a sworn law enforcement officer two years or less from the date of the permit application, and who satisfies all of the following:
  - a. Immediately before retirement, the individual was a qualified law

enforcement officer with a local, State, or company police agency in North Carolina.

- b. The individual has a nonforfeitable right to benefits under the retirement plan of the local, State, or company police agency as a law enforcement officer or has 20 or more aggregate years of law enforcement service and has retired from a company police agency that does not have a retirement plan.
  - c. The individual is not prohibited by State or federal law from receiving a firearm.
- (5) Qualified sworn law enforcement officer. – A law enforcement officer employed by a local, State, or company police agency in North Carolina who satisfies all of the following:
- a. The individual is authorized by the agency to carry a handgun in the course of duty.
  - b. The individual is not the subject of a disciplinary action by the agency that prevents the carrying of a handgun.
  - c. The individual meets the requirements established by the agency regarding handguns."

**SECTION 2.** Article 54B of Chapter 14 of the General Statutes is amended by adding a new section to read:

**"§ 14-415.16A. Permit extensions and renewals for deployed military permittees.**

(a) A deployed military permittee whose permit will expire during the permittee's deployment, or the permittee's agent, may apply to the sheriff for an extension of the military permittee's permit by providing the sheriff with a copy of the permittee's proof of deployment. Upon receipt of the proof, the sheriff shall extend the permit for a period to end 90 days after the permittee's deployment is scheduled to end. A permit that has been extended under this section shall be valid throughout the State during the period of its extension.

(b) A military permittee's permit that is not extended under subsection (a) of this section and that expires during deployment shall remain valid during the deployment and for 90 days after the end of the deployment as if the permit had not expired. The military permittee may carry a concealed handgun during this period provided the permittee meets all the requirements of G.S. 14-415.11(a).

(c) A military permittee under subsection (a) or subsection (b) of this section shall have 90 days after the end of the permittee's deployment to renew the permit. In addition to the requirements of G.S. 14-415.16, the permittee shall provide to the sheriff proof of deployment. The sheriff shall renew the permit upon receipt of this documentation provided the permittee otherwise remains qualified to hold a concealed handgun permit."

**SECTION 3.** G.S 14-415.11(a) reads as rewritten:

"(a) Any person who has a concealed handgun permit may carry a concealed handgun unless otherwise specifically prohibited by law. The person shall carry the permit together with valid identification whenever the person is carrying a concealed handgun, shall disclose to any law enforcement officer that the person holds a valid permit and is carrying a concealed handgun when approached or addressed by the officer, and shall display both the permit and the proper identification upon the request of a law enforcement officer. In addition to these requirements, a military permittee whose permit has expired during deployment may carry a concealed handgun during the 90 days following the end of deployment and before the permit is renewed provided the permittee also displays proof of deployment to any law enforcement

officer."

**SECTION 4.** G.S. 14-269(a1) reads as rewritten:

"(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 or considered valid under G.S. 14-415.24.
- (3) The deadly weapon is a handgun and the person is a military permittee as defined under G.S. 14-415.10(2a) who provides to the law enforcement officer proof of deployment as required under G.S. 14-415.11(a)."

**SECTION 5.** G.S. 14-269 is amended by adding a new subsection to read:

"(b2) It is a defense to a prosecution under this section that:

- (1) The deadly weapon is a handgun;
- (2) The defendant is a military permittee as defined under G.S. 14-415.10(2a); and
- (3) The defendant provides to the court proof of deployment as defined under G.S. 14-415.10(3a)."

**SECTION 6.** This act is effective when it becomes law.

# **AGENDA**

## **HOUSE COMMITTEE ON JUDICIARY II**

**July 07, 2005  
Room 421  
10:00 AM**

### **OPENING REMARKS**

Representative Mickey Michaux, Chair

### **AGENDA ITEMS**

**S 832 – Tow Trucks and Recovery Vehicles-Senator Hagan  
S 421 – Exempt REACT/Charitable Solicitations-Senator Jacumin  
S 109 – Handgun Permit Renewal/Deployed Military-Senator Thomas  
S 972 – Break Into Place of Worship-Senator Smith**

# VISITOR REGISTRATION SHEET

JUDICIARY II

JULY 07, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Jamie Fitzgerald	N.C. Family Policy Council
John Kuster	NCFPC
Susan Valauri	Nationwide
Gray Walker	N.C. House
J H Langdon Jr.	NC House
Ted Brown	Sampson Co. Sheriff's Office
BRIAN LEWIS	Covenant w/ NC's Children
Michael Wagner	Fayetteville Observer
Mike Cady	Cady + Associates
Jan - Pinsky	AAA Carolinas
Mary Brunson	Capital Group



## VISITOR REGISTRATION SHEET

JUDICIARY II

Name of Committee

JULY 07, 2005

Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME

FIRM OR AGENCY AND ADDRESS

Joe Mich

NRA

Russ Dubisky

CCPS

House Pages

Rm 421

Name Of Committee: J II Date: 7-7-05

1. Name: Meghan Spears County: Wake Sponsor: Black  
Cameron Parrish  
Wilkes  
Harrell
2. Name: Ashley Yohman County: Wake Sponsor: Culpepper
3. Name: Sara Herring County: Duplin Sponsor: Tucker
4. Name: Lauren Bambrick County: Wake Sponsor: Culpepper
5. Name: Michael Madrey County: Forsyth Sponsor: Rep. Womble

- Sgt-At-Arms
1. Name: JAMES WORTH
  2. Name: FRANK PREVO
  3. Name: \_\_\_\_\_
  4. Name: \_\_\_\_\_
  5. Name: \_\_\_\_\_

**MINUTES  
SUBCOMMITTEE ON SENATE BILL 972  
(BREAK INTO PLACE OF WORSHIP)  
JUDICIARY II**

July 6, 2005

The Judiciary II Subcommittee on Senate Bill 972 met on Wednesday, July 6, 2005 in Room 425 of the Legislative Office Building at 11:00 a.m. The following members were present: Chairman Tim Moore, Representatives Allen, Folwell, and Jones. Karen-Cochrane-Brown, Staff, was in attendance. Senator Fred Smith, the bill sponsor, also attended.

Chairman Moore called the meeting to order. Chairman Moore introduced the pages: Cole Phillips from Wake County, Keith Nance from Wake County, Hugh Absher from Wake County, Ryan Whitmore from Wake County, and Meghan Spears from Wake County. Mr. Jay Callaway, Sergeant-At-Arms was present.


Chairman Moore recognized Karen Cochrane-Brown to speak on the bill. She read a North Carolina Supreme Court Case law. It appears the statutes satisfy the constitutional requirements. Discussion followed and Ms. Cochrane-Brown read some of the bill analysis. Rep. Jones mentioned private schools that are church related. Representative Jones asked, is it to be looked at as religious property or only talking about the chapel itself. Senator Smith stated the building has to be clearly identified as a place of religious worship. Rep. Jones said there was a need to clarify if the bill includes all the campus of a church.


Further discussion followed. Senator Smith said the intent of the bill is to stop people from breaking into churches. The building must be clearly labeled. Senator Smith said there were four points: the person has to have the intent to commit felony or larceny, the building is used regularly, it is clearly identified, and the building is used as a place of worship. The majority of the committee did not find there were any constitutional issues raised in this legislation.

Representative Folwell made a motion for a favorable report on the bill to Judiciary II.

Chairman Moore asked for the ayes and no's. He then asked for a hand-raised vote. There were three "yes" votes by Representatives Allen, Folwell, and Moore, and one "no" by Representative Jones.

The meeting adjourned at 11:20 a.m.

  
Representative Tim Moore  
Presiding Chair

  
Nancy Garriss  
Committee Assistant

**MINUTES  
HOUSE COMMITTEE ON  
JUDICIARY II**

July 19, 2005

The House Committee on Judiciary II met on Tuesday, July 19, 2005, in Room 421 of the Legislative Office Building at 10:00 A.M. The following members were present: Chairman Mickey Michaux, Vice-Chairs Alice Bordsen and Timothy Moore, Representatives Farmer-Butterfield, Fisher, Folwell, Gulley, Jones, Walend and Wiley. Drupti Chauhan, Karen Cochrane-Brown and Jeff Hudson were in attendance. A Visitor's Registration list is included and made part of these minutes.

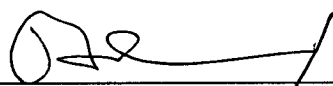
The Chairman called the meeting to order and recognized the Pages, Sergeant At Arms, Staff and visitors. The following bills were considered:


The Chair recognized Senator Kay Hagan to explain **SB 832, A BILL TO BE ENTITLED AN ACT TO ALLOW WRECKERS TO TAKE DISABLED VEHICLES UP TO FIFTY MILES FOR REPAIR, PARKING, OR STORAGE.** Drupti Chauhan, Staff Counselor was recognized to explain the bill analysis. Upon motion made by Rep. Folwell, the Committee gave a favorable report to the bill.

Senator Allran was recognized to explain **SB 486, A BILL TO BE ENTITLED AN ACT TO INCREASE THE PENALTY FOR DISCHARGING CERTAIN WEAPONS INTO OCCUPIED PROPERTY IN CERTAIN CIRCUMSTANCES.** Upon motion made by Rep. Folwell, the Committee adopted the Proposed Committee Substitute (PCS) for discussion. Jeff Hudson, Staff Counselor was recognized to explain changes the PCS would make to the bill. Upon motion made by Rep. Folwell, the Committee gave the PCS a favorable report and re-referred to the House Appropriations.

There being no further business, the Chair adjourned the meeting at 10:30 A.M.

Respectfully submitted,

  
\_\_\_\_\_  
Representative H. M. Michaux, Jr.  
Presiding Chair

  
\_\_\_\_\_  
Anita Wilder  
Committee Assistant

**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative Michaux (Chair) for the Committee on JUDICIARY II.

---

☒ Committee Substitute for

**SB 832** A BILL TO BE ENTITLED AN ACT TO ALLOW WRECKERS TO TAKE  
DISABLED VEHICLES UP TO FIFTY MILES FOR REPAIR, PARKING, OR STORAGE.

☒ With a favorable report.

**(FOR JOURNAL USE ONLY)**

---

\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on  
\_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of \_\_\_\_\_.

**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative Michaux (Chair) for the Committee on JUDICIARY II.

---

☒ Committee Substitute for

**SB 486**      A BILL TO BE ENTITLED AN ACT TO INCREASE THE PENALTY FOR DISCHARGING CERTAIN WEAPONS INTO OCCUPIED PROPERTY IN CERTAIN CIRCUMSTANCES.

☒ 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 Appropriations.

**(FOR JOURNAL USE ONLY)**

---

\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on \_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is placed on the Calendar of \_\_\_\_\_. (The original bill resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

\_\_\_\_\_ The (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is re-referred to the Committee on \_\_\_\_\_. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

S

D

SENATE BILL 486\*  
Judiciary II Committee Substitute Adopted 4/13/05  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S486-PCS35254-SB-37

Short Title: Rachel's Law.

(Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR DISCHARGING CERTAIN  
WEAPONS INTO OCCUPIED PROPERTY IN CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-34.1 reads as rewritten:

"§ 14-34.1. Discharging certain barreled weapons or a firearm into occupied  
property.

(a) Any person who willfully or wantonly discharges or attempts to discharge:

(1) ~~Any discharge any firearm or~~ barreled weapon capable of discharging  
shot, bullets, pellets, or other missiles at a muzzle velocity of at least  
600 feet per second; or

(2) ~~A firearm~~

~~second~~ into any building, structure, vehicle, aircraft, watercraft, or other conveyance,  
device, equipment, erection, or enclosure while it is occupied is guilty of a Class E  
~~felony. felony, unless a greater penalty applies.~~

(b) A person who willfully or wantonly discharges a weapon described in  
subsection (a) of this section into an occupied dwelling or into any occupied vehicle,  
aircraft, watercraft, or other conveyance that is being operated upon a public road,  
highway, public vehicular area, railroad track, or waterway, or in any airspace is guilty  
of a Class D felony.

(c) If a person violates subsection (a) or (b) of this section and the violation  
results in serious bodily injury to any person, the person is guilty of a Class C felony."

SECTION 2. This act becomes effective December 1, 2005, and applies to  
offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

S

2

SENATE BILL 832  
Judiciary I Committee Substitute Adopted 5/31/05

Short Title: Wreckers/Travel Mileage.

(Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED  
AN ACT TO ALLOW WRECKERS TO TAKE DISABLED VEHICLES UP TO  
FIFTY MILES FOR REPAIR, PARKING, OR STORAGE.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 20-118 reads as rewritten:

**"§ 20-118. Weight of vehicles and load.**

(a) For the purposes of this section, the following definitions shall apply:

(1) Single-axle weight. – The gross weight transmitted by all wheels whose centers may be included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle.

(2) Tandem-axle weight. – The gross weight transmitted to the road by two or more consecutive axles whose centers may be included between parallel vertical planes spaced more than 40 inches and not more than 96 inches apart, extending across the full width of the vehicle.

(3) Axle group. – Any two or more consecutive axles on a vehicle or combination of vehicles.

(4) Gross weight. – The weight of any single axle, tandem axle, or axle group of a vehicle or combination of vehicles plus the weight of any load thereon.

(5) Light-traffic roads. – Any highway on the State Highway System, excepting routes designated I, U.S. or N.C., posted by the Department of Transportation to limit the axle weight below the statutory limits.

(b) The following weight limitations shall apply to vehicles operating on the highways of the State:

(1) The single-axle weight of a vehicle or combination of vehicles shall not exceed 20,000 pounds.

(2) The tandem-axle weight of a vehicle or combination of vehicles shall not exceed 38,000 pounds.



(3) The gross weight imposed upon the highway by any axle group of a vehicle or combination of vehicles shall not exceed the maximum weight given for the respective distance between the first and last axle of the group of axles measured longitudinally to the nearest foot as set forth in the following table:

Distance Between Axles*		Maximum Weight in Pounds for any Group of Two or More Consecutive Axles					
		2 Axles	3 Axles	4 Axles	5 Axles	6 Axles	7 Axles
4		38000					
5		38000					
6		38000					
7		38000					
8 or less		38000	38000				
more than 8		38000	42000				
9		39000	42500				
10		40000	43500				
11			44000				
12			45000	50000			
13			45500	50500			
14			46500	51500			
15			47000	52000			
16			48000	52500	58000		
17			48500	53500	58500		
18			49500	54000	59000		
19			50000	54500	60000		
20			51000	55500	60500	66000	
21			51500	56000	61000	66500	
22			52500	56500	61500	67000	
23			53000	57500	62500	68000	
24			54000	58000	63000	68500	74000
25			54500	58500	63500	69000	74500
26			55500	59500	64000	69500	75000
27			56000	60000	65000	70000	75500
28			57000	60500	65500	71000	76500
29			57500	61500	66000	71500	77000
30			58500	62000	66500	72000	77500
31			59000	62500	67500	72500	78000
32			60000	63500	68000	73000	78500
33				64000	68500	74000	79000
34				64500	69000	74500	80000
35				65500	70000	75000	
36				66000**	70500	75500	
37				66500**	71000	76000	
38				67500**	72000	77000	

1	39	68000	72500	77500
2	40	68500	73000	78000
3	41	69500	73500	78500
4	42	70000	74000	79000
5	43	70500	75000	80000
6	44	71500	75500	
7	45	72000	76000	
8	46	72500	76500	
9	47	73500	77500	
10	48	74000	78000	
11	49	74500	78500	
12	50	75500	79000	
13	51	76000	80000	
14	52	76500		
15	53	77500		
16	54	78000		
17	55	78500		
18	56	79500		
19	57	80000		

\* Distance in Feet Between the Extremes of any Group of Two or More Consecutive Axles.

\*\* See exception in G.S. 20-118(c)(1).

(4) The Department of Transportation may establish light-traffic roads and further restrict the axle weight limit on such light-traffic roads lower than the statutory limits. The Department of Transportation shall have authority to designate any highway on the State Highway System, excluding routes designated by I, U.S. and N.C., as a light-traffic road when in the opinion of the Department of Transportation, such road is inadequate to carry and will be injuriously affected by vehicles using the said road carrying the maximum axle weight. All such roads so designated shall be conspicuously posted as light-traffic roads and the maximum axle weight authorized shall be displayed on proper signs erected thereon.

(c) Exceptions. – The following exceptions apply to G.S. 20-118(b) and 20-118(e).

...

(7) A wrecker may tow a any disabled truck or other motor vehicle or combination of vehicles in an emergency to a place for repairs, the nearest feasible point for parking, or storage within 50 miles from the point that the vehicle was disabled and may tow a truck, tractor, or other replacement vehicle to the site of the disabled vehicle without being in violation of G.S. 20-118 provided that the wrecker and towed vehicle or combination of vehicles otherwise meet all requirements of this section.

...."

**SECTION 2.** G.S. 20-116(e) reads as rewritten:

"(e) Except as provided by G.S. 20-115.1, no combination of vehicles coupled together shall consist of more than two units and no such combination of vehicles shall exceed a total length of 60 feet inclusive of front and rear bumpers, subject to the following exceptions: Said length limitation shall not apply to vehicles operated in the daytime when transporting poles, pipe, machinery or other objects of a structural nature which cannot readily be dismembered, nor to such vehicles transporting such objects operated at nighttime by a public utility when required for emergency repair of public service facilities or properties, but in respect to such night transportation every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of said projecting load to clearly mark the dimensions of such load: Provided that vehicles designed and used exclusively for the transportation of motor vehicles shall be permitted an overhang tolerance front or rear not to exceed five feet. Provided, that wreckers ~~in an emergency~~ may tow a truck, combination tractor and trailer-trailer, trailer, or any other disabled vehicle or combination of vehicles to a place for to the nearest feasible point for repair and/or storage; repair, parking, or storage within 50 miles of the point where the vehicle was disabled and may tow a truck, tractor, or other replacement vehicle to the site of the disabled vehicle. Provided, however, that a combination of a house trailer used as a mobile home, together with its towing vehicle, shall not exceed a total length of 55 feet exclusive of front and rear bumpers. Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to trailers not exceeding three in number drawn by a motor vehicle used by municipalities for the removal of domestic and commercial refuse and street rubbish, but such combination of vehicles shall not exceed a total length of 50 feet inclusive of front and rear bumpers. Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to a combination of vehicles coupled together by a saddle mount device used to transport motor vehicles in a driveway service when no more than three saddle mounts are used and provided further, that equipment used in said combination is approved by the safety regulations of the Federal Highway Administration and the safety rules of the Department of Crime Control and Public Safety."

**SECTION 3.** This act is effective when it becomes law.

# **AGENDA**

## **HOUSE COMMITTEE ON JUDICIARY II**

**July 19, 2005  
Room 421  
10:00 AM**

### **OPENING REMARKS**

Representative Mickey Michaux, Chair

### **AGENDA ITEMS**

**S 832 –Tow Trucks and Recovery Vehicles-Senator Hagan  
S 486 – Rachel's Law- Senator Allran**

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2005-2006 SESSION**

You are hereby notified that the Committee on **JUDICIARY II** will meet as follows:

**DAY & DATE:**     **Tuesday, July 19, 2005**

**TIME:**             **10:00 A.M.**

**LOCATION:**         **Room 421**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

**S 832-Tow Trucks and Recovery Vehicles-Senator Hagan**

**S 486-Rachel's Law-Senator Allran**

**S 846-Modernize Bail Bondsman Registration-Senator Swindell**

Respectfully,  
Representative H. M. Michaux, Jr.  
Chair

I hereby certify this notice was filed by the committee assistant at the following offices at  
**10:00 a.m. on July 14, 2005.**

☒ Principal Clerk  
☒ Reading Clerk - House Chamber

Anita Wilder (Committee Assistant)

# VISITOR REGISTRATION SHEET

JUDICIARY II

JULY 19, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Colleen Kochanek	TRPWC
EMMA JAKOB	Intern
Charlie Diehl	NC Trucking Association
BELINDA HARRIS	Towing & Recovery Assoc. of NC.
Bobby Dishier	" " "
Ann Bowman	" " "
Dave Ingram	WST
Johnny Moeller	NC Sentencing Commission
Mike Casey	Casey & Assoc

House Pages

Name Of Committee: Judiciary II Date: July 19, 05

1. Name: LeeAnn Bradley

County: Harrett

Sponsor: Rep. Coates

2. Name: Rebecca Bender

County: Jones

Sponsor: Rep. Preston

3. Name: Carli Gibson

County: ANSON

Sponsor: Rep. Pryor Gibson

4. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

5. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

Sgt-At-Arms

1. Name: FRANK PREVO

2. Name: JAMES WORTH

3. Name: BILL SULLIVAN

4. Name: \_\_\_\_\_

5. Name: \_\_\_\_\_

# **JUDICIARY II COMMITTEE**

**2005-2006 SESSION**

**REP. MICKEY MICHAUX  
CHAIR**

**REP. ALICE BORDSEN  
VICE CHAIR**

**REP. JAMES HARRELL  
VICE CHAIR**

**REP. TIMOTHY MOORE  
VICE CHAIR**

**Drupti Chauhan  
Committee Counsel**

**Karen Cochrane-Brown  
Committee Counsel**

**Jeff Hudson  
Committee Counsel**

**Anita Wilder  
Committee Assistant**



**NORTH CAROLINA GENERAL ASSEMBLY**

**JUDICIARY II  
2005 – 2006 SESSION**



**Rep. H. M. Michaux, Jr.**  
**Chair**



**Rep. Alice Bordsen**  
**Vice chair**

**Rep. James Harrell**  
**Vice chair**

**Rep. Timothy Moore**  
**Vice chair**



**Rep. Allen**

**Rep. Farmer-Butterfield**

**Rep. Fisher**

**Rep. Folwell**

**Rep. Gulley**



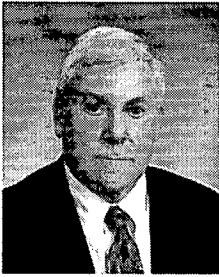
**Rep. Jones**

**Rep. Walend**

**Rep. Wiley**

**NORTH CAROLINA GENERAL ASSEMBLY**

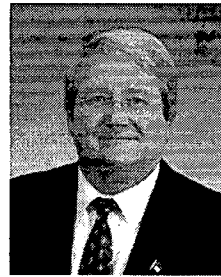
**JUDICIARY II  
2005 – 2006 SESSION**



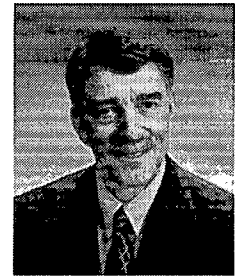
**Rep. Culpepper**  
Ex-officio



**Rep. Cunningham**  
Ex-officio



**Rep. Eddins**  
Ex-officio



**Rep. Hackney**  
Ex-officio

**HOUSE COMMITTEE ON**  
**JUDICIARY II**  
**2005-2006**

<b><u>MEMBER</u></b>	<b><u>ASSISTANT</u></b>	<b><u>PHONE</u></b>	<b><u>OFFICE</u></b>	<b><u>SEAT</u></b>
Allen, Lucy	Melissa Riddle	3-5860	1307	41
Bordsen, Alice Vice chair	Erin Wynia	3-5820	533	29
Farmer-Butterfield, Jean	Barbara Hocutt	3-5898	614	53
Fisher, Susan	Meredith Woodlief	5-2013	420	30
Folwell, Dale	Mary Marchman	3-5787	304	104
Gulley, Jim	Suzanne Gulley	3-5800	1319	114
Jones, Edward	Joan Peacock	3-5878	611	60
Harrell, James Vice chair	Beth LeGrande	5-1883	403	46
Michaux, H. M. Chair	Anita Wilder	5-2825	1227	57
Moore, Timothy Vice chair	Nancy Gariss	3-4838	502	85
Walend, Trudi	Ken Walend	5-4466	602	115
Wiley, Laura	Susan Brothers	3-5877	538	88

## ATTENDANCE

## JUDICIARY II

## 2006 – SHORT SESSTION

[illegible]

**MINUTES  
HOUSE COMMITTEE ON  
JUDICIARY II**

Thursday, June 6, 2006

The House Committee on Judiciary II met on Thursday, June 6, 2006, in Room 421 of the Legislative Office Building at 10:00 AM. The following members were present: Chairman Mickey Michaux, Vice-Chair Alice Bordsen, Representatives Allen, Fisher, Folwell, Gulley, Jones, Walend, and Wiley. Drupti Chauhan, Karen Cochrane-Brown and Jeff Hudson, Staff Counselors were also in attendance. A Visitor's Registration list is attached and made part of these minutes.

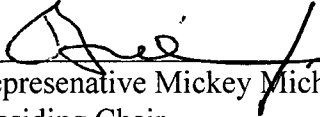
The Chairman called the meeting to order and recognized Pages, Sergeant-At-Arms, staff and visitors.

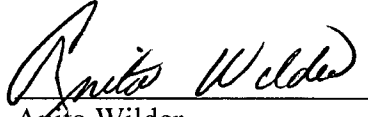
Representative Margaret Dickson was recognized to explain **HB 2076, A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES TO THE JUVENILE CODE, AS RECOMMENDED BY THE JOINT LEGISLATIVE CORRECTIONS, CRIME CONTROL, AND JUVENILE JUSTICE OVERSIGHT COMMITTEE**. Rep. Earl Jones was also recognized to give further explanation of the bill and Staff Counselor Drupti Chauhan explained the bill analysis.

After much discussion, Chairman Michaux announced that no action would be taken on this bill as an incarceration noted was needed.

There being no further business, the Chair adjourned the meeting at 10:10 AM.

Respectfully submitted,

  
Representative Mickey Michaux  
Presiding Chair

  
Arlita Wilder  
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

1

HOUSE BILL 2076\*

Short Title: Juvenile Code Changes.

(Public)

Sponsors: Representatives Dickson, Jones, Haire, Kiser (Primary Sponsors); and  
Glazier.

Referred to: Judiciary II.

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE JUVENILE CODE, AS RECOMMENDED  
BY THE JOINT LEGISLATIVE CORRECTIONS, CRIME CONTROL, AND  
JUVENILE JUSTICE OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 7B-1903(d) reads as rewritten:

"(d) The court may order secure custody for a juvenile who is alleged to have  
substantially violated the conditions of the juvenile's probation or post-release  
supervision, but only if the juvenile is alleged to have committed acts that damage  
property or injure persons supervision."

**SECTION 2.** G.S. 7B-2507(b) reads as rewritten:

"(b) Points. – Points are assigned as follows:

- (1) For each prior adjudication of a Class A through E felony offense, 4 points.
- (2) For each prior adjudication of a Class F through I felony ~~offense~~ offense, Class A1 misdemeanor offense, G.S. 14-202.2 (indecent liberties between children), G.S. 14-269 (carrying concealed weapons), or G.S. 14-269.7(a) (prohibitions on handguns for minors), 2 points.
- (3) For each prior adjudication of a Class 1, 2, or 3 misdemeanor offense, except G.S. 14-202.2 (indecent liberties between children), G.S. 14-269 (carrying concealed weapons), or G.S. 14-269.7(a) (prohibitions on handguns for minors), 1 point.
- (4) If the juvenile was on probation at the time of offense, 2 points."

**SECTION 3.** G.S. 7B-2508(a) reads as rewritten:

"(a) Offense Classification. – The offense classifications are as follows:

- (1) Violent – Adjudication of a Class A through E felony offense;
- (2) Serious – Adjudication of a Class F through I felony ~~offense or offense~~,  
a Class A1 ~~misdemeanor~~ misdemeanor, G.S. 14-202.2 (indecent

1 liberties between children), G.S. 14-269 (carrying concealed weapons),  
2 or G.S. 14-269.7(a) (prohibitions on handguns for minors);  
3 (3) Minor – Adjudication of a Class 1, 2, or 3 ~~misdemeanor~~misdemeanor,  
4 except G.S. 14-202.2 (indecent liberties between children),  
5 G.S. 14-269 (carrying concealed weapons), or G.S. 14-269.7(a)  
6 (prohibitions on handguns for minors)."

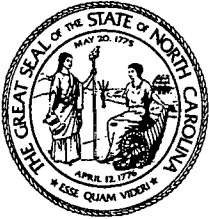
7 **SECTION 4.** G.S. 7B-2510(e) reads as rewritten:

8 "(e) If the court, after notice and a hearing, finds by the greater weight of the  
9 evidence that the juvenile has violated the conditions of probation set by the court, the  
10 court may continue the original conditions of probation, modify the conditions of  
11 probation, or, except as provided in subsection (f) of this section, order a new  
12 disposition at the next higher level on the disposition chart in G.S. 7B-2508. In the  
13 court's discretion, ~~part of the new disposition~~if the juvenile's disposition is not raised to  
14 a higher level of disposition, the court may include an order of confinement in a secure  
15 juvenile detention facility for up to twice the term authorized by  
16 G.S. 7B-2508.G.S. 7B-2508 for the juvenile's dispositional level."

17 **SECTION 5.** G.S. 7B-1501 is amended by adding a new subdivision to read:

18 "(21a) Prior adjudication. – Any adjudication that occurred before the current  
19 date of disposition which is not a part of some related transaction for  
20 the current offense."

21 **SECTION 6.** This act becomes effective December 1, 2006, and applies to  
22 offenses committed on or after that date.



# HOUSE BILL 2076: Juvenile Code Changes

## BILL ANALYSIS

**Committee:** House Judiciary II  
**Introduced by:** Reps. Dickson, Jones, Haire, Kiser  
**Version:** First Edition

**Date:** June 6, 2006  
**Summary by:** Drupti Chauhan  
Committee Counsel

**SUMMARY:** House bill 2076 would make changes to the Juvenile Code as recommended by the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee. The changes were presented to the Oversight Committee by the State Advisory Council on Juvenile Justice and Delinquency Prevention.

### BILL ANALYSIS:

#### Section 1

**Current Law:** G.S. 7B-1903 sets forth the criteria for secure or nonsecure custody. The court may order secure custody for a juvenile who is alleged to have violated conditions of probation or post-release supervision but only if the juvenile is alleged to have committed acts that damage property or injure person. Secure custody is described in G.S. 7B-1905(b) as an approved detention facility which shall be separate from any jail, lockup, prison, or other adult penal institution except that a holdover facility may be used for up to 72 hours if no acceptable alternative placement is available.

**Bill Analysis:** The bill would allow the court to order secure custody for a juvenile who is alleged to have substantially violated conditions of probation or post-release supervision.

#### Section 2:

**Current Law:** G.S. 7B-2507 provides for the determination of delinquency history levels for delinquent juveniles. When determining a juvenile's delinquency history, points are assigned to each of the juvenile's prior adjudications and to the juvenile's probation status, if any, at the time of the offense. Currently, for each prior adjudication of a Class 1, 2, or 3 misdemeanor offense, one point is assigned.

**Bill Analysis:** The bill would increase the number of points from 1 to 2 for the following offenses:

- G.S. 14-202.2—indecent liberties between children (Class 1 misdemeanor)
- G.S. 14-269—carrying concealed weapons (Class 2 misdemeanor)
- G.S. 14-269.7(a)—prohibition on handguns for minors (Class 2 misdemeanor)

#### Section 3:

**Current Law:** A juvenile with a high delinquency history may not be committed to a youth development center when adjudicated of a minor offense unless there is a finding that the juvenile has been adjudicated of four or more prior offenses. The juvenile can, however, be committed for a serious offense.

**Bill Analysis:** The bill would amend the offense classifications in G.S. 7B-2508(a) to increase the offense classifications for certain offenses from minor to serious for purposes of determining the disposition level (community, intermediate, or commitment). The changes are for the following offenses:

- G.S. 14-202.2—indecent liberties between children (Class 1 misdemeanor)



# House Bill 2076

Page 2

- G.S. 14-269—carrying concealed weapons (Class 2 misdemeanor)
- G.S. 14-269.7(a)—prohibition on handguns for minors (Class 2 misdemeanor)

## Section 4

*Current Law:* If a court finds that a juvenile has violated the terms of probation, the court may continue or modify the original conditions, or order a new disposition at the next higher level. Part of the disposition may include an order of confinement in a secure juvenile detention facility for up to twice the term authorized under G.S. 7B-2508 which governs dispositional limits.

*Bill Analysis:* The bill specifies that this expanded term of confinement can occur only when the juvenile's disposition is not raised to a higher level as a result of the probation violation.

## Section 5

*Bill Analysis:* This section adds the definition of "prior adjudication" to the Undisciplined and Delinquent Juveniles Subchapter of the Juvenile Code. "Prior adjudication" is any adjudication that occurred before the date of the disposition, which is not part of some related transaction for the current offense. The term is not currently defined in the definitions section.

**EFFECTIVE DATE:** The bill would become effective December 1, 2006 and apply to offenses committed on or after that date.

H2076e1-SMRQ

# **AGENDA**

## **HOUSE COMMITTEE ON JUDICIARY II**

**June 6, 2006  
Room 421  
10:00 AM**

### **OPENING REMARKS**

Representative Mickey Michaux, Chair

### **AGENDA ITEMS**

**H 2076 --Juvenile Code Changes**

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2006 SESSION**

You are hereby notified that the Committee on **JUDICIARY II** will meet as follows:

**DAY & DATE:**     **Tuesday, June 6, 2006**

**TIME:**             **10:00 A.M.**

**LOCATION:**         **Room 421**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

**H 2076 –Juvenile Code Changes**

Respectfully,  
Representative H. M. Michaux, Jr.  
Chair

I hereby certify this notice was filed by the committee assistant at the following offices at  
**10:30 a.m. on May 30, 2006.**

☒ Principal Clerk  
☒ Reading Clerk - House Chamber

Anita Wilder (Committee Assistant)

Rm 421  
10:Am

House Pages

Name Of Committee: Jud II Date: 6-6-06

1. Name: Alex Mcclant  
County: Wake  
Sponsor: Dickson
2. Name: George Smith  
County: Wake  
Sponsor: Doughtridge
3. Name: \_\_\_\_\_  
County: \_\_\_\_\_  
Sponsor: \_\_\_\_\_
4. Name: \_\_\_\_\_  
County: \_\_\_\_\_  
Sponsor: \_\_\_\_\_
5. Name: \_\_\_\_\_  
County: \_\_\_\_\_  
Sponsor: \_\_\_\_\_

Sgt-At-Arms

1. Name: MARtha GADISON
2. Name: JAMES WORTH
3. Name: FRANK PREVO
4. Name: \_\_\_\_\_
5. Name: -

## VISITOR REGISTRATION SHEET

JUDICIARY II

June 06, 2006

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Jeffy Watson	Youth Advocacy and Involvement Office
Brian Lewis	Covenant with New Children
LARRY DIX	DJJP
Kathy Dudley	DJJP
Karen [Signature]	Sentencing Commission
DAVID CARTNER	NC BAR Assoc.
Jo McCants	AAC

**MINUTES  
HOUSE COMMITTEE ON  
JUDICIARY II**

Thursday, July 6, 2006

The House Committee on Judiciary II met on Thursday, July 6, 2006, in Room 21 of the Legislative Office Building at 10:05 AM. The following members were present: Chairman Mickey Michaux, Vice-Chair Alice Bordsen, Representatives Allen, Fisher, Folwell, Walend, and Wiley. Drupti Chauhan, Karen Cochrane-Brown and Jeff Hudson, Staff Counselors were also in attendance. A Visitor's Registration list is attached and made part of these minutes

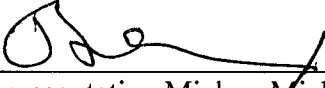
The Chairman called the meeting to order and recognized Pages, Sergeant-At-Arms, staff and visitors.

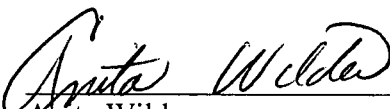
Rep. Dickson was recognized to explain **HB 2076, A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES TO THE JUVENILE CODE, AS RECOMMENDED BY THE JOINT LEGISLATIVE CORRECTIONS, CRIME CONTROL, AND JUVENILE JUSTICE OVERSIGHT COMMITTEE**. A fiscal note to the bill was also submitted and explained. Rep. Fisher moved that the bill be given a favorable report and the Committee agreed to the favorable report.

Sen. A. B. Swindell was recognized to explain **SB 846, A BILL TO BE ENTITLED AN ACT MODERNIZING THE MANNER IN WHICH BAIL BONDSMEN REGISTER THEIR LICENSES**. An amendment was submitted and Rep. Michaux moved that the amendment be rolled into a PCS for discussion. The Committee voted to accept the amendment as a PCS. Rep. Folwell moved that the PCS be given a favorable report and an unfavorable report to the original bill. The committee gave a favorable report to the PCS.

There being no further business for discussion, the Chairman adjourned the meeting at 10:35 AM.

Respectfully submitted,

  
\_\_\_\_\_  
Representative Mickey Michaux  
Presiding Chair

  
\_\_\_\_\_  
Ahita Wilder  
Committee Assistant

**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative Michaux (Chair) for the Committee on JUDICIARY II.

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☐ Committee Substitute for

**HB 2076**                    A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES TO THE JUVENILE CODE, AS RECOMMENDED BY THE JOINT LEGISLATIVE CORRECTIONS, CRIME CONTROL, AND JUVENILE JUSTICE OVERSIGHT COMMITTEE.

☒ With a favorable report.

**(FOR JOURNAL USE ONLY)**

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\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on \_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of \_\_\_\_\_.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

1

HOUSE BILL 2076\*

Short Title: Juvenile Code Changes.

(Public)

Sponsors: Representatives Dickson, Jones, Haire, Kiser (Primary Sponsors); and Glazier.

Referred to: Judiciary II.

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE JUVENILE CODE, AS RECOMMENDED  
BY THE JOINT LEGISLATIVE CORRECTIONS, CRIME CONTROL, AND  
JUVENILE JUSTICE OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 7B-1903(d) reads as rewritten:

"(d) The court may order secure custody for a juvenile who is alleged to have substantially violated the conditions of the juvenile's probation or post-release supervision, ~~but only if the juvenile is alleged to have committed acts that damage property or injure persons.~~ supervision."

**SECTION 2.** G.S. 7B-2507(b) reads as rewritten:

"(b) Points. – Points are assigned as follows:

- (1) For each prior adjudication of a Class A through E felony offense, 4 points.
- (2) For each prior adjudication of a Class F through I felony ~~offense~~ or offense, Class A1 misdemeanor offense, G.S. 14-202.2 (indecent liberties between children), G.S. 14-269 (carrying concealed weapons), or G.S. 14-269.7(a) (prohibitions on handguns for minors), 2 points.
- (3) For each prior adjudication of a Class 1, 2, or 3 misdemeanor offense, except G.S. 14-202.2 (indecent liberties between children), G.S. 14-269 (carrying concealed weapons), or G.S. 14-269.7(a) (prohibitions on handguns for minors), 1 point.
- (4) If the juvenile was on probation at the time of offense, 2 points."

**SECTION 3.** G.S. 7B-2508(a) reads as rewritten:

"(a) Offense Classification. – The offense classifications are as follows:

- (1) Violent – Adjudication of a Class A through E felony offense;
- (2) Serious – Adjudication of a Class F through I felony ~~offense or offense~~, a Class A1 ~~misdemeanor~~ misdemeanor, G.S. 14-202.2 (indecent



1 liberties between children), G.S. 14-269 (carrying concealed weapons),  
2 or G.S. 14-269.7(a) (prohibitions on handguns for minors);  
3 (3) Minor – Adjudication of a Class 1, 2, or 3 ~~misdemeanor~~-misdemeanor,  
4 except G.S. 14-202.2 (indecent liberties between children),  
5 G.S. 14-269 (carrying concealed weapons), or G.S. 14-269.7(a)  
6 (prohibitions on handguns for minors)."

7 **SECTION 4.** G.S. 7B-2510(e) reads as rewritten:

8 "(e) If the court, after notice and a hearing, finds by the greater weight of the  
9 evidence that the juvenile has violated the conditions of probation set by the court, the  
10 court may continue the original conditions of probation, modify the conditions of  
11 probation, or, except as provided in subsection (f) of this section, order a new  
12 disposition at the next higher level on the disposition chart in G.S. 7B-2508. In the  
13 court's discretion, part of the new disposition if the juvenile's disposition is not raised to  
14 a higher level of disposition, the court may include an order of confinement in a secure  
15 juvenile detention facility for up to twice the term authorized by  
16 G.S. 7B-2508.G.S. 7B-2508 for the juvenile's dispositional level."

17 **SECTION 5.** G.S. 7B-1501 is amended by adding a new subdivision to read:

18 "(21a) Prior adjudication. – Any adjudication that occurred before the current  
19 date of disposition which is not a part of some related transaction for  
20 the current offense."

21 **SECTION 6.** This act becomes effective December 1, 2006, and applies to  
22 offenses committed on or after that date.

# GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

## Legislative Fiscal Note

**BILL NUMBER:** House Bill 2076 (First Edition)

**SHORT TITLE:** Juvenile Code Changes.

**SPONSOR(S):** Representatives Kiser, Haire, Dickson, and Jones

### FISCAL IMPACT

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

FY 2006-07   FY 2007-08   FY 2008-09   FY 2009-10   FY 2010-11

#### EXPENDITURES:

Dept. of Juvenile Justice: Overall fiscal impact indeterminate but no substantial impact

**POSITIONS (cumulative):** None

**ADDITIONAL BEDS (Juvenile)** No impact likely on YDC juvenile population and bed capacity. See Assumptions and Methodology Section

#### PRINCIPAL DEPARTMENT(S) &

**PROGRAM(S) AFFECTED:** Department of Juvenile Justice and Delinquency Prevention

**EFFECTIVE DATE:** Applies to offenses committed on or after December 1, 2006

**BILL SUMMARY:** Amends GS 7B-1903(d) to provide that a court may order secure custody for a juvenile who is alleged to have substantially violated the conditions of probation or post-release supervision (was, authorized court to order secure custody only if conditions were violated by acts that damaged property or injured persons). Amends GS 7B-2507(b) (assignment of points for the purpose of calculating the delinquency history level for juveniles) to assess two points for violations of GS 14-202.2 1(indecent liberties between children), GS 14-269 (carrying concealed weapons), or GS 14-269.7(a) (prohibitions on handguns for minors). Also amends GS 7B-2508(a) to classify those additional offenses as "serious." Amends GS 7B-2510(e) to clarify that a court may issue an order of confinement in a secure juvenile detention facility for up to twice the term authorized for the juvenile's dispositional level if the juvenile's disposition was not already raised to a higher level of disposition. Enacts new GS 7B-1501(21a) to define "prior adjudication." Makes conforming changes to GS 7B-2507(b)(3) and GS 7B-2508(a)(3). Applies to offenses committed on or after December 1, 2006

*Source: Bill Digest H.B. 2076 (05/17/0200).*

## ASSUMPTIONS AND METHODOLOGY:

### General – Sentencing and Policy Advisory Commission

The juvenile code, for the most part, uses adult criminal penalty classifications as the basis for the filing and disposition of juvenile cases. The Sentencing and Policy Advisory Commission prepares adult prison population projections for each criminal penalty bill. When analyzing these bills, the Commission also reviews whether these criminal penalty changes would alter where these crimes/penalties would fall in the Juvenile Sentencing Grid and determines the potential impact on juvenile justice facility beds or other resources.

For HB 2076, the only potential changes are to the Juvenile Sentencing Grid. Under G.S. 164-43, the Commission is charged with reviewing bills that change the range of punishment or dispositional level for a particular classification in the juvenile system.

### Department of Juvenile Justice and Delinquency Prevention

The Sentencing Commission notes the following on HB 2076 and its potential impact on the juvenile system:

SECTION 2. Section 2 increases the delinquency history point value for three misdemeanor offenses from 1 point to 2 points:

14-202.2. Indecent liberties between children.

14-269. Carrying concealed weapons.

14-269.7(a). Prohibitions on handguns for minors.

**This change would treat these three misdemeanors the same as Class F through I felonies or Class A1 misdemeanors for punishment purposes.** The Commission indicates that this recommendation could not be assessed due to lack of available data on the offense composition of prior adjudications comprising a juvenile's Delinquency History Level. However, the Commission notes that a juvenile could be sentenced in a higher delinquency history level as a result of this proposed change. For example, a juvenile sentenced in the low DHL category now for a "minor" crime could now be sentenced in medium for a "Serious" crime. *Fiscal Research notes that by increasing prior record points, a juvenile could be bumped up to a higher disposition level on the Grid and be subject to more expensive sanctions and treatment programs. The exact cost cannot be determined since it is not known what sanctions or treatment will be assigned by the judge. A range of options exists at Levels 1 and 2.*

SECTION 3. Section 3 raises three misdemeanor offenses from the Minor category to the Serious category for dispositional purposes:

14-202.2 (Indecent liberties between children) - Class 1 misdemeanor.

14-269 (Carrying concealed weapons) - Class 2 misdemeanor.

14-269.7(a) (Prohibitions on handguns for minors) - Class 2 misdemeanor.

**In effect, this changes dispositional options available to the judge.** Juveniles are sentenced on one of three levels based on the seriousness of the offense and prior offenses. Under HB 2076, it is possible in some instances for a judge to give a Level 2 disposition to a first time offender and a Level 3 disposition (YDC commitment) to an offender not currently subject to Level 3

The Commission notes that DJJDP identified 196 juveniles disposed during FY 2004-05 with adjudication for one of the three above-listed offenses. These 196 juveniles would, hypothetically, move from the Minor to the Serious Offense Level (OL) for dispositional purposes, therefore increasing the punishment level.

In FY 2004-05, 73% of all adjudicated delinquents placed in the low Delinquency History Level (DHL), 15% in the medium DHL, and 12% in the high DHL. Assuming a similar delinquent history distribution for the 196 juveniles, the recommendation would move approximately:

- (1) 143 juveniles into the "Serious OL/Low DHL" cell (Disposition Levels 1/2);
- (2) 29 juveniles into the "Serious OL/Medium DHL" cell (Disposition Level 2); and
- (3) 24 juveniles into the "Serious OL/High DHL" cell (Disposition Levels 2/3). In FY 2004-05, the rate of commitment to Youth Development Centers (YDC) in this cell was 39% (9 of the 24 juveniles).

Note that it is unknown whether the offenses in the recommendation were the most serious adjudicated offenses for the 196 juveniles; if not, their cases might or might not be moved for dispositional purposes, depending on the Offense Level (OL) of their other offenses.

***Fiscal Research Comments on Section 3:*** *For those cases that move to a higher disposition level, the cost of treatment and punishment is likely to increase. The cost cannot be determined since it is not known what Level 2 punishments would be assigned by a judge.*

*Level 3 would be commitment—the cost of a YDC bed was \$91,350 per bed in 2004-05. However, even given 9 additional beds needed in YDC's as a result of Section 3, it is likely that there will be little or no fiscal impact. Assuming similar delinquent history distribution as in 2004-05 and at least 196 juveniles adjudicated for these offenses, there would be 9 additional commitments to Youth Development Centers. Based on current YDC bed capacity and Sentencing Commission juvenile population projections, the addition of 9 juveniles to YDC's (assuming an average of about one year commitment) would not create a fiscal impact. See Table I which shows a small surplus of YDC beds, given certain assumptions, even with 9 potential new commitments.*

**TABLE 1**

<b><i>Fiscal Year</i></b>	<b><i>2006-07</i></b>	<b><i>2007-08</i></b>	<b><i>2008-09</i></b>	<b><i>2009-10</i></b>	<b><i>2010-11</i></b>
<b><i>Population*</i></b>	461	470	472	480	Not available
<b><i>YDCBed Capacity**</i></b>	508	508	508	508	508
<b><i>Difference</i></b>	+47 beds	+38	+36	+28	NA

*\*Population projections prepared by the Sentencing and Policy Advisory Commission in April 2006.*

*\*\*Bed capacity figures provided by DJJDP as of May 2006. Assumes completion of five new YDC's during 2007-08 and continued operation of some existing YDC beds*

*The caveats to the assumption of little or no fiscal impact are:*

- *Assumes no other bills are passed that affect YDC commitment rates*
- *Assumes no substantial change in DJJDP admission rates, release rates, average length of stay and related policies that could affect population and bed capacity*
- *Assumes distribution of the 196 cases into Levels 1, 2, and 3 as presented in Sentencing Commission's hypothetical situation*

SECTION 5. Section 5 defines prior adjudications as "Any adjudication that occurred before the current date of disposition which is not a part of some related transaction for the current offense."

The Commission indicates the impact of this change could not be assessed due to lack of available data on the dates of prior adjudications comprising a juvenile's Delinquency History Level.

**SOURCES OF DATA:** Sentencing and Policy Advisory Commission and Department of Juvenile Justice and Delinquency Prevention

**TECHNICAL CONSIDERATIONS:** Creates deviation from the Juvenile Sentencing Grid by requiring three misdemeanors to be punished at the same level as felonies or A1 misdemeanors.

**FISCAL RESEARCH DIVISION: (919) 733-4910**

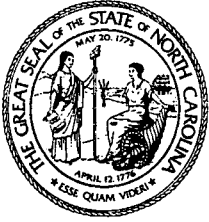
**PREPARED BY:** Jim Mills

**APPROVED BY:** Lynn Muchmore, Director  
Fiscal Research Division



**DATE:** June 14, 2006

**Signed Copy Located in the NCGA Principal Clerk's Offices**



# HOUSE BILL 2076: Juvenile Code Changes

## BILL ANALYSIS

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<b>Committee:</b>	House Judiciary II	<b>Date:</b>	July 5, 2006
<b>Introduced by:</b>	Reps. Dickson, Jones, Haire, Kiser	<b>Summary by:</b>	Drupti Chauhan
<b>Version:</b>	First Edition		Committee Counsel

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**SUMMARY:** *House bill 2076 would make changes to the Juvenile Code as recommended by the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee. The changes were presented to the Oversight Committee by the State Advisory Council on Juvenile Justice and Delinquency Prevention.*

### BILL ANALYSIS:

#### Section 1

**Current Law:** G.S. 7B-1903 sets forth the criteria for secure or nonsecure custody. The court may order secure custody for a juvenile who is alleged to have violated conditions of probation or post-release supervision but only if the juvenile is alleged to have committed acts that damage property or injure persons. Secure custody is described in G.S. 7B-1905(b) as an approved detention facility which shall be separate from any jail, lockup, prison, or other adult penal institution except that a holdover facility may be used for up to 72 hours if no acceptable alternative placement is available.

**Bill Analysis:** The bill would allow the court to order secure custody for a juvenile who is alleged to have substantially violated conditions of probation or post-release supervision.

#### Section 2:

**Current Law:** G.S. 7B-2507 provides for the determination of delinquency history levels for delinquent juveniles. When determining a juvenile's delinquency history, points are assigned to each of the juvenile's prior adjudications and to the juvenile's probation status, if any, at the time of the offense. Currently, for each prior adjudication of a Class 1, 2, or 3 misdemeanor offense, one point is assigned.

**Bill Analysis:** The bill would increase the number of points from 1 to 2 for the following offenses:

- G.S. 14-202.2—indecent liberties between children (Class 1 misdemeanor)
- G.S. 14-269—carrying concealed weapons (Class 2 misdemeanor)
- G.S. 14-269.7(a)—prohibition on handguns for minors (Class 2 misdemeanor)

#### Section 3:

**Current Law:** A juvenile with a high delinquency history may not be committed to a youth development center when adjudicated of a minor offense unless there is a finding that the juvenile has been adjudicated of four or more prior offenses. The juvenile can, however, be committed for a serious offense.

**Bill Analysis:** The bill would amend the offense classifications in G.S. 7B-2508(a) to increase the offense classifications for certain offenses from minor to serious for purposes of determining the disposition level (community, intermediate, or commitment). The changes are for the following offenses:

- G.S. 14-202.2—indecent liberties between children (Class 1 misdemeanor)

# House Bill 2076

Page 2

- G.S. 14-269—carrying concealed weapons (Class 2 misdemeanor)
- G.S. 14-269.7(a)—prohibition on handguns for minors (Class 2 misdemeanor)

## Section 4

*Current Law:* If a court finds that a juvenile has violated the terms of probation, the court may continue or modify the original conditions, or order a new disposition at the next higher level. Part of the disposition may include an order of confinement in a secure juvenile detention facility for up to twice the term authorized under G.S. 7B-2508 which governs dispositional limits.

*Bill Analysis:* The bill specifies that this expanded term of confinement can occur only when the juvenile's disposition is not raised to a higher level as a result of the probation violation.

## Section 5

*Bill Analysis:* This section adds the definition of "prior adjudication" to the Undisciplined and Delinquent Juveniles Subchapter of the Juvenile Code. "Prior adjudication" is any adjudication that occurred before the date of the disposition, which is not part of some related transaction for the current offense. The term is not currently defined in the definitions section.

**EFFECTIVE DATE:** The bill would become effective December 1, 2006 and apply to offenses committed on or after that date.

H2076e1-SMRQ

**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative Michaux (Chair) for the Committee on JUDICIARY II.

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☒ Committee Substitute for

**SB 846**        A BILL TO BE ENTITLED AN ACT MODERNIZING THE MANNER IN WHICH BAIL BONDSMEN REGISTER THEIR LICENSES.

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

**(FOR JOURNAL USE ONLY)**

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\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on \_\_\_\_\_:

\_\_\_\_\_ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is placed on the Calendar of \_\_\_\_\_. (The original bill resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

\_\_\_\_\_ The (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is re-referred to the Committee on \_\_\_\_\_. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

S

D

SENATE BILL 846  
Judiciary II Committee Substitute Adopted 5/24/05  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S846-PCS75557-RQ-76

Short Title: Modernize Bail Bondsman Registration.

(Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED  
AN ACT MODERNIZING THE MANNER IN WHICH BAIL BONDSMEN  
REGISTER THEIR LICENSES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 58-71-140 reads as rewritten:

**"§ 58-71-140. Registration of licenses and power of appointments by insurers.**

(a) ~~No~~ Before the date of the notice provided for in subsection (e) of this section,  
no professional bail bondsman shall become a surety on an undertaking unless he or she  
has registered his or her current license in the office of the clerk of superior court in the  
county in which he or she resides and a certified copy of the same with the clerk of  
superior court in any other county in which he or she shall write bail bonds.

(b) ~~A~~ Before the date of the notice provided for in subsection (e) of this section, a  
surety bondsman shall register his or her current surety bondsman's license and a  
certified copy of his or her power of appointment with the clerk of superior court in the  
county in which the surety bondsman resides and with the clerk of superior court in any  
other county in which the surety bondsman writes bail bonds on behalf of an insurer.

(c) ~~No~~ Before the date of the notice provided for in subsection (e) of this section,  
no runner shall become surety on an undertaking on behalf of a professional bondsman  
unless that runner has registered his or her current license and a certified copy of his or  
her power of attorney in the office of the clerk of superior court in the county in which  
the runner resides and with the clerk of superior court in any other county in which the  
runner writes bail bonds on behalf of the professional bondsman.

(c1) On or after the date of the notice provided for in subsection (e) of this section,  
all licensed professional bail bondsmen, surety bondsmen, and runners shall register in  
the statewide Electronic Bondsmen Registry in accordance with subsection (e) of this  
section.

1 (d) Professional bondsmen, surety bondsmen, and runners shall file with the clerk  
2 of court having jurisdiction over the principal an affidavit on a form furnished by the  
3 Administrative Office of the Courts. The affidavit shall include, but not be limited to:

- 4 (1) If applicable, a statement that the bondsman has not, nor has anyone  
5 for the bondsman's use, been promised or received any collateral,  
6 security, or premium for executing this appearance bond.  
7 (2) If promised a premium, the amount of the premium promised and the  
8 due date.  
9 (3) If the bondsman has received a premium, the amount of premium  
10 received.  
11 (4) If given collateral security, the name of the person from whom it is  
12 received and the nature and amount of the collateral security listed in  
13 detail.

14 (e) On or before October 1, 2006, the Administrative Office of the Courts shall  
15 establish a statewide Electronic Bondsmen Registry (Registry) for all licenses, powers  
16 of appointment, and powers of attorney requiring registration under this section. When  
17 the Registry is established, the Administrative Office of the Courts shall notify the  
18 Commissioner and the Commissioner shall notify all licensed professional bondsmen,  
19 surety bondsmen, runners, and qualified insurance companies of the Registry. On or  
20 after the date of that notice, a person may register as required under this section by  
21 maintaining a record of each required license, power of appointment, or power of  
22 attorney in the Registry. After a bondsman, surety bondsman, or runner has completed  
23 registration in the Registry, he or she is authorized to execute bail bonds pursuant to his  
24 or her registered license, power of appointment, or power of attorney in all counties so  
25 long as the registered license, power of appointment, or power of attorney remains in  
26 effect."

27 **SECTION 2.** G.S. 15A-544.7(c) reads as rewritten:

28 "(c) Execution; Copy to Commissioner of Insurance. – After docketing a final  
29 judgment under this section, the clerk shall:

- 30 (1) Issue execution on the judgment against the defendant and against  
31 each accommodation bondsman and professional bondsman named in  
32 the judgment and shall remit the clear proceeds to the county finance  
33 officer as provided in G.S. 115C-452.  
34 (2) If an insurance company or professional bondsman is named in the  
35 judgment, send the Commissioner of Insurance a ~~copy~~ notice of the  
36 judgment, showing the date on which the judgment was docketed."

37 **SECTION 3.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

S

2

SENATE BILL 846  
Judiciary II Committee Substitute Adopted 5/24/05

Short Title: Modernize Bail Bondsman Registration.

(Public)

Sponsors:

Referred to:

March 23, 2005

1 A BILL TO BE ENTITLED  
2 AN ACT MODERNIZING THE MANNER IN WHICH BAIL BONDSMEN  
3 REGISTER THEIR LICENSES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 58-71-140 reads as rewritten:

6 "§ 58-71-140. Registration of licenses and power of appointments by insurers.

7 (a) ~~No~~ Before the date of the notice provided for in subsection (e) of this section,  
8 no professional bail bondsman shall become a surety on an undertaking unless he or she  
9 has registered his or her current license in the office of the clerk of superior court in the  
10 county in which he or she resides and a certified copy of the same with the clerk of  
11 superior court in any other county in which he or she shall write bail bonds.

12 (b) ~~A~~ Before the date of the notice provided for in subsection (e) of this section, a  
13 surety bondsman shall register his or her current surety bondsman's license and a  
14 certified copy of his or her power of appointment with the clerk of superior court in the  
15 county in which the surety bondsman resides and with the clerk of superior court in any  
16 other county in which the surety bondsman writes bail bonds on behalf of an insurer.

17 (c) ~~No~~ Before the date of the notice provided for in subsection (e) of this section,  
18 no runner shall become surety on an undertaking on behalf of a professional bondsman  
19 unless that runner has registered his or her current license and a certified copy of his or  
20 her power of attorney in the office of the clerk of superior court in the county in which  
21 the runner resides and with the clerk of superior court in any other county in which the  
22 runner writes bail bonds on behalf of the professional bondsman.

23 (c1) On or after the date of the notice provided for in subsection (e) of this section,  
24 all licensed professional bail bondsmen, surety bondsmen, and runners shall register in  
25 the statewide Electronic Bondsman Registry in accordance with subsection (e) of this  
26 section.

27 (d) Professional bondsmen, surety bondsmen, and runners shall file with the clerk  
28 of court having jurisdiction over the principal an affidavit on a form furnished by the  
29 Administrative Office of the Courts. The affidavit shall include, but not be limited to:

- (1) If applicable, a statement that the bondsman has not, nor has anyone for the bondsman's use, been promised or received any collateral, security, or premium for executing this appearance bond.
- (2) If promised a premium, the amount of the premium promised and the due date.
- (3) If the bondsman has received a premium, the amount of premium received.
- (4) If given collateral security, the name of the person from whom it is received and the nature and amount of the collateral security listed in detail.

(e) On or before July 1, 2006, the Administrative Office of the Courts shall establish a statewide Electronic Bondsmen Registry (Registry) for all licenses, powers of appointment, and powers of attorney requiring registration under this section. When the Registry is established, the Administrative Office of the Courts shall notify the Commissioner and the Commissioner shall notify all licensed professional bondsmen, surety bondsmen, runners, and qualified insurance companies of the Registry. On or after the date of that notice, a person may register as required under this section by maintaining a record of each required license, power of appointment, or power of attorney in the Registry. After a bondsman, surety bondsman, or runner has completed registration in the Registry, he or she is authorized to execute bail bonds pursuant to his or her registered license, power of appointment, or power of attorney in all counties so long as the registered license, power of appointment, or power of attorney remains in effect."

**SECTION 2.** G.S. 15A-544.7(c) reads as rewritten:

"(c) Execution; Copy to Commissioner of Insurance. – After docketing a final judgment under this section, the clerk shall:

- (1) Issue execution on the judgment against the defendant and against each accommodation bondsman and professional bondsman named in the judgment and shall remit the clear proceeds to the county finance officer as provided in G.S. 115C-452.
- (2) If an insurance company or professional bondsman is named in the judgment, send the Commissioner of Insurance a ~~copy~~-notice of the judgment, showing the date on which the judgment was docketed."

**SECTION 3.** This act is effective when it becomes law.



NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
Senate Bill 846

S846-ARQ-29 [v.1]

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

Page 1 of 1

Date \_\_\_\_\_, 2006

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

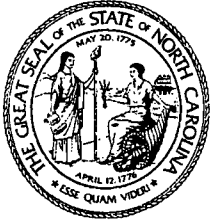
Representative Michaux

- 1 moves to amend the bill on page 2, line 11 by deleting "July 1, 2006," and substituting
- 2 "October 1, 2006,".
- 3
- 4

SIGNED \_\_\_\_\_  
Amendment Sponsor

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

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



## SENATE BILL 846: Modernize Bail Bondsman Registration

### BILL ANALYSIS

<b>Committee:</b>	House Judiciary II	<b>Date:</b>	July 5, 2006
<b>Introduced by:</b>	Sen. Swindell	<b>Summary by:</b>	Drupti Chauhan*
<b>Version:</b>	Second Edition		Committee Counsel

**SUMMARY:** *Senate Bill 846 would require that the Commissioner of Insurance and the Administrative Office of the Courts establish a statewide Electronic Bondsmen Registry for all licenses, powers of appointment, and powers of attorney that require registration under G.S. 58-71-140 and would require that all licensed professional bail bondsmen, surety bondsmen and runners register with the Registry. Registration with the statewide registry would replace the current county-level registration with the clerks of court and would allow all licensed professional bail bondsmen, surety bondsmen and runners to operate statewide rather than only in the counties in which they are registered.*

**CURRENT LAW:** General Statutes require that the following individuals writing bail bonds register with the clerk of superior court in the county in which they reside and with the clerk of superior court in the county in which they would like to write bail bonds: licensed professional bail bondsmen, surety bondsmen, and runners. Surety bondsmen and runners must also register certified copies of their power of appointment or power of attorney with both counties' clerks of superior court as well. Licensed professional bail bondsmen, surety bondsmen, and runners may not write bonds in any county in which they have not filed the appropriate paperwork with the clerk of court.

**BILL ANALYSIS:** Registration with the statewide registry would replace the current county-level registration with the clerks of court and would allow all licensed professional bail bondsmen, surety bondsmen and runners to operate statewide rather than only in the counties in which they are registered.

Senate Bill 846 would add a subsection to the existing statute, requiring that the Commissioner of Insurance and the Administrative Office of the Courts establish a statewide Electronic Bondsmen Registry for all licenses, powers of appointment, and powers of attorney as required by G.S. 58-71-140. The bill would require that the Registry be established on or before July 1, 2006 and would direct the Commissioner to notify all licensed professional bail bondsmen, surety bondsmen, runners, and qualified insurance companies of the Registry. The bill includes an additional subsection that would require all licensed professional bail bondsmen, surety bondsmen, or runners to register with the Registry on or after the date of notice by the Commissioner.

Section 2 of the bill would require that the clerk of court who docket a final judgment on a bail bond forfeiture that names an insurance company or professional bondsman to send the Commissioner of Insurance a notice of the judgment. The current law requires a copy of the judgment.

**EFFECTIVE DATE:** The act would be effective when it becomes law.

**BACKGROUND:** Currently, licensed professional bail bondsmen, surety bondsmen, and runners are limited to operate only in counties in which they have filed the required paperwork. Verification of their registration with the clerk of superior court is often evidenced only by a printed list kept in either the county jail or the local magistrate's office, which may or may not be accurate and updated.

\*Ben Popkin, counsel to Senate Judiciary II, substantially contributed to this summary.

S0846e2-SMRQ

# **AGENDA**

## **HOUSE COMMITTEE ON JUDICIARY II**

**July 6, 2006  
Room 421  
10:00 AM**

### **OPENING REMARKS**

Representative Mickey Michaux, Chair

### **AGENDA ITEMS**

**H 2076 –Juvenile Code Changes  
S 846 Modernize Bail Bondsman Registration**

**Anita Wilder (Rep. Michaux)**

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**From:** Anita Wilder (Rep. Michaux)  
**Sent:** Wednesday, June 28, 2006 11:36 AM  
**To:** Rep. Phillip Haire; Rep. Margaret H. Dickson; Rep. Joe Kiser; Rep. Earl Jones; Sen. A.B. Swindell  
**Cc:** Drupti Chauhan (Research); Karen Cochrane-Brown (Research); Jeffrey Hudson (Research); @HouseCommitteeNotice; @House/Judiciary II  
**Subject:** House J-II Committee Notice - July 6, 2006

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2006 SESSION**

You are hereby notified that the Committee on **JUDICIARY II** will meet as follows:

**DAY & DATE:**       **Thursday, July 6, 2006**

**TIME:**               **10:00 A.M.**

**LOCATION:**          **Room 421**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

**H 2076 –Juvenile Code Changes**

**S 846 –Modernize Bail Bondsman Registration**

Respectfully,  
Representative H. M. Michaux, Jr.  
Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **11:45 a.m. on June 28, 2006.**

  X   Principal Clerk  
  X   Reading Clerk - House Chamber

Anita Wilder (Committee Assistant)



House Pages

Name Of Committee: J 11 Date: 7/6/06

1. Name: Ben Long  
County: New Hanover  
Sponsor: Thomas Wright
2. Name: Martez T Barnes  
County: Wake  
Sponsor: Rep Paulson
3. Name: Richard Stolp  
County: Wake  
Sponsor: Tim Black
4. Name: \_\_\_\_\_  
County: \_\_\_\_\_  
Sponsor: \_\_\_\_\_
5. Name: \_\_\_\_\_  
County: \_\_\_\_\_  
Sponsor: \_\_\_\_\_

Sgt-At-Arms

1. Name: MARK CONE
2. Name: JAMES WORTH
3. Name: \_\_\_\_\_
4. Name: \_\_\_\_\_
5. Name: =

# VISITOR REGISTRATION SHEET

JUDICIARY II

July 6, 2006

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Kathy Dudley	DJJDP
Ginger Helms	AOC
John Madler	NC Sentencing Commission
Larry Dick	DJJDP
Mr Osborne	AOC
Mark Blum	NCBAA
Tam Woods	NCBAA
Walter Moore	ACCFAA
Vicky Young	DOI
Barbara Morales Burke	DOI

**MINUTES  
HOUSE COMMITTEE ON  
JUDICIARY II**

July 11, 2006

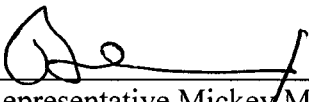
The House Committee on Judiciary II met on Tuesday, July 11, 2006, in Room 421 of the Legislative Office Building at 10:05 AM. The following members were present: Chairman Mickey Michaux, Vice-Chairs Alice Bordsen, James Harrell and Timothy Moore, Representatives Allen, Fisher, Gulley, Jones, Walend and Wiley. Drupti Chauhan, Karen Cochrane-Brown and Jeff Hudson, Staff Counselors were also in attendance. A Visitor's Registration list is attached and made part of these minutes.

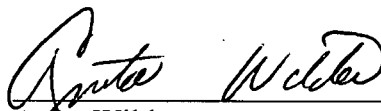
The Chairman called the meeting to order and recognized the Pages, Sergeant-At-Arms, Staff and visitors.

Rep. Timothy Moore was recognized to explain **HB 2145, A BILL TO BE ENTITLED AN ACT TO MAKE FALSE, HIDDEN, OR SECRET COMPARTMENTS IN A VEHICLE UNLAWFUL AND TO APPROPRIATE ONE HUNDRED THOUSAND DOLLARS TO THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY FOR GRANTS TO LOCAL LAW ENFORCEMENT AGENCIES TO HELP OFFSET THE COST OF ENFORCING THIS ACT.** A PCS was introduced and Rep. Gulley moved for the PCS to be adopted for discussing. The Committed voted to adopt the PCS. After much discussion, Chairman Michaux announced that no action would be taken on the bill today.

There being no further business, the Chair adjourned the meeting at 10:25 AM.

Respectfully submitted,

  
\_\_\_\_\_  
Representative Mickey Michaux, Jr.  
Presiding Chair

  
\_\_\_\_\_  
Anita Wilder  
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

D

HOUSE BILL 2145

Committee Substitute Reported Without Prejudice 6/8/06  
PROPOSED COMMITTEE SUBSTITUTE H2145-CSSU-38 [v.2]

7/10/2006 9:47:40 AM

Short Title: Secret Compartments in Motor Vehicles.

(Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO MAKE FALSE, HIDDEN, OR SECRET COMPARTMENTS IN A  
VEHICLE UNLAWFUL AND TO APPROPRIATE ONE HUNDRED  
THOUSAND DOLLARS TO THE DEPARTMENT OF CRIME CONTROL AND  
PUBLIC SAFETY FOR GRANTS TO LOCAL LAW ENFORCEMENT  
AGENCIES TO HELP OFFSET THE COST OF ENFORCING THIS ACT.

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 90 of the General Statutes is amended by adding a  
new section to read:

**"§ 90-108.1. Vehicles with false, hidden, or secret compartments.**

**(a) Definitions. –**

**(1) False, hidden, or secret compartment means any enclosure that is  
intended or designed to be used to conceal, hide, or prevent discovery  
by law enforcement officers of the false, hidden, or secret  
compartment, or its contents, for an unlawful purpose, and which is  
integrated into or attached to a vehicle. The term "false, hidden, or  
secret compartment" does not include a compartment or enclosure that  
is designed and installed by the manufacturer of the vehicle prior to the  
sale of the vehicle or by a licensed motor vehicle dealer pursuant to  
manufacturer guidelines. The term "false, hidden, or secret  
compartment" includes, but is not limited to:**

**a. False, altered, or modified fuel tank.**

**b. Any original factory equipment on a vehicle that has been  
modified to conceal, hide, or prevent discovery of its contents.**

**c. Any compartment, space, or box that is added or attached to  
existing compartments, spaces, or boxes integrated into or  
attached to a vehicle.**

(2) Vehicle includes, but is not limited to, cars, trucks, buses, motorcycles, mopeds, bicycles, aircraft, helicopters, boats, ships, yachts, railcars, rail engines, and any other property that may be attached to, pulled, towed, or drawn by a vehicle.

(b) For the purposes of this section, a person's intention to use a false, hidden, or secret compartment to conceal the contents of the compartment from a law enforcement officer may be inferred from factors including, but not limited to, the discovery of any of the following, or evidence of the previous placement of any of the following, within the false, hidden, or secret compartment:

(1) A person concealed for an unlawful purpose.

(2) A controlled substance, if possession of the controlled substance would be classified as a Class 1 misdemeanor or higher.

(3) Other contraband, if possession of the contraband would be classified as a Class 1 misdemeanor or higher.

(c) It is unlawful for any person to own or operate any vehicle he or she knows to contain a false, hidden, or secret compartment.

(d) It is unlawful for any person to install, create, build, or fabricate a false, hidden, or secret compartment in any vehicle.

(e) It is unlawful for any person to sell, trade, or otherwise dispose of a vehicle he or she knows to contain a false, hidden, or secret compartment.

(f) Upon the arrest of a person who owns or operates a vehicle in violation of this section, if the vehicle is not otherwise subject to forfeiture under other provisions of law or determined to be needed to be held as evidence, the law enforcement officer shall seize the license plate and registration card for the vehicle. Any law enforcement officer who seizes a license plate and registration card under this section shall report the seizure to the Division of Motor Vehicles within 48 hours of the seizure. Upon application to the Division, the owner of the vehicle may be issued a temporary license plate for the vehicle which shall be valid for 30 days or until the owner of the vehicle provides verification that the vehicle has been repaired to eliminate any violation of this section, whichever occurs first. The vehicle shall be subject to inspection by law enforcement, and if it is determined that the vehicle has been repaired, the license plate and registration card shall be returned to the owner.

(g) A violation of this section is punishable as a Class I felony."

**SECTION 2.** There is appropriated from the General Fund to the Department of Crime Control and Public Safety the sum of one hundred thousand dollars (\$100,000) to be used for grants to local law enforcement agencies to offset the costs of enforcing Section 1 of this act.

**SECTION 3.** This act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2006 SESSION**

You are hereby notified that the Committee on **JUDICIARY II** will meet as follows:

**DAY & DATE:**     **Tuesday, July 11, 2006**

**TIME:**             **10:00 A.M.**

**LOCATION:**        **Room 421**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

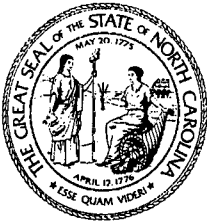
**H 2145-Secret Compartments in Motor Vehicles – Rep. Moore**

Respectfully,  
Representative H. M. Michaux, Jr.  
Chair

I hereby certify this notice was filed by the committee assistant at the following offices at  
**11:30 a.m. on July 06, 2006.**

☒ Principal Clerk  
☒ Reading Clerk - House Chamber

Anita Wilder (Committee Assistant)



# HOUSE BILL 2145: Secret Compartments in Motor Vehicles

## BILL ANALYSIS

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<b>Committee:</b>	House Judiciary II	<b>Date:</b>	July 10, 2006
<b>Introduced by:</b>	Rep. Moore	<b>Summary by:</b>	Karen Cochrane-Brown
<b>Version:</b>	PCS to Second Edition		Committee Counsel
	H2145-CSSU-38[v.2]		

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**SUMMARY:** *The Proposed Committee Substitute for House Bill 2145 would make it unlawful to own or operate a vehicle with a false, hidden, or secret compartment for an unlawful purpose; to install such a compartment in a vehicle; or to sell, trade, or otherwise dispose of a vehicle that contains such a compartment. It would also require law enforcement to seize the license plate and registration for a vehicle when the owner or operator is arrested for a violation of the provisions of the act. The PCS would also appropriate \$100,000 to the Department of Crime Control and Public Safety to be used for grants to local law enforcement agencies to offset the costs of enforcement.*

## CURRENT LAW:

Under the Controlled Substances Act, maintaining a vehicle with knowledge that it is used to keep or sell controlled substances is a misdemeanor, and maintaining a vehicle with the intent that it be so used is a Class I felony. In addition, vehicles used or intended for use to conceal, convey or transport controlled substances may be seized and are subject to forfeiture. However, a vehicle cannot be forfeited unless the violation involved is a felony.

**BILL ANALYSIS:** The PCS for House Bill 2145 would do the following:

Definition of false, hidden, or secret compartment. The PCS would define false, hidden, or secret compartment as an enclosure that is intended or designed to be used to conceal the compartment or contents from law enforcement for an unlawful purpose. The compartment would have to be integrated into or attached to the vehicle, but the definition would not include any enclosure designed and installed by the manufacturer of the vehicle prior to sale or by a licensed motor vehicle dealer pursuant to manufacturer guidelines.

The PCS also lists specific factors from which intent to use a false, hidden, or secret compartment to conceal the contents from law enforcement may be inferred. They include the discovery of, or evidence of previous placement of, any of the following items within the compartment:

- A person concealed for an unlawful purpose.
- A controlled substance if possession would be a Class 1 misdemeanor or higher.
- Other contraband if possession would be a Class 1 misdemeanor or higher.

Prohibited acts. The PCS would make it unlawful to do any of the following:

- Own or operate a vehicle knowing it to contain a false, hidden, or secret compartment.
- Install, create, build, or fabricate a false, hidden, or secret compartment in a vehicle.

# House Bill 2145

Page 2

- Sell, trade, or otherwise dispose of a vehicle knowing it to contain a false, hidden, or secret compartment.

Violation of these provisions would be a Class I felony, punishable by a minimum of 3 months of community punishment and a maximum of 15 months of intermediate or active punishment.

Seizure of license plate and registration. When a person who owns or operates a vehicle in violation of the provisions of the act is arrested, the PCS would require law enforcement to seize the license plate and registration for the vehicle. The owner would be able to reclaim the plate and registration upon providing verification that the vehicle has been repaired to eliminate any violation.

Funds for enforcement. The PCS would also appropriate \$100,000 from the General Fund to the Department of Crime Control and Public Safety to be used for grants to local law enforcement agencies to offset the cost of enforcing the provisions of the act.

**EFFECTIVE DATE:** The bill would become effective December 1, 2006, and would apply to offenses committed on or after that date.

*Wendy Graf Ray, counsel to the House Transportation Committee, substantially contributed to this summary.*

H2145e2-SMRO-CSSU-38v2



# **AGENDA**

## **HOUSE COMMITTEE ON JUDICIARY II**

**July 11, 2006  
Room 421  
10:00 AM**

### **OPENING REMARKS**

Representative Mickey Michaux, Chair

### **AGENDA ITEMS**

**H 2145 –Secret Compartments in Motor Vehicles – Rep. Tim Moore**

House Pages

Name Of Committee: J II Date: 7/11/06

1. Name: Brittney Harbin  
County: Gaston  
Sponsor: William Current
2. Name: Spencer Egerung  
County: Buncombe  
Sponsor: Bruce Enright
3. Name: George Davies  
County: Charlotte  
Sponsor: James Black
4. Name: Win Joyner  
County: Hertford  
Sponsor: Bill Owens
5. Name: Laura Riddle  
County: Lincoln  
Sponsor: Karen Ray

Kaitlyn Averette  
Franklin  
Lucy Allen  
Lauren Weisberger  
Mecklenburg  
Jim Gullett

Sgt-At-Arms

1. Name: Frank Shero
2. Name: James North
3. Name: Gerald Perry
4. Name: Martha Sadesin
5. Name: —

# VISITOR REGISTRATION SHEET

JUDICIARY II

July 11, 2006

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Jill Shatzberger

ACLU-NC

John P. ...  
Greg ...

NEADA

DMV

Nancy Davis

LA - Rep Moore

Teracy Hardesty

NCPC

MARK GINSBERG

CANALY CORPITION (TO MEET REP. JULEN)

Elizabeth Dalton

NCRMA

DAREN BAKST

John Locke Felt

...

**MINUTES  
HOUSE COMMITTEE ON  
JUDICIARY II**

Tuesday, July 18, 2006


The House Committee on Judiciary II met on Tuesday, July 18, 2006, in Room 421 of the Legislative Office Building at 10:05 AM. The following members were present: Chairman Mickey Michaux, Vice-Chairs Alice Bordsen and Timothy Moore, Representatives Allen, Fisher Folwell, Gulley, Jones, Walend and Wiley. Drupti Chauhan, Karen Cochrane-Brown and Jeff Hudson, Staff Counselors were also in attendance. A Visitor's Registration list is attached and made part of the minutes.



The Chairman called the meeting to order and recognized Pages, Sergeant-At-Arms, Staff and visitors.

Sen. Katie Dorsett was recognized to explain **SB 1295, A BILL TO BE ENTITLED AN ACT TO INCREASE PROTECTIONS FOR CONSUMERS WHO RECEIVE UNSOLICITED FACSIMILES**. The first amendment was introduced and Rep. Edward Jones moved that the amendment be adopted into the bill for discussion and the Committee gave favorable approval. Chairman Mickey Michaux moved that the second amendment to the bill be adopted for discussion and both amendments be rolled into a Proposed Committee Substitute (PCS). The Committee voted for the PCS. After much discussion, Rep. Wiley made a motion to give the PCS a favorable report and an unfavorable report to the original bill. The Committee voted and agreed to the motion.

There being no further business, the Chair adjourned the meeting at 10:25 AM.

Respectfully submitted,

  
\_\_\_\_\_  
Representative Mickey Michaux, Jr.  
Presiding Chair

   
\_\_\_\_\_  
Anita Wilder  
Committee Assistant

**2005 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

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

By Representative Michaux (Chair) for the Committee on JUDICIARY II.

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☐ Committee Substitute for

**SB 1295**

A BILL TO BE ENTITLED AN ACT TO INCREASE PROTECTIONS  
FOR CONSUMERS WHO RECEIVE UNSOLICITED FACSIMILES.

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

**(FOR JOURNAL USE ONLY)**

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\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on \_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is placed on the Calendar of \_\_\_\_\_. (The original bill resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

\_\_\_\_\_ The (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is re-referred to the Committee on \_\_\_\_\_. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S

D

SENATE BILL 1295

Second Edition Engrossed 7/12/06

PROPOSED HOUSE COMMITTEE SUBSTITUTE S1295-PCS15434-SB-63

Short Title: Junk Faxes.

(Public)

Sponsors:

Referred to:

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO INCREASE PROTECTIONS FOR CONSUMERS WHO RECEIVE  
UNSOLICITED FACSIMILES.

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 75 of the General Statutes is amended by adding a  
new Article to read:

"Article 5.

"Unsolicited Facsimiles.

"§ 75-115. The following definitions apply in this Article:

(1) Established business relationship. –

a. A relationship between a seller and a consumer based on:

1. The consumer's purchase, rental, or lease of the seller's  
goods or services or a financial transaction between the  
consumer and the seller or one or more of its affiliates  
within the 18 months immediately preceding the date of  
an unsolicited advertisement; or
2. The consumer's inquiry or application regarding a  
product or service offered by the seller within the three  
months immediately preceding the date of an unsolicited  
advertisement.

b. A relationship between a tax-exempt nonprofit organization and  
a person based on:

1. The person's association with the tax-exempt nonprofit  
organization as a member, contributor, or volunteer of  
the tax-exempt nonprofit organization within the 18  
months immediately preceding the date of an unsolicited  
advertisement;

2. The person's subscription to or use of the services of the tax-exempt nonprofit organization within the 18 months immediately preceding the date of an unsolicited advertisement; or

3. The person's inquiry regarding the tax-exempt nonprofit organization within the three months immediately preceding the date of an unsolicited advertisement.

(2) Telephone facsimile machine. – Equipment that has the capacity to do either or both of the following:

a. Transcribe text or images or both from paper into an electronic signal and to transmit that signal over a regular telephone line.

b. Transcribe text or images or both from an electronic signal received over a regular telephone line onto paper.

(3) Unsolicited advertisement. – Any material advertising the commercial availability or quality of any property, goods, or services that is transmitted to any person or entity without that person's or entity's prior express invitation or permission. Prior express invitation or permission may be obtained for a specific or unlimited number of advertisements and may be obtained for a specific or unlimited period of time.

**"§ 75-116. Prohibition of unsolicited facsimiles; exception.**

(a) No person or entity, if either the person or entity or the recipient is located within the State of North Carolina, shall (i) use any telephone facsimile machine, computer, or other device to send or (ii) cause another person or entity to use a telephone facsimile machine to send an unsolicited advertisement to a telephone facsimile machine.

(b) This section shall not apply to a person or entity that has an established business relationship with the recipient of the facsimile. However, the person or entity who sends an unsolicited advertisement under this subsection shall provide a notice in the unsolicited advertisement that: (i) is clear and conspicuous and on the first page of the unsolicited advertisement; (ii) states that the recipient may make a request to the sender to "do not send" any future unsolicited advertisements to a telephone facsimile machine and that the sender's failure to comply with the request is unlawful; and (iii) includes a toll-free domestic telephone number or facsimile machine number that the recipient may call at any time on any day of the week to transmit a request to "do not send" future facsimiles.

**"§ 75-117. Facsimiles to contain identifying material.**

(a) It shall be a violation of this Article for any person or entity, if either the person or entity or the recipient is located in the State of North Carolina, to do either of the following:

(1) Initiate any communication using a telephone facsimile machine that does not clearly mark in a margin at the top or bottom of each transmitted page or on the first page of each transmission the date and time sent; an identification of the business, other entity, or person

1 sending the message, and the telephone number of the sending  
2 machine or of the business, other entity, or person.

- 3 (2) Use a computer or other electronic device to send any message via a  
4 telephone facsimile machine unless it is clearly marked in a margin at  
5 the top or bottom of each transmitted page of the message or on the  
6 first page of the transmission the date and time it is sent, the  
7 identification of the business, other entity, or person sending the  
8 message, and the telephone number of the sending machine or of the  
9 business, other entity, or person.

10 (b) This section shall not apply to a facsimile sent by or on behalf of a  
11 professional or trade association that is a tax-exempt nonprofit organization and in  
12 furtherance of the association's tax-exempt purpose to a member of the association if all  
13 of the following conditions are met:

- 14 (1) The member voluntarily provided the association the facsimile number  
15 to which the facsimile was sent.  
16 (2) The facsimile is not primarily for the purpose of advertising the  
17 commercial availability or quality of any property, goods, or services  
18 of one or more third parties.  
19 (3) The member who is sent the facsimile has not requested that the  
20 association stop sending facsimiles.

21 **"§ 75-118. Enforcement.**

22 (a) A person or entity who receives an unsolicited advertisement in violation of  
23 this Article may bring any of the following actions in civil court:

- 24 (1) An action to enjoin further violations of this Article by the person or  
25 entity who sent the unsolicited advertisement.  
26 (2) An action to recover five hundred dollars (\$500.00) for the first  
27 violation, one thousand dollars (\$1,000) for the second violation, and  
28 five thousand dollars (\$5,000) for the third and any other violation that  
29 occurs within two years of the first violation.

30 (b) In an action brought pursuant to this Article, the court may award a prevailing  
31 plaintiff reasonable attorneys' fees if the court finds the defendant willfully engaged in  
32 the act or practice, and the court may award reasonable attorneys' fees to a prevailing  
33 defendant if the court finds that the plaintiff knew, or should have known, that the  
34 action was frivolous and malicious.

35 (c) Actions brought by a person or entity pursuant to this section shall be tried in  
36 the county where the plaintiff resides at the time of the commencement of the action.

37 (d) This section shall not be construed to alter or restrict any remedy a person  
38 may have under federal law, including the Junk Fax Prevention Act of 2005, against a  
39 person or entity who sends an unsolicited advertisement.

40 (e) A violation of G.S. 75-116 is a violation of G.S. 75-1.1."

41 **SECTION 2.** This act becomes effective September 1, 2006, and applies to  
42 offenses committed on or after that date.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S

2

SENATE BILL 1295  
Second Edition Engrossed 7/12/06

Short Title: Junk Faxes.

(Public)

Sponsors: Senators Dorsett; Albertson, Allran, Apodaca, Atwater, Berger of Rockingham, Blake, Bland, Clodfelter, Dalton, Dannelly, East, Forrester, Garrou, Garwood, Goodall, Graham, Hagan, Hartsell, Holloman, Hoyle, Jenkins, Lucas, Malone, Nesbitt, Presnell, Purcell, Stevens, Swindell, Tillman, and Weinstein.

Referred to: Rules and Operations of the Senate.

May 11, 2006

1 A BILL TO BE ENTITLED  
2 AN ACT TO INCREASE PROTECTIONS FOR CONSUMERS WHO RECEIVE  
3 UNSOLICITED FACSIMILES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 75 of the General Statutes is amended by adding a  
6 new Article to read:

7 "Article 5.

8 "Unsolicited Facsimiles.

9 "§ 75-115. The following definitions apply in this Article:

10 (1) Established business relationship. – A relationship between a seller  
11 and a consumer based on:

12 a. The consumer's purchase, rental, or lease of the seller's goods or  
13 services or a financial transaction between the consumer and the  
14 seller or one or more of its affiliates within the 18 months  
15 immediately preceding the date of an unsolicited advertisement;  
16 or

17 b. The consumer's inquiry or application regarding a product or  
18 service offered by the seller within the three months  
19 immediately preceding the date of an unsolicited advertisement.

20 (2) Telephone facsimile machine. – Equipment that has the capacity to do  
21 either or both of the following:

22 a. Transcribe text or images or both from paper into an electronic  
23 signal and to transmit that signal over a regular telephone line.

24 b. Transcribe text or images or both from an electronic signal  
25 received over a regular telephone line onto paper.

(3) Unsolicited advertisement. – Any material advertising the commercial availability or quality of any property, goods, or services that is transmitted to any person or entity without that person's or entity's prior express invitation or permission. Prior express invitation or permission may be obtained for a specific or unlimited number of advertisements and may be obtained for a specific or unlimited period of time.

**"§ 75-116. Prohibition of unsolicited facsimiles; exception.**

(a) No person or entity, if either the person or entity or the recipient is located within the State of North Carolina, shall (i) use any telephone facsimile machine, computer, or other device to send or (ii) cause another person or entity to use a telephone facsimile machine to send an unsolicited advertisement to a telephone facsimile machine.

(b) This section shall not apply to a person or entity that has an established business relationship with the recipient of the facsimile. However, the person or entity who sends an unsolicited advertisement under this subsection shall provide a notice in the unsolicited advertisement that: (i) is clear and conspicuous and on the first page of the unsolicited advertisement; (ii) states that the recipient may make a request to the sender to "do not send" any future unsolicited advertisements to a telephone facsimile machine and that the sender's failure to comply with the request is unlawful; and (iii) includes a toll-free domestic telephone number or facsimile machine number that the recipient may call at any time on any day of the week to transmit a request to "do not send" future facsimiles.

**"§ 75-117. Facsimiles to contain identifying material.**

(a) It shall be a violation of this Article for any person or entity, if either the person or entity or the recipient is located in the State of North Carolina, to do either of the following:

(1) Initiate any communication using a telephone facsimile machine that does not clearly mark in a margin at the top or bottom of each transmitted page or on the first page of each transmission the date and time sent; an identification of the business, other entity, or person sending the message, and the telephone number of the sending machine or of the business, other entity, or person.

(2) Use a computer or other electronic device to send any message via a telephone facsimile machine unless it is clearly marked in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission the date and time it is sent, the identification of the business, other entity, or person sending the message, and the telephone number of the sending machine or of the business, other entity, or person.

(b) This section shall not apply to a facsimile sent by or on behalf of a professional or trade association that is a tax-exempt nonprofit organization and in furtherance of the association's tax-exempt purpose to a member of the association if all of the following conditions are met:

- 1           (1)   The member voluntarily provided the association the facsimile number  
2           to which the facsimile was sent.  
3           (2)   The facsimile is not primarily for the purpose of advertising the  
4           commercial availability or quality of any property, goods, or services  
5           of one or more third parties.  
6           (3)   The member who is sent the facsimile has not requested that the  
7           association stop sending facsimiles.

8   **"§ 75-118. Enforcement.**

9           (a)   A person or entity who receives an unsolicited advertisement in violation of  
10          this Article may bring any of the following actions in civil court:

- 11           (1)   An action to enjoin further violations of this Article by the person or  
12           entity who sent the unsolicited advertisement.  
13           (2)   An action to recover five hundred dollars (\$500.00) for the first  
14           violation, one thousand dollars (\$1,000) for the second violation, and  
15           five thousand dollars (\$5,000) for the third and any other violation that  
16           occurs within two years of the first violation.

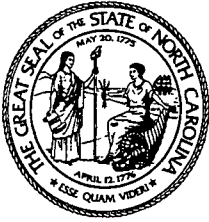
17          (b)   In an action brought pursuant to this Article, the court may award a prevailing  
18          plaintiff reasonable attorneys' fees if the court finds the defendant willfully engaged in  
19          the act or practice, and the court may award reasonable attorneys' fees to a prevailing  
20          defendant if the court finds that the plaintiff knew, or should have known, that the  
21          action was frivolous and malicious.

22          (c)   Actions brought by a person or entity pursuant to this section shall be tried in  
23          the county where the plaintiff resides at the time of the commencement of the action.

24          (d)   This section shall not be construed to alter or restrict any remedy a person  
25          may have under federal law, including the Junk Fax Prevention Act of 2005, against a  
26          person or entity who sends an unsolicited advertisement.

27          (e)   A violation of this Article is a violation of G.S. 75-1.1."

28          **SECTION 2.** This act is effective when it becomes law.



## SENATE BILL 1295: Junk Faxes

### BILL ANALYSIS

**Committee:** House Judiciary II  
**Introduced by:** Senator Dorsett  
**Version:** Second Edition

**Date:** July 18, 2006  
**Summary by:** Jeff Hudson  
Committee Counsel

**SUMMARY:** *Senate Bill 1295 would prohibit the transmission of unsolicited facsimile advertisements to telephone facsimile machines in certain situations. The bill would also require all facsimile transmissions to contain certain identifying information.*

### BILL ANALYSIS:

**Prohibition on transmission of unsolicited facsimile advertisements** - Senate Bill 1295 would prohibit the transmission of unsolicited facsimile advertisements to a person with whom the sender did not already have an "established business relationship". The act defines what constitutes an "established business relationship" between a seller and a consumer. The act would not prohibit the transmission of unsolicited facsimile advertisements when the sender and the recipient of the facsimile already have an "established business relationship", but the facsimile would be required to include: the clear and conspicuous notice of the advertisement on the first page, directions for the recipient to place a request not to be sent similar advertisements, and a toll-free telephone or facsimile number to receive their "do not send" request.

**Requirement for identifying information** - Senate Bill 1295 would require that the following identifying information be contained in all facsimile transmissions: the date and time sent, an identification of the sender of the message, and a telephone number of the sending business or person. The act would exempt certain non-profit professional or trade association transmissions from these identifying information requirements.

**Enforcement** - Senate Bill 1295 would provide that any person or entity receiving an unsolicited advertisement in violation of this Article may bring any of the following actions in civil court:

- 1) An action to enjoin further violations by the sender; and
- 2) An action to recover the following amounts from the sender - \$500 for the first violation, \$1,000 for the second violation, and \$5,000 for the third and subsequent violations, within a two year period.

Violation of this Article would also be an unfair and deceptive trade practice, which would provide additional remedies, including the possibility of treble damages.

**EFFECTIVE DATE:** The act would be effective when it becomes law.

**BACKGROUND:** Three states currently address the sending of unsolicited facsimile transmissions as sections of their "Do Not Call" laws: Oregon, Massachusetts, and Colorado. On July 9, 2005, Congress enacted The Junk Fax Prevention Act of 2005 to amend the unsolicited fax advertisement provisions of the Telephone Consumer Protection Act of 1991 (TCPA) and directed the Federal Communications Commission (FCC) to issue rules to implement the act. The new rules are scheduled to take effect on August 1, 2006.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

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

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

S. B. No. 1295

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

DATE 7/18/06

Amendment No. 2  
(to be filled in by  
Principal Clerk)

Rep. )  
Sen. ) Michaux

1 moves to amend the bill on page 3, line 27

2 ( ) WHICH CHANGES THE TITLE

3 by rewording the line to read:

4 " (e) A violation of G.S. 75-116 is a violation  
5 of G.S. 75-1.1."

6 \_\_\_\_\_

7 \_\_\_\_\_

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SIGNED 

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

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)



NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
Senate Bill 1295

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

S1295-ASB-43 [v.2]

Page 1 of 2

Date \_\_\_\_\_, 2006

Comm. Sub. [YES]  
Amends Title [NO]  
Second Edition

Representative \_\_\_\_\_

1 moves to amend the bill on page 1, lines 9 through 19,  
2 by rewriting those lines to read:

3  
4 "§ 75-115. The following definitions apply in this Article:

5 (1) Established business relationship. –

6 a. A relationship between a seller and a consumer based on:

7 1. The consumer's purchase, rental, or lease of the seller's  
8 goods or services or a financial transaction between the  
9 consumer and the seller or one or more of its affiliates  
10 within the 18 months immediately preceding the date of  
11 an unsolicited advertisement; or

12 2. The consumer's inquiry or application regarding a  
13 product or service offered by the seller within the three  
14 months immediately preceding the date of an unsolicited  
15 advertisement.

16 b. A relationship between a tax-exempt nonprofit organization and  
17 a person based on:

18 1. The person's association with the tax-exempt nonprofit  
19 organization as a member, contributor, or volunteer of  
20 the tax-exempt nonprofit organization within the 18  
21 months immediately preceding the date of an unsolicited  
22 advertisement;

23 2. The person's subscription to or use of the services of the  
24 tax-exempt nonprofit organization within the 18 months



**NORTH CAROLINA GENERAL ASSEMBLY**  
**AMENDMENT**  
**Senate Bill 1295**

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

S1295-ASB-43 [v.2]

Page 2 of 2

immediately preceding the date of an unsolicited  
advertisement; or

3. The person's inquiry regarding the tax-exempt nonprofit  
organization within the three months immediately  
preceding the date of an unsolicited advertisement." and

on page 3, line 28,  
by rewriting the line to read:

"SECTION 2. This act becomes effective September 1, 2006, and applies to  
offenses committed on or after that date."

SIGNED \_\_\_\_\_  
Amendment Sponsor

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

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

# **AGENDA**

## **HOUSE COMMITTEE ON JUDICIARY II**

**July 18, 2006  
Room 421  
10:00 AM**

### **OPENING REMARKS**

Representative Mickey Michaux, Chair

### **AGENDA ITEMS**

**S-1295 –Junk Faxes-Senator Dorsett**



**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2006 SESSION**

You are hereby notified that the Committee on **JUDICIARY II** will meet as follows:

**DAY & DATE:**     **Tuesday, July 18, 2006**

**TIME:**             **10:00 A.M.**

**LOCATION:**        **Room 421**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

**S-1295 Junk Faxes-Senator Dorsett**

Respectfully,  
Representative H. M. Michaux, Jr.  
Chair

I hereby certify this notice was filed by the committee assistant at the following offices at  
**12:45 p.m. on July 14, 2006.**

☒ Principal Clerk  
☒ Reading Clerk - House Chamber

Anita Wilder (Committee Assistant)

House Pages

Name Of Committee: Judiciary II Date 7-18-06

1. Name: Dave Rossi

County: Wake

Sponsor: Black

2. Name: Tony A. Tyson II

County: Greene

Sponsor: Mrs. Edith Warren

3. Name: Brice Hamby

County: Pitt

Sponsor: Tolson

4. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

5. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

Sgt-At-Arms

1. Name: James Worth

2. Name: FRANK PrevO

3. Name: \_\_\_\_\_

4. Name: \_\_\_\_\_

5. Name: =

## VISITOR REGISTRATION SHEET

JUDICIARY II

July 18, 2006

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Cameron Contrizano	Daily Bulletin
Lauren Rogers	NC Family Policy Council
Bill Ruston	ASP
Rob Schuchfeld	NCCNB
Betty Turner	Bank of America
Mike Baker	ASP
Stephen Simpson	NCAR

**MINUTES  
HOUSE COMMITTEE ON  
JUDICIARY II**

Wednesday, July 26, 2006


The House Committee on Judiciary II met on Wednesday, July 26, 2006, in Room 421 of the Legislative Office Building at 10:05 AM. The following members were present: Chairman Mickey Michaux, Vice-Chair Timothy Moore, Representatives Allen, Fisher, Folwell, Gulley, Jones, Walend and Wiley. Drupti Chauhan, Karen Cochrane-Brown and Jeff Hudson, Staff Counselors were also in attendance. A Visitor's Registration list is attached and made part of these minutes.

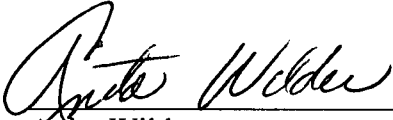
The Chairman called the meeting to order and recognized Pages, Sergeant-At-Arms, Staff and visitors.

Rep. Parmon was recognized to explain **HB 2793, A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE USE OF INDIVIDUAL SURETIES AND IRREVOCABLE LETTERS OF CREDIT FOR PERFORMANCE AND PAYMENT BONDS FOR PUBLIC CONSTRUCTION, AND TO ALLOCATE FUNDS TO IMPLEMENT THIS PROGRAM.** An amendment was introduced for discussion and Rep. Edward Jones made a motion to adopt the amendment for discussion and the Committee gave a favorable vote. After much discussion the Chairman announced that no vote would be taken on the bill and it would be further discussed at another meeting. Everyone was asked to check their emails for a possible future meeting.

There being no further business, the Chair adjourned the meeting at 10:25 AM.

Respectfully submitted,

  
\_\_\_\_\_  
Representative Mickey Michaux, Jr.  
Presiding Chair

  
\_\_\_\_\_  
Anita Wilder  
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

2

HOUSE BILL 2793  
Committee Substitute Favorable 7/20/06

Short Title: Additional Surety for Public Construction.

(Public)

Sponsors:

Referred to:

May 30, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE USE OF INDIVIDUAL SURETIES AND  
IRREVOCABLE LETTERS OF CREDIT FOR PERFORMANCE AND  
PAYMENT BONDS FOR PUBLIC CONSTRUCTION, AND TO ALLOCATE  
FUNDS TO IMPLEMENT THIS PROGRAM.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 44A-26(b) reads as rewritten:

"(b) The performance bond and the payment bond shall be executed by one or more sureties that are one of the following:

(1) A surety companies-company legally authorized to do business in the State of North Carolina-Carolina.

(2) An individual surety qualified under G.S. 44A-26.1.

(3) A qualified financial institution in the form of an irrevocable letter of credit under G.S. 44A-26.4.

~~and~~ The performance bond and payment bond shall become effective upon the awarding of the construction contract."

**SECTION 2.** Article 3 of Chapter 44A of the General Statutes is amended by adding the following new sections to read:

**"§ 44A-26.1. Individual sureties.**

(a) An individual who meets the requirements of this section shall qualify as an individual surety for purposes of G.S. 44A-26.

(b) The contracting body shall determine the acceptability of individuals proposed as sureties, and shall ensure that the surety's pledged assets are sufficient to cover the bond obligation. The contracting body shall not accept an independent surety excluded under G.S. 44A-26.2.

(c) An individual surety must execute the bond, and the unencumbered value of the assets (exclusive of all outstanding pledges for other bond obligations) pledged by the individual surety, must equal or exceed the penal amount of each bond. The individual surety shall execute a standard surety bond form approved by the

Commissioner of Insurance and provide a security interest in accordance with G.S. 44A-26.3. One individual surety is adequate support for a bond, provided the unencumbered value of the assets pledged by that individual surety equal or exceed the amount of the bond. A contractor may submit up to three individual sureties for each bond, in which case the pledged assets, when combined, must equal or exceed the penal amount of the bond. Each individual surety must accept both joint and several liability to the extent of the penal amount of the bond.

(d) A contractor submitting an unacceptable individual surety in satisfaction of a performance or payment bond requirement may be permitted a reasonable time, as determined by the contracting body, to substitute an acceptable surety for a surety previously determined to be unacceptable.

(e) When evaluating individual sureties, contracting bodies may obtain assistance from the Attorney General. Contracting bodies shall obtain the opinion of legal counsel as to the adequacy of the documents pledging the assets prior to accepting payment and performance bonds.

(f) Chapter 58 of the General Statutes does not apply to sureties provided in accordance with this section.

**"§ 44A-26.2. Exclusion of individual sureties.**

(a) An individual may be excluded from acting as a surety on bonds submitted by contractors under this Article by the contracting body in accordance with this section. The exclusion shall be for the purpose of protecting the contracting body.

(b) An individual may be excluded for any of the following causes:

(1) Failure to fulfill the obligations under any bond.

(2) Failure to disclose all bond obligations.

(3) Misrepresentation of the value of available assets or outstanding liabilities.

(4) Any false or misleading statement, signature, or representation on a bond or affidavit of individual suretyship.

(5) Any other cause affecting responsibility as a surety of such serious and compelling nature as may be determined to warrant exclusion.

(c) An individual surety excluded pursuant to this section shall be included in the Excluded Parties List System maintained in the Department of Administration.

(d) Contracting bodies shall not accept the bonds of individual sureties whose names appear in the Excluded Parties List System unless the contracting body states in writing the compelling reasons justifying acceptance.

(e) An exclusion of an individual surety under this section will also preclude the party from acting as a contractor under G.S. 143-128.

**"§ 44A-26.3. Security interest of individual surety.**

(a) An individual surety may be accepted only if a security interest in assets acceptable under 48 C.F.R. § 28.203.2 is provided to the contracting body by the individual surety. The security interest shall be furnished with the bond.

(b) The value at which the contracting body accepts the assets pledged must be equal to or greater than the aggregate penal amounts of the bonds required by the solicitation and may be provided by one or a combination of the following methods:

1           (1)   An escrow account with a federally insured financial institution in the  
2               name of the contracting body. While the contractor is responsible for  
3               establishing the escrow account, the terms and conditions must be  
4               acceptable to the contracting body. At a minimum, the escrow account  
5               shall provide for the following:

- 6           a.   The account must provide the contracting body the sole and  
7               unrestricted right to draw upon all or any part of the funds  
8               deposited in the account. A written demand for withdrawal shall  
9               be sent to the financial institution by the contracting body, after  
10              obtaining the concurrence of legal counsel, with a copy to the  
11              contractor and to the surety. Within the time period specified in  
12              the demand, the financial institution would pay the contracting  
13              body the amount demanded up to the amount on deposit. If any  
14              dispute should arise between the contracting body and the  
15              contractor, the surety, or the subcontractors or suppliers with  
16              respect to the offer or contract, the financial institution would  
17              be required, unless precluded by order of a court of competent  
18              jurisdiction, to disburse monies to the contracting body as  
19              directed by the contracting body.
- 20           b.   The financial institution would be authorized to release to the  
21               individual surety all or part of the balance of the escrow  
22               account, including any accrued interest, upon receipt of written  
23               authorization from the contracting body.
- 24           c.   The contracting body would not be responsible for any costs  
25               attributable to the establishment, maintenance, administration,  
26               or any other aspect of the account.
- 27           d.   The financial institution would not be liable or responsible for  
28               the interpretation of any provisions or terms and conditions of  
29               the solicitation or contract.
- 30           e.   The financial institution would provide periodic account  
31               statements to the contracting body.
- 32           f.   The terms of the escrow account could not be amended without  
33               the consent of the contracting body.

34           (2)   A lien on real property owned in fee simple by the surety without any  
35               form of concurrent ownership except where all cotenants agree to act  
36               jointly, located within the United States and not the principal residence  
37               of the surety. The asset value of real estate will be accepted at one  
38               hundred percent (100%) of the most current tax assessment value less  
39               encumbrances or seventy-five percent (75%) of the real estate's  
40               unencumbered market value provided a current appraisal is furnished.  
41               Whenever a bond with a security interest in real property is submitted,  
42               the individual surety shall provide all of the following:

- 43           a.   Evidence of title in the form of a certificate of title prepared by  
44               a title insurance company on the List of Approved Attorneys.

Abstracters, and Title Companies approved by the United States Department of Justice. This title evidence must show fee simple title vested in the surety along with any concurrent owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the contracting body.

b. Evidence of the amount due under any encumbrance shown in the evidence of title.

c. A copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than six months prior to the date of the bond, prepared by a professional appraiser who certifies that the appraisal has been conducted in accordance with the generally accepted appraisal standards as reflected in the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Foundation.

**"§ 44A-26.4. Irrevocable letters of credit.**

(a) Any person required to furnish a bond under G.S. 44A-26 has the option to furnish a bond secured by an irrevocable letter of credit in accordance with this section in an amount equal to the penal sum required to be secured under G.S. 44A-26. A separate irrevocable letter of credit is required for each bond.

(b) The irrevocable letter of credit shall be irrevocable, require presentation of no document other than a written demand and the irrevocable letter of credit (and letter of confirmation, if any), expire only as provided in subsection (f) of this section, and be issued or confirmed by an acceptable federally insured financial institution as provided in subsection (g) of this section.

(c) To draw on the irrevocable letter of credit, the contracting body shall use the sight draft set forth in subsection (h) of this section and present it with the irrevocable letter of credit (including letter of confirmation, if any) to the issuing financial institution or the confirming financial institution (if any).

(d) If the contractor does not furnish an acceptable replacement irrevocable letter of credit, or other acceptable substitute, at least 30 days before an irrevocable letter of credit's scheduled expiration, the contracting body shall immediately draw on the irrevocable letter of credit.

(e) If, after the period of performance of a contract where irrevocable letters of credit are used to support payment bonds, there are outstanding claims against the payment bond, the contracting body shall draw on the irrevocable letter of credit prior to the expiration date of the irrevocable letter of credit to cover these claims.

(f) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the contractor may submit an irrevocable letter of credit with an initial expiration date estimated to cover the entire period for which financial security is required or an irrevocable letter of credit with an initial expiration date that is a minimum period of one year from the date of issuance. The irrevocable letter of credit shall provide that, unless the issuer provides the beneficiary written notice of nonrenewal at least 60 days in advance of the current expiration date, the irrevocable



letter of credit is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and the contracting body provides the financial institution with a written statement waiving the right to payment. The period of required coverage shall be as follows:

- (1) For performance bonds only, until completion of any warranty period.
- (2) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.

(g) Only federally insured financial institutions rated investment grade or higher shall issue or confirm the irrevocable letter of credit. Unless the financial institution issuing the irrevocable letter of credit had letter-of-credit business of at least twenty-five million dollars (\$25,000,000) in the past year, irrevocable letters of credits over five million dollars (\$5,000,000) must be confirmed by another acceptable financial institution that had letter-of-credit business of at least twenty-five million dollars (\$25,000,000) in the past year.

- (1) The contractor shall provide the contracting body a credit rating from a recognized commercial rating service as specified in Office of Federal Procurement Policy Pamphlet No. 7, 48 C.F.R. § 28.204-3(h), that indicates the financial institution has the required rating as of the date of issuance of the irrevocable letter of credit.

- (2) If the contracting body learns that a financial institution's rating has dropped below the required level, the contracting body shall give the contractor 30 days to substitute an acceptable irrevocable letter of credit or shall draw on the irrevocable letter of credit in accordance with subsection (c) of this section.

(h) The following format shall be used by the contracting body for a sight draft to draw on the letter of credit:

"SIGHT DRAFT

\_\_\_\_\_  
[City, State]

(Date) \_\_\_\_\_

\_\_\_\_\_  
[Name and address of financial institution]

Pay to the order of \_\_\_\_\_ [Contracting Body]  
the sum of United States \$ \_\_\_\_\_.

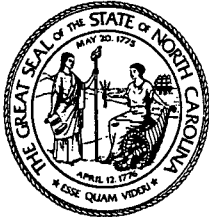
This draft is drawn under Irrevocable Letter of Credit No. \_\_\_\_\_.

\_\_\_\_\_  
[Contracting Body]

By: \_\_\_\_\_."

1           **SECTION 3.** There is allocated from funds appropriated from the General  
2 Fund to the Department of Administration for the HUB Office the sum of ten thousand  
3 dollars (\$10,000) for the 2006-2007 fiscal year to develop a program to implement this  
4 act and to educate individual sureties regarding State construction project opportunities.

5           **SECTION 4.** Sections 1 and 2 of this act become effective September 1,  
6 2006. The remainder of this act is effective when it becomes law.



# HOUSE BILL 2793: Additional Surety for Public Construction

## BILL ANALYSIS

<b>Committee:</b>	House Judiciary II	<b>Date:</b>	July 26, 2006
<b>Introduced by:</b>	Reps. Womble, Parmon	<b>Summary by:</b>	Drupti Chauhan
<b>Version:</b>	Second Edition		Committee Counsel

**SUMMARY:** *House Bill 2793 would allow the use of individual sureties and irrevocable letters of credit for performance and payment bonds for public construction and appropriates \$10,000 to the Department of Administration's Historical Underutilized Business Office (HUB) for the implementation of the act and to educate individual sureties on State construction project opportunities.*

**CURRENT LAW:** State law currently mandates that State contracting bodies must require a performance and payment bond from any contractor with a contract of more than \$50,000 when the total amount of construction contracts awarded for any one project exceeds \$300,000. The performance bond and payment bond must be executed by a surety company legally authorized to do business in the State.

### BILL ANALYSIS:

**Section 1** of the bill would authorize individual sureties that meet statutory qualifications and qualified financial institutions in the form of irrevocable letters of credit to execute performance bonds and payment bonds.

**Section 2** of the bill sets forth the requirements that an individual must meet in order to qualify as an individual surety who can execute performance bonds and payment bonds for State contracting bodies. The bill states that the contracting body must determine the acceptability of individuals proposed as sureties and have to ensure that the pledged assets are sufficient to cover the bond obligation. The contracting body cannot accept any individual surety that is specifically excluded in this act.

#### Requirements of Individual Sureties:

- Must execute the bond and the unencumbered value of the assets pledged by the individual surety
- Must equal or exceed the penal amount of each bond
- Must execute a standard surety bond form approved by the Commissioner of Insurance and provide a security interest
- Up to 3 individual sureties may be submitted for each bond and each individual surety must accept both joint and several liability to the extent of the penal bond

#### Exclusions of Individual Sureties

An individual may be excluded from acting as a surety on bonds in this act by the contracting body for any of the following reasons:

- Failure to fulfill the obligations under any bond
- Failure to disclose all bond obligations
- Misrepresentation of the value of available assets or outstanding liabilities

# House Bill 2793

Page 2

- Any false or misleading statement, signature, or representation on a bond or affidavit of individual suretyship
- Any other serious or compelling reason that affects the individual's responsibility as a surety

The Department of Administration is required to maintain an Excluded Parties List System which contains individual sureties that are excluded under the act. Contracting parties cannot use sureties that appear on this List unless there is stated in writing a compelling reason to justify acceptance.

## Required Security Interests of Individual Sureties

- Security interests in assets must meet the requirements in 48 CFR 28.203-2. These are federal acceptable assets and include items such as cash, certificates of deposit, United States government securities at market value
- The value at which the contracting body accepts the assets pledged has to be equal to or greater than the aggregate penal amounts of the bonds and has to be provided by one or a combination of specified methods including:
  - An escrow account with a federally insured financial institution in the name of the contracting body and which allows the contracting body to draw upon the funds in the account.
  - A lien on real property owned in fee simple by the surety located in the US and not the principal residence of the surety with documentation showing ownership, appraisal, and any encumbrances.

## Irrevocable Letters of Credit

G.S. 44A-26.4 would allow any person that is required to furnish a performance and payment bond to secure the bond by an irrevocable letter of credit. A separate irrevocable letter of credit is required for each bond. The section sets forth specific criteria that the irrevocable letters of credit must meet and when and under what circumstances the contracting body must draw on the irrevocable letters of credit.

**Section 3** of the bill appropriates \$10,000 to the Department of Administration's Historical Underutilized Business Office (HUB) for the implementation of the act and to educate individual sureties on State construction project opportunities.

**EFFECTIVE DATE:** Sections 1 and 2 of the bill become effective September 1, 2006. The remainder of the bill is effective when it becomes law.

H2793e2-SMRQ



NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
House Bill 2793

H2793-ASB-50 [v.2]

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

Page 1 of 1

Date July 26, 2006

Comm. Sub. [YES]  
Amends Title [NO]  
Second Edition

Representative

- 1 moves to amend the bill on page 2, line 1,
- 2 by deleting "Commissioner of Insurance" and substituting "Department of
- 3 Administration".

SIGNED Edward H. Jones  
Amendment Sponsor

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

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

# **AGENDA**

## **HOUSE COMMITTEE ON JUDICIARY II**

**July 26, 2006  
Room 421  
10:00 AM**

### **OPENING REMARKS**

Representative Mickey Michaux, Chair

### **AGENDA ITEMS**

**H- 966 – Candidate-Specific Communications – Reps. Miller and Luebke**

**H- 2793 – Additional Surety for Public construction – Reps. Womble and Parmon**

**2<sup>nd</sup> Correction**  
**NORTH CAROLINA HOUSE OF REPRESENTATIVES**  
**COMMITTEE MEETING NOTICE**  
**AND**  
**BILL SPONSOR NOTIFICATION**  
**2006 SESSION**

You are hereby notified that the Committee on **JUDICIARY II** will meet as follows:

**DAY & DATE:**     **Wednesday, July 26 2006**

**TIME:**             **10:00 A.M.**

**LOCATION:**        **Room 421**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

**H-966 – Candidate-Specific Communications – Reps. Miller and Luebke**

**H-2793 – Additional Surety for Public Construction – Reps. Womble and Parmon**

Respectfully,  
Representative H. M. Michaux, Jr.  
Chair

I hereby certify this notice was filed by the committee assistant at the following offices at  
**3:30 p.m. on July 25, 2006.**

☒ Principal Clerk  
☒ Reading Clerk - House Chamber

Anita Wilder (Committee Assistant)

House Pages

**JUDICIARY II**

Name Of Committee: \_\_\_\_\_

Date: JULY 26, 2006

1. Name: Mckenzie Matthews

County: Harnett

Sponsor: David Lewis

2. Name: Will Nance

County: Harnett

Sponsor: David Lewis

3. Name: Stewart Harry

County: mecklenburg

Sponsor: Doug Vinson

4. Name: Andrew Jones

County: Carteret

Sponsor: \_\_\_\_\_

5. Name: Drew Hoogstra

County: Gaston

Sponsor: Clary

Sgt-At-Arms

1. Name: FRED HINES

2. Name: EARL COCKER

3. Name: WILL HEATH

4. Name: \_\_\_\_\_

5. Name: -



# VISITOR REGISTRATION SHEET

JUDICIARY II

July 26, 2006

Name of Committee

Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME

FIRM OR AGENCY AND ADDRESS

<del>Steve McIntire</del>	NC DPI
Rebecca Barringer	GA's office
Mike Parker	NC Council of School Attorneys
Judy McConnell	Daily Bulletin (IOG)
Clarence Hayes	Self
Bill Scoggin	KCLH
Lee Hilde	KCLH
Gaby Parker	
Rob Schofield	NC CNP
Elizabeth Dalton	NCRMA
Andy Ellen	NCRMA

# VISITOR REGISTRATION SHEET

JUDICIARY II

July 26, 2006

Name of Committee

Date

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NAME

FIRM OR AGENCY AND ADDRESS

Roz Sawitt	NC ACC
Peyton Maynard	SPR
Barbara Casler	BSGR
Adam Prodenoe	NCASA
Ann Marie Ammon	NCACC
Daniel Cordero	NCACC
George Washington	Dent President
Patrick Byrne	KLEIN ASSOCIATES, INC.
CRMA	NCATL
Jim Stegall	U.C.P.S.
John Doe	ITAC, PA

## VISITOR REGISTRATION SHEET

Judiciary II

Name of Committee

July 26, 2006

Date

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NAME

FIRM OR AGENCY AND ADDRESS

Kan Jan	Sanitar Indus
Rita L. Joyner	SBE
Boyd Cukle	City of Charlotte
Dick Taylor	NCAR
Paul Puley	NCATL
Molly Bz	NCSPA
Chris Hyas	Civitas
Jeff Milen	Civitas
Chris Fitzsimon	NC Policy Watch
DAVE Simpson	CAAC
STEVE KEENE	NCIMS

# VISITOR REGISTRATION SHEET

Judiciary II  
Name of Committee

July 26, 2006  
Date

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NAME

FIRM OR AGENCY AND ADDRESS

<u>John H. H.</u>	NCFPC
Pete Rolka	Forsyth Co Tax Assessor Collector
Jim Blackburn	Association of County Commissioners
Tom Bean	NCEW, NCWF
Becki Gray	Civitas Institute
Andy Lomen	NCLM
David Crawford	AIA NC
FRANK W. FOLGER	HELMS MULLISS WICKER
Rick Zechini	NC ASSN. OF REACTORS
Johanna Reese	DOT
John M. M.	Boo Office

## VISITOR REGISTRATION SHEET

House J II

7/26/06

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Wayne Goodwin	NE DOT
ZACIL ABEGUNRI	DOA/SCO
SPERUS FLEGGAS	DOA
Henry M. Lancaster <sup>B</sup>	UMCNC
BRUDERS L. WALK	DOA/HUB office
LoBy Ann Harris	CAAT
Jack Ayers	Wamble
April Z...	HHS
Kenneth Johnson	CANC